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## Recent Legislative Activity

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# Recent Legislative Activity

## Arkansas Targets Fraud Against Elderly and Disabled

The Governor of Arkansas signed legislation in February 1993 that enhances the penalties for fraud against elderly or disabled persons. Under the amendment to the state Deceptive Practices Act, courts have the power to assign additional civil penalties of up to \$10,000 for each violation. The additional money will be deposited in a victim's fund that will finance both the investigation and prosecution of consumer fraud against elderly and disabled persons, and consumer education.

The amendment directs courts to consider a list of factors in deciding whether to impose the enhanced civil penalty. These factors include the relative vulnerability of the victims because of age or infirmity, the fraudulent party's intent, and the effect of the fraud on the victim.

Elderly and disabled persons have a cause of action under this law for actual damages, punitive damages, and reasonable attorney's fees. Victims are repaid money they have lost as result of the fraud before punitive damages, attorney's fees, or other civil penalties. The law also provides that the Attorney General of Arkansas must educate elderly and disabled consumers about the

prevalence of this type of fraud. The law requires the Attorney General's office to establish and maintain referral procedures with other state agencies and to monitor and prosecute consumer fraud. **1993 Ark. Acts 138, §§4-88-201-206.** ❖

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## New Jersey May Join States Regulating Rent-to-Own Stores

New Jersey legislators are considering regulation of rent-to-own stores that would require the rental stores to disclose the weekly cost of the item to be rented, the number of payments required before the buyer owns the merchandise, and the total cost of the purchase. Rental stores would also be required to provide a description of the goods purchased.

Proponents of the legislation point to the exorbitant cost a consumer purchasing through a rent-to-own store pays. Credit rates are much higher than what banks or credit card companies charge, and as a result, consumers end up paying two or even three times the actual listed sale price for goods.

Of the thirty-one states regulating rent-to-own transactions, only Pennsylvania places a cap on the credit rate that can be charged. The proposed New Jersey legislation would not place a cap on interest rates.

The rent-to-own industry points to its rapid growth over the last ten years as proof of the popularity of its service. But proponents of the legislation argue that retailers are taking advantage of a particularly vulnerable sector of the market, usually low-income persons or families with limited credit options. **N.J. Rev. Stat. Title 17, §1988 (proposed) 1992.** ❖

## Florida Cable Companies May Enter Pay Phone, Telecommunication Businesses

Florida cable companies could soon be competing with telephone companies, selling new telecommunication services such as video information hook-ups, transmitting information between schools, and providing public pay phones. This Florida bill, introduced in February 1993, would define the basic telecommunication services provided by Southern Bell as competitive services subject to competition. The new definition would open the door for competition among telephone service providers. Spokespeople for the telephone companies say that the Florida Public Service Commission, the agency that regulates phone services, could have declared telecommunication services to be a competitive service but did not.

Telephone companies contend that profitable business services permit lower rates for residential phone use, and if Florida allows competition in this area, it will drive up the costs for residential customers. The phone companies argue that they provide lower rates because the profitable monopoly they enjoy in providing telecommunication services compensates for the money they lose providing residential phone service.

The proposed legislation would also ban billing local calls by time, also known as local measured service, a process in which local calls are billed like long distance calls. Southern Bell had asked the Florida Public Service Commission to make local measured service a billing option for the company. **1993 Fla. H.B. 1533.** ❖

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### Massachusetts Passes Condo Association Protection

In a victory for condominium associations, the Massachusetts legislature recently passed revisions to Chapter 183A of its Condominium Law. After April 6, 1993, condominium associations can file for delinquent association fees with regard to any future foreclosures. Under the new law, condominium associations can collect a "super lien," or up to six months of fees due from delinquent owners of foreclosed units. The measure gives condominium associations some protection in a weak real estate market.

Opponents of the new measure, including banks, contend that it was unfair to change the legal terms of mortgages on which these financial institutions were relying. Supporters of the new law argue that banks now have incentives to speed up foreclosures or to try to make borrowers pay condominium fees.

Other features of the legislation include clarifying notice requirements to condominium owners who fall behind in fee payments, requiring fidelity insurance for all associations of ten or more units, defining what financial records can be inspected by condominium owners, and listing the associations' rights to terminate contracts with companies hired to manage condominium complexes. **Mass. Gen. Laws ch. 183A §§ 6-14 (West 1993).** ❖

### Bankruptcy Streamlining Proposed

On March 10, 1993, Senator Howell Heflin of Alabama, along with nine cosponsors, introduced Senate Bill 540. The bill aims to improve the administration of the country's overworked bankruptcy courts and resembles a

measure unanimously approved by the Senate in 1992.

The proposed bankruptcy reform legislation seeks to reduce crowded federal court dockets by speeding up filing dates and expanding the use of status conferences. Under Title II of the bill, a pilot program would permit small businesses to file for reorganization outside of Chapter 11, the federal bankruptcy provision. This program would be tested in eight judicial districts over a three year period.

Former spouses and children receiving alimony and child support from parties declaring bankruptcy would receive increased protection of their right to support. The proposed bill prevents anyone who owes alimony or child support from declaring bankruptcy merely to avoid paying support. **S.540 1993.** ❖

### Illinois Consumer Contracts to be Written in Plain English

The Illinois House of Representatives passed a bill that aims to clear up consumer contracts by requiring a plain language translation for any "legalese" used in consumer contracts involving less than \$100,000. Illinois joins almost thirty other states by requiring that paragraphs of dense verbiage be distilled into a sentence or two. The bill seeks to decipher consumer rights and obligations in leases and in contracts for the sale of goods, services, or real estate.

The proposed bill defines consumers as individuals who enter an arrangement primarily for personal, family, or household purposes, and who lease property for less than three years. The statute requires that contracts be divided into separately captioned sections but does not prohibit drafters from using terms that are required under federal law. Contracts that violate the statute are not void or voidable, but give the Illinois Attorney General

authority to bring an action to stop the business from using such contracts.

Opponents to the bill argue that the costs of replacing form contracts already in place in many computer programs outweigh any benefits to consumers. In addition, parties will now litigate over the definition of plain language, further raising costs for consumer transactions. The bill's proponents counter that other states have had success with similar consumer friendly laws, and that consumers should not have to hire a lawyer in order to know what they are signing. **Ill. H.B. 575, 1993 (proposed).** ❖

### California Regulates Sale of Autographed Sports Memorabilia

In response to perceived exploitation of the current boom in the sports memorabilia market, the Governor of California signed legislation regulating the sale of autographed sports memorabilia priced over fifty dollars. The law provides civil remedies for victims of fraud in this rapidly growing business. Collectible items are defined as, among other things, any autographed trading cards, sports equipment or clothing, photographs, or plaques.

Under the new law, dealers of sports memorabilia must provide a prescribed certificate of authenticity. The certificate must be in writing and signed by the dealer or his or her agent. Dealers can no longer merely give an opinion as to an item's origin; the certificate is an express warranty that all items sold are authentic.

Failure to comply with the provisions of this law could subject the offending dealer to a civil action by the purchaser for actual damages and attorney's fees and a civil penalty of up to three times the item's price. **Cal. A.B. 3113, Stats. 1992, ch. 656.** ❖