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Recent Legislative Activity

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RECENT LEGISLATIVE ACTIVITY

by Omar Fayez

Prohibited writings

The California State Legislature recently passed a bill, adding to Section 640.2 of the Penal Code, making it a misdemeanor to stamp, print, place, or insert any writing on any package or other container containing a consumer product offered for sale, without the consent of the person owning or operating the premises where the product is stored or sold, or of the product manufacturer or distributor. Since this bill creates a new crime, the bill would impose a state-mandated local program. This law does not apply if the owner or manager of the premises where the product is sold or stored, or his or her designee, or the product manufacturer or authorized distributor or retailer of the product consents to the placing or inserting of the writing. Effective date: July 12, 1996. **CAL. PENAL CODE § 640.2 (WEST 1996).**

Consumer credit records

The Illinois Legislature revised the Consumer Fraud and Deceptive Business Practices Act adding Section 2B.2. Effective January 1, 1997. After the close of 1996, it will become an unlawful practice for any person to offer for sale or sell to a customer access to any records or copies of any records pertaining to the customer that may be obtained at no or nominal cost from a governmental agency or consumer reporting agency as defined in the Fair Credit Reporting Act unless all offers for such service include a statement made in capital letters not less than 10 point scale which states that such information is available at little or no cost. Additionally, it must also be pointed out in the statement that credit reporting agencies are required to give you a copy of your credit report at no charge or for a nominal fee. **815 ILL. COMP. STAT. 505/2B.2 (WEST 1996).**

Automated teller machines

The Illinois Legislature recently enacted a bill cited as the Automated Teller Machine Security Act. Any automated teller installed on or after July 1, 1997 shall provide lighting during darkness hours with respect to open teller machines and any defined parking area, access area, and exterior of an enclosed automated teller. This Act applies to an operator of an automated teller machine only to the extent the operator controls the access area or defined parking area to be lighted. (205 ILCS § 695/10).

Additionally, the issuer of an automated teller shall provide the customer receiving the device with a notice of basic safety precautions with regard to the use of the teller. The issuer of an access device shall be deemed to be in compliance with the notice requirement of the Section if the issuer advises the customer: (1) to be aware of the customer's surroundings, particularly during the hours of darkness; (2) to be accompanied by another person when using an automated teller during the hours of darkness; (3) to avoid displaying cash; (4) to use another teller or return later if anything suspicious is noticed when using or when considering to use an automated teller; and (5) to report all crimes to the operator of the automated teller machine or to local law enforcement officials. (205 ILCS § 695/15). **205 ILL. COMP. STAT. 695/1 (WEST 1996).**

Health insurance

The United States Congress passed an act to amend the Internal Revenue Code of 1986 to improve portability and continuity of health insurance coverage in the group and individual markets. The purpose of such act is also to fight waste, fraud, and abuse within the health care and health insurance system. Most notable, is the increased portability through limitations on pre-existing exclusions (Sec. 2701), prohibiting discrimination against individual participants and beneficiaries based on health status (Sec. 2702), and

guaranteed availability of coverage and renewability for employers in the group market (Sec. 2711, 2712). Enacted date: August 21, 1996. **110 Stat 1936 (1996).**

Anti-counterfeiting

The United States Congress has implemented the Anti-counterfeiting Consumer Protection Act of 1996, designed to control and prevent commercial counterfeiting. Section 1961 (1)(B) of title 18, United States Code is amended by inserting section 2318 relating to trafficking in counterfeit labels for phonorecords, computer programs or computer documentation or packaging and copies of motion pictures or other audiovisual works. Congress deemed this act necessary due to the multibillion-dollar drain on the U.S. Economy and threat to thousands of American jobs.

Section 35 of the amended Act allows that in a case involving the use of a counterfeit mark in connection with the sale, offering for sale, or distribution of goods or services, the plaintiff may elect, at any time prior to final judgment is rendered by the trial court, to recover statutory damages, instead of just actual damages and profits, for such use in the connection with the counterfeit mark. The goods for sale must be valued not less than \$500 or more than \$100,000 per counterfeit mark type; or, if the court finds willful conduct, not more than \$1,000,000 per counterfeit mark. Date passed: July 2, 1996. **110 Stat 1386 (1996).**

Collateral protection

The Illinois Legislature recently passed the Consumer Law-Collateral Protection Act concerning the protection of collateral pledged to ensure payment or performance under a credit agreement. A creditor may place collateral protection insurance provided the following conditions are met: (1) the debtor has entered into a credit transaction with the creditor; (2) the credit transaction has been reduced to a credit agreement, and the agreement requires the debtor to maintain insurance on the collateral; and (3) a notice has been included in the credit agreement or separate document provided to the debtor and any other person liable with the debtor at the time the credit agreement is entered. The notice must stipulate that unless the debtor has provided evidence of insurance coverage required by the agreement, the

creditor may purchase insurance at the expense of the borrower. The insurance may, but need not, protect your interests. Additionally, the creditor must give notice that the debtor may cancel the insurance, but only after [providing the creditor with evidence that insurance has been obtained pursuant to the agreement, The costs of the insurance may be added to the total outstanding balance or obligation, and the insurance may be more than the cost of insurance the borrower may be able to obtain on their own. This act takes effect upon becoming law. **815 ILL. COMP. STAT. 180/10 (West 1996).**

Alcohol advertising

The Illinois Legislature passed an act to amend the Liquor Control Act of 1934 by placing limitations on signs and inside advertising materials. No manufacturer or distributor can sell, supply, furnish, give, pay, lease, loan and furnishing, fixture, or equipment on the premises of a place of business authorized to sell alcoholic liquor at retail, either for consumption on or off the premises. However, a manufacturer or distributor may furnish to a retail licensee one temporary outside sign per brand without being subject to limitations. Temporary outside signs include, but are not limited to, banners, flags, pennants, and streamers, and must be temporary and non-permanent in nature. All temporary signs and inside advertising materials in place and in use at any one time shall cost in aggregate not more than \$325 per manufacturer.

Permanent outside signs shall be limited to one outside sign, per brand, in place and in use at any one time, costing not more \$2000 per manufacturer. Permanent signs, whether visible from the outside or the inside of the premises, include, for example, neons, illuminated signs, clocks, tap handles, window painting, window trim, and menus. A permanent sign must include the manufacturer's name, brand name, slogans, or logos that are generally used in identifying the product. However, permanent signs include the name, markings, or logos of the retailer. Date approved: July 19, 1996. **235 ILL. COMP. STAT. 5/6-6 (West 1996).**