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Recent Legislative Activity

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Butter Declared an Inherently Unsafe Product by the Texas Legislature

The Texas Legislature added a new products liability chapter to its Civil Practice and Remedies Code, which became effective on September 1, 1993.

Under the chapter, a manufacturer has a duty to indemnify a seller against losses arising out of products liability actions unless the seller's negligence, intentional misconduct, or other act or omission, such as altering the product, caused the loss. A seller eligible for indemnification must give reasonable notice to the manufacturer, and is entitled to recover attorney's fees, court costs, and reasonable damages.

The chapter also distinguishes between inherently unsafe products and design defects. If the ordinary consumer knows a product is inherently unsafe and it is intended for personal consumption, then the manufacturer or seller will not be liable. Examples of inherently unsafe products include sugar, castor oil, alcohol, tobacco, and butter. However, in a design defect action, if the consumer proves by a preponderance of the evidence that a safer alternative design for the product existed, and that the defect caused the injury, the consumer is entitled to recover. The legislature defined a safer alternative design as a design

that would have prevented or significantly reduced the consumer's risk of injury without substantially impairing the product's utility. In addition, the safer alternative design must be economically and technologically feasible at the time the product leaves the control of the manufacturer or seller.

The chapter provides that any damages awarded by a judge or jury will be deemed reasonable for purposes of the chapter. **1993 Tex. Sess. Law Serv. Ch. 5 (Vernon's).**

Used Car Salespeople Must Now Disclose Lemons

The Maine Legislature recently passed a law requiring used car dealers to inform buyers when a car was the subject of a lemon law decision.

The law requires Maine car dealers to obtain a written statement from the seller of a used car that includes information on the make, model, serial number, and principal use of the car as well as data on the seller. The statement must also identify any and all known mechanical defects, and describe any damage the car previously sustained.

Lemon law statutes are generally designed to protect consumers from cars that do not conform to all the manufacturer's express warranties. Under Maine's new law, if a car has been the subject of a complaint under any state's lemon law statute and the manufacturer repurchased the vehicle pursuant to a court or arbitration order or voluntary settlement, then the dealer must disclose this information to the new buyer.

In addition to other remedies, dealers who violate the new law are liable to the buyer for costs and reasonable attorney's fees between \$100 and \$1,000. A dealer who can show that the violation was an unintentional bona fide error will not be found liable under the law. **1993 Me. Legis. Serv. Ch. 112 (West).**

New Jersey Provides a Free Ride for Commuters

The New Jersey legislature approved a bill which provides a tax break to individuals receiving commuter transportation benefits from their employer.

Pursuant to the new law, employees can receive a maximum of \$720 for transportation expenses without being required to include the amount as income. Should an employee receive transportation benefits in excess of \$720 in a year, only the excess must be included in the employee's gross income. Employees must furnish their employers with suitable proof of the expense in the form of receipts or ticket stubs.

The commuter transportation tax break only applies if the employer provides the benefit in addition to, not in lieu of, compensation which would otherwise be payable to the employee. **1993 N.J. Sess. Law Serv. Ch. 150 (West).**

Pennsylvania Declares Latin Dead in Consumer Contracts

In response to findings that many consumer contracts are written and designed to be difficult for consumers to understand, the Pennsylvania General Assembly approved a new law that requires the use of plain language in consumer contracts.

The law covers written agreements pursuant to which a consumer borrows money, obtains credit, buys, leases, or rents personal property, real property, or services for cash or credit. The Act excludes contracts such as real estate conveyancing documents, consumer contracts involving amounts greater than \$50,000, marital agreements, and contracts to buy securities.

The law admonishes contract drafters to use short words, sentences, para-

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graphs, and active verbs. Contracts should not contain technical legal terms, Latin or foreign words, sentences with more than one condition, and double negatives. The contract should define words by using other commonly understood words, and should refer to the parties to the contract in an easily understood and uniform manner.

Any vendor who does not comply with the plain language statute is liable to the consumer for actual losses caused by the violation, statutory damages of \$100 or the total amount of the contract if less, court costs, attorney's fees, and any other relief ordered by the court. However, if the contract has been performed, a consumer wrote the contract, or the vendor makes a good faith and reasonable effort to comply with the Act, courts will not assess liability. **1993 Pa. Legis. Serv. 1993-29 (Purdon's).**

Florida Requires Commercial Weight-Loss Businesses to Provide Consumers with a "Weight-Loss Bill of Rights"

Under Florida's new Commercial Weight-Loss Practices Act, providers of weight-loss services are required to make certain disclosures to consumers.

Under the new law, each weight-loss provider must give consumers a written, itemized statement of the fixed or estimated cost of the entire program. The disclosure must include all additional products, services, supplements, exams, or laboratory tests the consumer may have to purchase from a weight-loss provider as part of the program. The weight-loss providers must also estimate the duration of the program, upon request provide the educational and professional background of employees, and provide the name, address, and qualifications of the person who reviewed and approved the program.

In addition, the bill requires weight-loss centers to provide consumers with

a palm-sized card containing the "Weight-Loss Bill of Rights."

The bill of rights warns the consumer about the dangers of rapid weight loss, and advises the consumer to consult a personal physician before beginning any weight-loss program. It also reminds consumers that they have the right to ask questions regarding things such as health risks, nutritional content of products, and available psychological support. The Weight-Loss Bill of Rights must be posted at the registration desk of any weight-loss center and in every room in which a presentation or sale of a weight-loss program is made.

Violation of the Act constitutes an unfair and deceptive trade practice. Florida's Department of Agriculture and Consumer Services is empowered to bring a civil action for temporary or permanent injunctive relief. In addition, the department may seek other civil remedies including penalties not to exceed \$5,000 for each violation. Violators will also be responsible for restitution and damages to the consumer, court costs, and reasonable attorney's fees. **1993 Fla. Sess. Law Serv. Ch. 93-274 (West).**

Washington Wants to Protect After Dark ATM Users

In an effort to enhance the safety of consumers using automated teller machines (ATM's) and night deposit facilities, the Washington Legislature enacted a new law requiring minimum lighting requirements for ATM's put into service on or after July 1, 1994. In addition, operators of existing ATM's must evaluate the safety of their ATM facilities.

New ATM operators must provide sufficient lighting at the face of the ATM extending outward five feet during the hours of darkness. Additionally, operators must provide lighting within 50 feet in all directions of the ATM as well as in the portion of the parking area within 50 feet of the ATM.

Operators of existing ATM's must

adopt procedures for evaluating the safety of their ATM machines. The procedures must pertain to (1) the extent to which the lighting will comply with the new statute (2) the presence of landscaping, vegetation, or other obstructions in the area, and (3) the incidence of violent crimes in the immediate neighborhood. Under the new law, all operators must furnish customers with information about basic safety precautions that the customer should employ when using an ATM after dark. Existing ATM's must meet the lighting standards set out in the new law by July 1, 1996. Until that time, compliance with the new law is optional. The statute provides that compliance with the objective standards and information requirements of the new law is prima facie evidence that the operator of the ATM has provided adequate measures for the safety of ATM users. **1993 Wash. Legis. Serv. Ch. 324 (West).**

Maine Prohibits Businesses from Displaying Consumers' Social Security Numbers

In order to prevent wide access to consumers' Social Security numbers, Maine has enacted a law prohibiting businesses from displaying social security numbers on credit cards, customer service cards, and debit cards.

The law, effective January 1, 1994, defines a customer service card as a card used by a business as a means of identifying customers who receive membership, purchasing, or check-cashing privileges by use of the card.

Violators of the new law face a fine of up to \$1,000. The Superintendent of the Bureau of Consumer Credit Protection will enforce the law and may take appropriate action to ensure compliance. The superintendent's power includes acting on complaints, conducting hearings, issuing cease and desist orders, and referring cases to the attorney general. **1993 Me. Legis. Serv. Ch. 115 (West).**