



## Bill Targets Merchants of Malfunction

When a manufacturer rips you off by selling a product it knows is likely to malfunction soon after its warranty expires, you should get your day in court. Unfortunately, judges have whittled away at Californians' protection against fraud, finding in several cases that unless the concealed defect creates a safety hazard, it is perfectly fine to market junk products and not let you in on the secret.

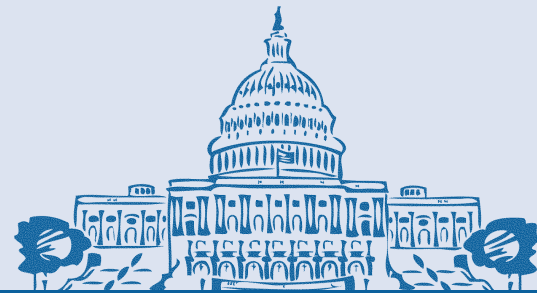
Consumer Federation of California is sponsoring Senate Bill 1188 (Jackson) to restore the potency that California's Consumer Legal Remedies Act (CLRA) lost to these ill-advised court rulings. The Senate Judiciary Committee will take up the measure May 6.

SB 1188 specifies that CLRA protects consumers when a company commits fraud by failing to disclose a known latent defect – something not readily apparent at the time of purchase – whether safety is at risk or not. The legislation would undo some of the damage done by a 2006 state appeals court ruling in the case of *Daugherty v. American*

*Honda Motor Co.* and subsequent cases where courts have rejected CLRA fraudulent omission claims if a product or service did not pose a demonstrable risk to consumer health or safety.

Just a few examples:

- Consumers who bought certain Sony television sets started seeing things – spots, stains and haze in garish blues, yellows and greens – after the TVs' warranty period expired. Sony refused free repairs, even though consumers alleged the company knew of the problem in the products' LCD technology. Aggrieved consumers brought a class-action lawsuit alleging CLRA violations, but a court rejected those claims because the defect did not relate to product safety.
- Purchasers of washing machines – marketed by Sears, Roebuck & Co. as being of the highest quality – found the products stopped in mid-cycle, allegedly because of defects in the electronic control boards. They filed a federal class-action lawsuit citing



## 2014 LEGISLATIVE SUMMARY

The following is a brief update on key consumer rights bills (partial list):

### CFC-sponsored bills

**SB 383 (Jackson)** restores consumer privacy for online credit card purchases; passed in the Senate, awaiting Assembly action.

**SB 1188 (Jackson)** spells out that the Consumer Legal Remedies Act protects consumers against merchants' failure to disclose a known defect, even if safety is not at risk.

**SB 1256 (Mitchell)** prohibits payment from a bank or financial institution to a healing arts practitioner for procedures that have not yet been provided.

**AB 2667 (Bloom)** requires rental-purchase agreements governing computers to provide clear notice if that device has geophysical location tracking technology, and prohibits use of the technology other than to prevent fraud.

### CFC-supported bills

**SB 962 (Leno)** requires smartphones sold in the state to include a "kill switch" that the owner could activate to render the phone inoperable in case of loss or theft.

**SB 1019 (Leno)** builds on state regulatory changes for upholstered furniture, requiring labels clearly stating whether the product contains toxic flame-retardant chemicals.

**SB 894 (Corbett)** strengthens procedures for suspension and/or revocation of licenses to operate assisted living facilities for the elderly.

**SB 895 (Corbett)** requires unannounced comprehensive inspections of assisted living facilities for the elderly at least yearly, up from the current five-year requirement.

## 2014 LEGISLATIVE SUMMARY

▶ CONTINUED FROM PREVIOUS PAGE

**SB 1017 (Evans)** enacts a 9.5 percent tax on oil production in California to help fund vital social services.

**AB 1523 (Atkins)** prohibits new admissions to assisted living facilities for the elderly that fail to comply with critical health and safety regulations.

**AB 1554 (Skinner)** requires investigations of complaints involving abuse, neglect, or serious harm to a resident of an assisted living facility for the elderly to begin within 24 hours of receipt, and to be completed within 30 days.

**AB 1571 (Eggman)** requires state agencies to establish an online consumer information system on every assisted living facility for the elderly.

**AB 1700 (Medina)** requires reverse mortgage lenders to provide prospective borrowers with a detailed suitability worksheet concerning potential negative consequences.

**AB 1710 (Dickinson and Wieckowski)** restricts the retention of sensitive personal consumer information by businesses, and requires timely notice when such information may have been breached.

**AB 2162 (Fox)** requires automatic fire sprinkler systems to be installed in assisted living facilities for the elderly having six or fewer residents.

**AB 2171 (Wieckowski)** establishes a bill of rights for elderly residents of assisted living facilities and establishes the right to seek injunctive relief to stop violations.

### Support if amended

**SB 994 (Monning)** requires clear and concise disclosure of the technological capacity of new motor vehicles to record information about the vehicle. CFC would support SB 994 if it were amended to prevent insurers' access to the information except as allowed under current regulation.

### Oppose

**SB 1331 (Gaines)** calls for a November 2014 ballot proposition to repeal the public participation provisions of 1988's Proposition 103, including the consumer intervenor process through which CFC has provided an experienced and effective voice for the public.

▶ CONTINUED FROM PREVIOUS PAGE

CLRA. The district court rejected all claims filed after the warranty period. Again, the court said the customers failed to demonstrate a safety defect.

- A man bought a \$4,149 Alienware laptop computer, only to have it overheat and stop working after just six months of use. He brought suit under CLRA, but the U.S. 9th Circuit Court of Appeals rejected the lawsuit, citing the *Daugherty* case and noting the plaintiff failed to prove that the defect posed a safety threat. The early dismissal denied him an opportunity for discovery to determine if Alienware had hidden knowledge that its expensive computer model often fails sooner than would be deemed reasonable by most consumers. In these cases and others, courts have

hamstrung the use of CLRA to expose fraud and seek justice for consumers. SB 1188 would help restore consumers' rights, rein in irresponsible manufacturers and hold corporations to a much-needed standard of behavior that they've been able to evade for too long. Otherwise, merchants in all but the most dangerous cases will continue to be able to sell with impunity products they know will soon become junk.

SB 1188 is needed to assure fairness for Californians when a business defrauds customers, but it faces fierce industry opposition from manufacturers and high-tech businesses. If you receive a CFC Action Alert when the bill comes up for a vote, please make your voice heard.



## Credit Card Privacy Dealt a Win

A single vote in the state Senate earlier this year was enough – barely – to keep the drive alive to protect consumer credit card privacy from needless overreach by online retailers.

Senate Bill 383 (Jackson), co-sponsored by Consumer Federation of California, survived a barrage of opposition led by Apple, the California Retailers Association and high-tech industry lobbyists to eke out the 21 votes needed to pass the measure and send it on to the Assembly, where the battle is sure to be equally intense.

The legislation would counter the

damage done last year by a divided state Supreme Court, when a 4-3 ruling in *Apple v. The Superior Court of Los Angeles* held that the Song Beverly Credit Card Act's limits on consumer information gathering apply only to brick-and-mortar retailers. SB 383 strikes a balance between consumer privacy and crime prevention, allowing online merchants to collect personal information needed to guard against fraud and identity theft when a credit card is used while prohibiting the use of that data for marketing or sharing with third parties.

# Ending Deadly Neglect of Seniors in Assisted Living

The first phase of an ambitious drive to protect seniors living in residential care facilities for the elderly (RCFEs) passed an important milestone in April, when several bills tied to a reform package were approved in legislative committees.

The action was in Sacramento, but the impetus for the much-needed changes comes from families around the state whose parents, grandparents and other loved ones rely on RCFEs not just for a roof over their heads but for meals and minimum levels of professional medical care.

Too often, those services are deliv-

ered poorly – or not at all, as demonstrated by the owners' abandonment of 14 sick and elderly patients in a Castro Valley assisted living facility last fall. The results can be tragic. The deaths of at least 27 seniors in San Diego County RCFEs since 2008 were documented in last year's "Deadly Neglect," a series of reports from the San Diego Union-Tribune and the California Healthcare Foundation's Center for Health Reporting. The scandalous situation has led to the introduction of nearly 20 bills in the current legislative session.

Consumer Federation of Califor-

nia supports the efforts of California Advocates for Nursing Home Reform (CANHR) to write needed changes into law. CANHR's nine-bill reform package is now making its way through the state Legislature.



## We Saved Consumers \$125 Million So Far in 2014



BY RICHARD HOLOBER, EXECUTIVE DIRECTOR

Consumer Federation of California (CFC) has saved 2.8 million homeowners about \$125 million in insurance premiums this year, successfully challenging two insurance rate-hike applications that we believed were excessive. We have filed two more rate challenges at the Department of Insurance, one involving auto insurance and the other homeowner policies.

Under Proposition 103, CFC and similar organizations can participate as an "intervenor" when an insurer asks the Department to approve a change in premium rates for homeowner, motor vehicle and certain other lines of insurance. The law recognizes the lopsided advantage that big insurers have when they seek approval of a rate hike.

These corporations can hire lawyers, economists, actuaries and other experts by the truckload to make the case that their calculations are accurate. To correct this imbalance, organizations with a track record of fighting for consumers or the public interest, as well as independence from corporate overlords, can intervene in rate hearings. CFC's attorneys and actuaries dissect the company's case for a

rate hike, challenge any incorrect math or other assumptions, and attempt to persuade the regulator to slash the proposed rate hike based on our fact-based critique.

In our first settled challenge, a proposed \$72 million rate hike by Farmers was trimmed by \$34 million, saving 1.2 million homeowners an average of \$28 this year. In our second challenge, the Department of Insurance approved a settlement that reduces by \$91 million the total rate hike that another major insurer sought for about 1.6 million homeowner policies. That's about a \$55 savings per policyholder.

Under a similar program, CFC has intervened before the Public Utilities Commission (PUC) for eight years. Much of our PUC work focuses on the safety and reliability of, and fairness in access to, natural gas, electric, water and telephone services by privately owned utilities (the PUC does not regulate LA Water and Power, SMUD, and other government-owned electric and water districts). In some PUC proceedings, we can calculate CFC's savings to consumers. For example, CFC and other public interest groups stopped a PG&E, SoCal Gas Company and SDG&E proposal to shift \$90 million a year in gas bills from industrial users onto the backs of residential consumers. In another case, we

helped stop a scheme of Gov. Schwarzenegger to impose a \$60 million a year charge onto the electric bills of PG&E, SCE and SDG&E customers to fund a pet project of dubious value. PUC rejected this pork barrel program, saving rate-payers \$600 million over its 10-year life.

Under these programs, intervenors can ask regulators to order insurers or utilities to compensate us for the attorneys, actuaries and other experts we hire to challenge their corporate calculations. The standards for compensation are exacting. We must demonstrate that our intervention made a substantial contribution to the proceeding, and that we did not duplicate the work of others. CFC takes a financial risk when we pay staff and expert consultants – sometimes years before cases are settled, never knowing if we will prevail, or whether we will receive any compensation.

For our work in the first two insurance rate cases, we anticipate that the insurance companies will pay intervenor fees of one penny for every \$10 saved. In the natural gas case, the utilities paid CFC one penny for every \$50 we saved consumers over a 10-year period. That's an excellent return on an investment that keeps big corporations honest, for a service that CFC is pleased to provide for everyday Californians.

## ABOUT US

The Consumer Federation of California (CFC) is a non-profit advocacy organization. Since 1960, CFC has been a powerful voice for consumer rights, campaigning for state and federal laws that place consumer protection ahead of corporate profit. Each year, CFC testifies before the California legislature on dozens of bills that affect millions of our state's consumers and appears before state agencies in support of consumer regulations.

Contributions are not tax deductible.

## KEEP IN TOUCH

Consumer Federation of California  
1107 9th Street, Suite 625  
Sacramento, CA 95814  
Phone: (916) 498-9608  
Fax: (916) 498-9611  
Email: [mail@consumercal.org](mailto:mail@consumercal.org)  
Website: [www.consumercal.org](http://www.consumercal.org)

**Jim Gordon**, President

**Richard Holober**, Executive Director

**Brian Taylor**, Newsletter Editor



Non-Profit Org  
U.S. Postage  
**PAID**  
Sacramento, CA  
Permit No. 1691

# Senate Bill Would Stop Medical Credit Scams

Health care practitioners could no longer arrange medical loans for uninsured procedures under terms that richly reward the provider while trapping unsuspecting patients into exorbitant interest payments under a Consumer Federation of California-sponsored bill that passed a unanimous state Senate committee vote in April.

CFC Executive Director Richard Holober testified in favor of Senate Bill 1256 (Mitchell) before the Senate Committee on Business, Professions and Economic Development. He illustrated the need for the legislation with the experience of a chronic pain sufferer living in Shingle Springs who responded to a 2009 Sacramento Bee advertisement for four free introductory chiropractic treatments, part of a longer treatment plan.

The total cost of the 14-treatment plan was \$3,877, and the patient's health insurance wouldn't cover it. The chiropractor arranged for the patient to obtain credit from ChaseHealthAdvance, a division of Chase Bank. Unknown to

the patient, the lending institution immediately paid the chiropractor the entire amount – three weeks before the first treatment even began.

After receiving the four free treatments, the patient had not received any pain relief. He told the chiropractor he wished to discontinue the procedures, but the chiropractor persuaded him to continue, stating that the cumulative effects would eventually help him. The patient agreed.

When the treatments still failed to provide any relief, the patient withheld a monthly payment of \$217 while he exercised his right to question the bill. In response, Chase promptly terminated the deferred interest and subjected the entire loan amount to interest at a usurious annual rate of 25.5 percent.

The patient explained to the creditor that he was disputing the obligation to pay because the treatments had been a sham. But Chase continued to insist on full payment – both of the cost of the full 14-treatment regimen and of \$1,266

in interest – unless the chiropractor returned the advance payment the bank gave him. Ultimately, the patient paid over \$5,000 for treatments that were completely worthless.

SB 1256 would curb this type of unfair financial arrangement between health care providers and financial institutions – an arrangement that Chase reportedly no longer offers through California health care providers. The bill prohibits the payment from a bank or financial institution to a healing arts practitioner for procedures that have not yet been provided. SB 1256 contains other patient protections:

- It requires a health care practitioner to refund to a lender any payment for services that have not been rendered within 15 days of a patient's request.
- It restricts the establishment of credit with a patient who is anesthetized or sedated.
- It requires a written notice and treatment plan from the medical care provider before the credit can be established.