

1990

Recent Legislative Activity

Follow this and additional works at: <http://lawcommons.luc.edu/lclr>

 Part of the [Consumer Protection Law Commons](#)

Recommended Citation

Recent Legislative Activity, 2 Loy. Consumer L. Rev. 108 (1990).

Available at: <http://lawcommons.luc.edu/lclr/vol2/iss4/4>

This Recent Legislative Activity is brought to you for free and open access by LAW eCommons. It has been accepted for inclusion in Loyola Consumer Law Review by an authorized administrator of LAW eCommons. For more information, please contact law-library@luc.edu.

Recent Legislative Activity

Electrical Product Certification

Alaska passed a law that prohibits businesses from selling or transferring consumer electrical products unless the products clearly are marked as being listed by an approved third-party certification program. A consumer electrical product is defined as a product with an electrical circuit operating at 110 volts AC or higher, and a third-party certification program is defined as a program that meets the requirements of the American National Standards for Certification — Third-Party Certification Program, published by the American National Standards Institute.

If the product has not been approved by a third-party certification program, the product must bear a warning label that the product is not listed by an approved third-party certification program. The Department of Labor is empowered to exempt works of art from this rule. 1990 Alaska Sess. Laws 59.

Buyers' Clubs and Loan Finders

Colorado amended its Consumer Protection Act to regulate "buyers' club" membership contracts. Buyers' clubs allow member consumers an exclusive right to purchase merchandise at alleged discount prices. The amendment gives consumers the right to rescind their membership contracts, for any reason, any time before the close of business the day after the buyer signed the contract. The membership contract must contain a "Purchaser's Right to Cancel" statement explaining the right to rescind and the procedure for doing so. If the consumer cancels the contract, the seller must, within fifteen days of receiving the cancellation notice, refund all payments made by the consumer.

The Consumer Protection Act also was amended to prohibit loan finders from charging borrowers any fees until the borrowers actually receive the agreed-upon loans. A loan finder is a person who serves as a lender or as an agent to obtain loans. Among those exempt from this provision are supervised financial organizations, persons licensed to make supervised loans, business development corporations, mortgage brokers, pawnbrokers, and government entities. 1990 Colo. Legis. Serv. 90-1090 (West).

Consumer Service Contract Rights

California amended its Civil Code concerning delivery and service contracts. If the sale of merchandise provides that the merchandise is to be delivered at a later date, and the consumer must be present at the time of delivery, the seller must specify a four-hour period during which the delivery will be made. Likewise, if a utility company or cable television company is to render services requiring the consumer's presence, the company must specify a four-hour period during which the company will perform the service.

If the consumer does not receive the delivery or service within the specified four-hour time period, the consumer may bring an action for lost wages, expenses actually incurred, or other actual damages not exceeding \$500. The consumer may not recover damages, however, if the consumer was not present during the specified period. Nor may the consumer recover damages if the company was unable to make the delivery or provide the service due to unforeseen or unavoidable circumstances beyond the control of the company and the company diligently attempted to inform the consumer of the delay. Any agreement by the consumer to

waive the rights created by the new law is void as contrary to public interest. 1990 Cal. Legis. Serv. 193 (West).

Consumer Insurance Education

Maryland established a Consumer Education and Advocacy Program regarding insurance. The program will provide information and assistance to consumers on filing procedures for complaints against insurers, agents, and others regulated under the state insurance code. The program also will develop an information and assistance system to provide information on available insurers, types of personal insurance coverage, underwriting practices, general rating concepts, claim procedures, and other relevant services. 1990 Md. Laws 509.

Medicare Supplement Warning

The Senate Committee on Commerce, Science, and Transportation is considering the Medicare Supplemental Policy Consumer Warning Act, which is designed to warn consumers about purchasing unnecessary or inadequate Medicare supplemental policies. The bill provides that no person may advertise such a policy, solicit people by direct mail, or proffer contractual documents concerning such a policy unless a prescribed warning is included. The warning must state that most supplemental policies pay only a small portion of the costs not covered by Medicare, and advise consumers to contact their state department of insurance or local agency on aging for more information. Violators of this act would be subject to a maximum fine of \$100,000. S. 2293, 101st Cong. 2nd Sess. (1990).

Credit Repair and Credit Reporting Agencies

The House of Representatives Committee on Banking, Finance, and Urban Affairs is considering the **Consumer Credit Protection Amendments of 1990**, which would amend the Fair Credit Reporting Act (15 U.S.C. §§ 1681-1681t (1988)). The bill would protect consumers from a consumer credit reporting agency using inaccurate information, unfair advertisements, or deceptive business practices. Consumer credit reporting agencies would be required to disclose to a consumer the identity of persons who obtained information regarding the consumer and the purpose for which the information was sought. The bill also would require the credit reporting agency to disclose all information in the consumer's file at the time of a request, along with a summary of all of the consumer's rights and remedies under the statute.

In addition, the bill contains the **Credit Repair Organizations Act**. Under the Act, credit repair agencies would be required to give to consumers a complete description of the services to be performed and the cost of the services, and to inform consumers of their rights under the Act, including the right to cancel the credit repair contract within three business days of signing it. Credit repair agencies would be prohibited from charging consumers for credit repair services until the services are rendered, and would be prohibited from using untrue or misleading statements or advising consumers to make such statements to other credit agencies. Any waiver by the consumer of these statutory rights would be void, as would any contract violating the statute. **H.R. 4213, 101st Cong. 2nd Sess. (1990).**

Telephone Advertising

The House of Representatives has passed, and the Senate Commerce, Science and Transportation Committee is considering, the **Telephone Advertising Regulation**

Act, which would amend the Communications Act of 1934 (47 U.S.C. §§ 151-613 (1988)). The bill would regulate unsolicited advertisements and solicitations sent by automatic telephone dialing systems or telephone facsimile machines. An automatic telephone dialing system stores or generates telephone numbers, dials those numbers, and plays a prerecorded message.

Telephone companies would be required to allow their customers to provide notice that they object to receiving unsolicited facsimile advertisements and/or prerecorded solicitations from automatic dialing systems. The bill would empower the United States Commerce Commission to compile a list of these persons. No one would be permitted to send to any person on that list any unsolicited advertisements or solicitations via telephone facsimile or automatic telephone dialing system. The Act also prohibits making unsolicited calls, using an automatic dialing system, to an emergency telephone line of a hospital, physician, health care facility, fire protection or law enforcement agency, or to any paging or cellular telephone service number.

Finally, the bill would establish technical requirements for telephone facsimile and automatic telephone dialing systems. Telephone facsimile machines would be required to identify, at the top or bottom of the page, the business sending the message and the telephone number of the sending machine. Similarly, automatic telephone dialing systems' messages would have to identify the sender's name and telephone number and release the recipient's telephone line within five seconds after the recipient hangs up. **H.R. 2921, 101st Cong. 1st Sess. (1989).**

Florida amended its law regulating telephone solicitations. The law applies to any telephone solicitation for the sale of consumer goods or the extension of credit for consumer goods. Unless the consumer expressly requests the call or there is a pre-existing contract or business relationship between the

parties, the caller must immediately identify herself and, within thirty seconds, ask if the consumer is interested in listening to the sales presentation. If the consumer is not, the caller must immediately discontinue the call. Telephone companies must inform consumers of the option to register with a "no sales solicitation calls" listing. If a consumer is registered on the listing, no one may make a telephone solicitation to that consumer.

All contracts made pursuant to a telephone solicitation must be in writing, describe the goods or service identified in the call, and provide the name, address, and telephone number of the seller. The contract may not disavow any representation made during the call and must inform the consumer that there is no obligation to pay unless the consumer signs the contract. The seller may not charge the consumer's credit card account until the seller receives the signed contract from the consumer. Any contract made in violation of the telephone solicitation law is void.

The law does not apply to calls made in connection with prior negotiations between the seller and the consumer at the seller's store. The law also does not apply if the consumer may return the goods or cancel the services within seven days of receipt. Finally, the law does not apply if the purchase is made pursuant to a television, radio, or print advertisement that provides the name, address, and telephone number of the seller, describes the goods or services, and states any applicable limitation. **1990 Fla. Sess. Law Serv. 90-143 (West).**

"Recent Legislative Activity" is prepared by the Editors. A limited number of statutes appearing here are available for a \$5 copying charge. Please be specific (include volume number, issue number, and statute cite) when ordering. Send requests to: Managing Editor, Loyola Consumer Law Reporter, One East Pearson Street, Chicago, Illinois, 60611.