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Recent Legislative Activity

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Car Dealers Must Add Information to Ads

As of January 1, 1993, California made it illegal for car dealers to advertise sale prices of new cars without listing the number of models available at that price. The California Vehicle Code prohibits licensed vehicle dealers from advertising sale prices without the intent of supplying a reasonably expected demand. The amended portion of the Code seeks to enforce this policy by requiring automobile dealers that advertise to list the number of vehicles available for the advertised price.

The law places restrictions on type size, style, and color of newspaper advertisements. For example, the type size for the number of cars available must be at least the same size as the type used to display the price of the car. Violations of this provision are misdemeanors. *Cal. Veh. Code §11713.1(i) (1993)*. ❖

Proposed Revisions to Pollution Laws Target Consumers

Recent proposals to update federal clean air and anti-pollution statutes could, for the first time, directly regulate individual consumers. Previously, Congress had sought only to influence individuals through rules governing corporate responsibility. Enforcement

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efforts have focused on businesses because of the amount of pollution these entities produce.

Examples of legislation aimed at individual consumers include proposed regulations to mandate recycling of used lead-acid batteries. Consumers would also be required to dispose properly of cleaning solvents, paints, and used pesticides and motor oil.

Another regulation targeting consumers is the proposed federal emission program. Surveys show that consumers strongly favor car emission regulation. Proponents of higher standards see tighter regulation as an opportunity for consumers to participate in the battle against pollution.

In addition to these proposed regulations, current laws could be enforced differently, thus imposing individual responsibility. Homeowners could be liable under Superfund regulations for environmental hazards on their property. "Passive owners" of residential property have not been charged with liability for this type of waste, but the new focus on individual consumers could change that practice. *H.R. 424 (1993)*, (proposed amendment to *Solid Waste Disposal Act, 42 U.S.C. §§ 6941 et. seq.*). ❖

House Proposes Federal Limits on Employee Monitoring

The Privacy for Consumers and Workers Act would impose new restrictions on electronic monitoring in the work place. The Act defines electronic monitoring as, among other things, the collection of information through "computer[s], electronic observation and supervision, telephone service observation, telephone call accounting, or other form of visual, auditory, or computer-based technology which is conducted by any method

other than direct observation by another person"

In addition, electronic monitoring includes the measuring of key strokes of employees using word processors, recording of financial transactions, and even the videotaping of persons entering work areas after business hours.

The legislation proposed in the House of Representatives requires employers to provide general notice to workers that the company engages in monitoring and written notice to employees who will be monitored. Employees would be told when the monitoring would occur and for what purposes it would be used. Random monitoring would be permitted for employees who had been working for less than sixty days, as long as the employee received at least one day's notice.

Employers would not be required to provide notice in instances when the employer had reasonable suspicion that the employee was engaged in conduct that violated criminal or civil law and adversely affected the employer's interests or the interests of other employees.

The House report accompanying the Act also provides for First Amendment protection for employees exercising rights of free speech in the work place. *H.R. 1218 (1993)*. ❖

California Hits Junk Faxes

California has restricted the sending of unauthorized facsimiles, or junk faxes, as of January 1, 1993. The new law prohibits any person or entity operating in the state from faxing or causing to be faxed any junk faxes advertising the lease, sale, rental, or gift offer of any goods, services, or credit. Violations of this bill carry a \$500 fine for each transmission.

Junk faxes cost receivers of the unwanted material time and money. Receivers pay for the paper, and impor-

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tant messages may be interrupted by these junk faxes. California joins a number of states that have enacted restrictions on unwanted facsimiles. **Cal. Bus. & Prof. Code § 17538.4 (1993).** ♦

FDA Clarifies Regulations of Drugs for Rare Diseases

The Food and Drug Administration ("FDA") recently published regulations regarding the implementation of the 1983 Orphan Drug Act, covering drugs that treat a rare disease, or diseases affecting less than 200,000 people. The regulations permit manufacturers of antibiotics and biological products to enjoy seven years of exclusive approval for the drugs following marketing approval.

When a similar drug is "clinically superior" to the originally approved drug, the similar drug is also entitled to the seven year protection. Clinical superiority may be shown through greater effectiveness, safety, or some other major contribution to patient care. In response to industry comments, the FDA stated that a proposed similar drug for the treatment of AIDS, while it may require a lesser dose than a currently approved drug, would not be considered clinically superior unless the proponent could show reduced side effects or enhanced patient convenience.

The FDA also permitted the developers of drugs that treat rare afflictions and common ailments at the same time to retain orphan status. While the FDA is concerned about drug manufacturers seeking orphan status for drugs with more general uses, the agency hopes the current classification system will motivate the testing and development of drugs for rare diseases or conditions. **21 C.F.R. §316 (1993).** ♦

Texas Products Liability Bill Criticized

Consumer advocates have criticized a products liability bill approved by the Texas Senate in January, 1993. The proposed legislation provides that manufacturers of dangerous products would be liable only when there was proof that a safer, economically viable alternative existed. The bill has been sent to the Texas House for consideration.

The bill exempts from liability products that are inherently unsafe. A product is inherently unsafe if the consumer, having the ordinary knowledge of a member of the community, knows the product to be unsafe. The exemption does not apply to suits based on manufacturing defects or breach of an express warranty. A party alleging a design defect has the burden to show that the defect caused the injury and a safer alternative design existed.

Products exempted under the proposed bill include tobacco, alcohol, butter, sugar, and federally approved vaccines for AIDS. Critics of the legislation argue that manufacturers will be given a free pass to injure consumers without being held accountable. Critics also argue that the legislation was drafted in secret, without adequate consumer input. Proponents of the bill say the law will discourage manufacturers from placing questionable products on the market. **Tex. H.B. 373 (1993) (proposed).** ♦

Banks Liable for Wrongful Bounces in Virginia

After January 1, 1993, bank customers in Virginia have a statutory cause of action against banks for wrongful dishonor of items, or bouncing checks. Under the revised section of the state's commercial code, a bank may be liable for consequential damages. For example, if a customer was arrested or prosecuted for bouncing checks as a result of a bank wrongful

withholding payment, the customer could bring suit. The legislature revised this section to clear up confusion as to what type of damages a bank would be liable for in the event of a wrongful bounce.

The official comments to the bill attempt to distinguish between wrongful dishonor and a bank's failure to exercise ordinary care in processing a check. The comments also note that under similar statutes, some state courts have permitted actions by persons who were not customers, for example, a landlord or a family member. The Virginia legislature rejected such implied lawsuits, noting that non-customers can sue for damage to reputation. **Va. Code Ann. §8.4-212 (Michie 1992).** ♦

Installment Sales Complaints Promptly Addressed in New Hampshire

In New Hampshire, written consumer complaints against companies selling automobiles on an installment basis shall be forwarded to the seller by certified or registered mail for response within ten days of receipt by the consumer affairs department. According to the law, effective June 30, 1992, sellers must send written acknowledgment of the complaint to the consumer and the bank issuing credit for the automobile purchase. Within sixty days, the seller must conduct an investigation.

Within that time period, the seller must either make corrections to the installment contract or send an explanation of why its actions were appropriate to the buyer and the banking department. Failure to respond within the allotted time carries a \$50 per day fine payable to the New Hampshire Bank Commissioner. **N.H. Rev. Stat. Ann. Title 33A, §361 -A-:4-a (1992).** ♦