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Auto Brokers, Auto Warranties, Credit Card Disclosures, Employment Agencies, Home Equity Loans, Long-Term Care Insurance

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RECENT LEGISLATIVE ACTIVITY

Home Equity Loans

The **Home Equity Loan Consumer Protection Act of 1988** requires creditors to provide key loan information as well as an educational pamphlet to consumers at the time they apply for a home equity loan. Generally, a home equity loan is any open end consumer credit plan secured by the consumer's home. The creditor must disclose the fixed Annual Percentage Rate ("APR") of the loan, and where the APR varies, a description of how the APR is computed and when it will change. When a creditor uses an index to adjust rates, the index must be publicly available and not under the control of the creditor. The creditor must also disclose any additional fees such as annual fees, application fees, transaction fees, and points. Upon a consumer's request, creditors must estimate the fees which may be imposed by third parties, such as appraisers and attorneys. The contract must include a statement that the loan is secured by the consumer's home and that the consumer risks loss of the home in the event of a default. **Pub. L. No. 100-709, § 1-7, 102 Stat. 4725. To be codified at 15 U.S.C. §§ 1637, 1647, 1661.**

California now requires lenders to disclose to borrowers that a default on their home equity loans could cause them to lose their homes. Home equity loans are defined as open end consumer credit plans in which a security interest is taken against the borrower's dwelling. The disclosure is required to be made at the time the borrower applies for the loan if the borrower applies in person, or within 3 business days of application if the borrower applies by telephone or mail. The disclosure requires lenders to indicate to consumers that the loan is secured by their homes, either by a conspicuous statement on the application or by a separate document which accompanies the application. Effective September 26, 1988. **Cal. Civ. Code §§ 2970-2971 (West Supp. 1989).**

Credit Card Disclosures

The **Fair Credit and Charge Card Disclosure Act of 1988** amends the Truth in Lending Act. The amendments require disclosure in application or solicitation materials of the annual percentage interest rate, fee, grace period, and the method of calculation of the outstanding balance on which interest is charged. In addition there must be disclosure of any cash advance fee, late fee, or any over the limit fee. These disclosure requirements apply to solicitations by mail, telephone, or through magazines, catalogs, or other publications. The card issuer must also disclose to card holders who purchase

repayment insurance any change in the insurance company. **Pub. L. No. 100-583, §§ 1-8, 102 Stat. 2960. To be codified at 15 U.S.C. §§ 1637, 1632, 1640, 1610, 1646.**

Employment Agencies

Illinois recently enacted a statute to regulate commercial job referral and job listing services. A job referral or job listing service is defined as any person who offers to provide job seekers with a list of employers or who distributes lists of job seekers to potential employers, and charges job seekers a fee for the service. The job referral service must maintain specific records of employers as well as its schedule of fees. The service must provide the job seeker a copy of the written contract prior to accepting a fee, and the contract must set forth the type of jobs requested, qualifications and experience of the job seeker, salary, benefits and other conditions of employment. The service must refund its fee in full if it does not provide the job seeker with at least three opportunities for employment which satisfy the job seeker's requirements within 10 calendar days of execution of the contract. In addition, it is unlawful for the service to split fees it receives from job seekers with an employer or any agent of an employer. Effective September 1, 1988. **P.A. 85-1367, 1988 Ill. Legis. Serv. 2610 (West). To be codified at Ill. Ann. Stat. ch. 121 ½ pars. 2001-2012 (Smith-Hurd Supp. 1989).**

New York has amended the licensing provisions governing commercial employment agencies. The revisions prohibit agencies which are paid by employers from receiving anything of value from job seekers. Employers must not require employees to reimburse them for the cost of the agency's fee, and an employer who violates this provision is required to reimburse the employee twice the amount paid by the employer, and may be subject to a civil penalty of \$500 per violation. The amendments also require agencies to inform applicants when the applicants are being referred to employers who have not requested to interview the applicant. If the agency sends an applicant to an employer without informing the applicant that the employer did not request an interview and the applicant subsequently fails to obtain employment, then the agency must upon request reimburse the applicant for all reasonable and necessary travel expenses. The agency must also inform the applicant if it is sending the applicant to an employer which is in the midst of a labor dispute. Effective September 1, 1989. **N.Y. Gen. Bus. Law §§ 171-194 (McKinney 1988 & Supp. 1989).**

Auto Warranties

California recently expanded its new auto lemon law to include motorhomes. The warranty protections are now applicable to the chassis, chassis cab, and those parts of the motorhome designed for propulsion. Motorhomes are defined as self-propelled vehicles designed for human habitation for recreational or emergency occupancy. Effective August 29, 1988. **Cal. Civ. Code § 1793.2 (West 1985 & Supp. 1989).**

Indiana recently enacted a lemon law covering all vehicles except conversion vans and motorhomes. Under the law, warranty provisions expire at the earlier of 18,000 miles or 18 months after the delivery date. The purchaser must inform the manufacturer of a defect as required by the owner's manual. Otherwise, notification to the dealer is sufficient. If the vehicle's defect is not corrected after four attempts by the manufacturer (or its agent) to fix the defect, or if the vehicle has been out of service for a cumulative of thirty business days, then the purchaser can return the vehicle. The manufacturer must refund either the purchaser's money or provide a replacement vehicle of comparable value. Effective February 22, 1988 (certain provisions are not effective until July 1, 1988). **Ind. Code Ann. §§ 24-5-13-1 to -24 (West Supp. 1988).**

New York has amended its lemon law to provide that a consumer who prevails in any judicial action or arbitration proceeding is entitled to an award of reasonable attorney fees. Effective August 1, 1988. **N.Y. Gen. Bus. Law § 198-a(l) (McKinney 1988 & Supp. 1989).**

Long-Term Care Insurance

California has enacted standards and requirements for individual and group long-term care insurance policies. Long-term care insurance is defined as any insurance which provides coverage for medically necessary treatment or care, other than in an acute care hospital unit, for 12 consecutive months or longer. Medicare supplement policies are specifically excluded. Before providers market their long-term care coverage, they must file policy and promotional information with the California Department of Insurance. The statute also restricts the marketing of this type of insurance through group policies. For example, the targeted group must be

organized for purposes other than obtaining insurance for its members, must have been in existence for more than a year, must have a constitution and by-laws, and regular meetings. In addition, there must be more than 100 members in the group. The statute restricts the provider's definition of "preexisting conditions," as well as the provider's use of waivers. An applicant for a policy may void the policy within 30 days of delivery and receive a full refund. Effective for all policies issued in California after January 1, 1989 (certain provisions are not effective until January 1, 1990). **Cal. Ins. Code §§ 10230-10237 (West 1972 & Supp. 1989).**

Auto Brokers

New York recently enacted a law to regulate the automobile broker business. Auto brokers provide assistance to consumers who wish to purchase an automobile. The statute prohibits automobile brokers from collecting their fees prior to rendering services and requires the contract to be in writing. The contract must also provide a complete description of the automobile, including whether it was manufactured according to federal government specifications or whether it will be modified to meet these specifications. The broker assumes full financial responsibility for insuring that the vehicle meets the appropriate standards. The price of the automobile must be included in the contract, as must a statement of whether the vehicle comes with a manufacturer's warranty. The consumer's right to cancel the contract within 3 days of its execution also must be set forth in the contract. Brokers who violate this statute are liable for three times the actual amount paid to them by their customer(s). The prevailing party also is entitled to attorney fees. Effective January 1, 1989. **N.Y. Gen. Bus. Law §§ 736-744 (McKinney 1988 & Supp. 1989).**

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