



# The California CONSUMER

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THE NEWSLETTER OF THE CONSUMER FEDERATION OF CALIFORNIA



## Governor Brown Signs Expired Food & Drug Ban

On October 9th Governor Jerry Brown signed the Consumer Federation of California's food and drug safety bill, AB 688, authored by Assemblyman Richard Pan. This common sense law will protect the most vulnerable Californians - the very young and the ill.

AB 688 bans the retail sale of expired infant formula, baby food and over-the-counter medication. The law fills a gap in existing regulation. Federal law requires expiration dates on labels of these products as the manufacturer's guarantee of the product's safety and effectiveness. However, until AB 688 was enacted, no law prohibited supermarkets, pharmacies and other retailers from selling these expired products.

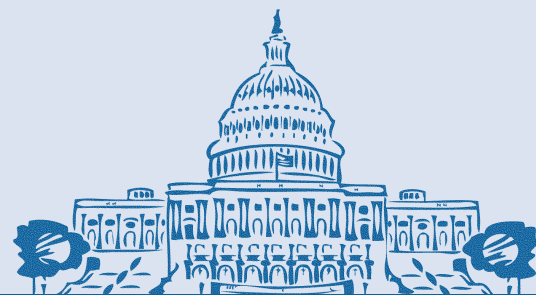
Federal requirements for expiration dates serve a public health purpose. Formula that has passed its "use by" health date may lose its nutritional value or clog the nipple of a baby bottle. Health effects may include inadequate consumption of ingredients that promote an infant's brain and eye development. Expired medications may lose their po-

tency, resulting in ill and elderly persons getting less than a proper dosage.

"As a father of two young sons, I know how important it is for working families to trust that the food they buy for their infants is safe and nutritious," Dr. Pan said. "Many parents don't know it is legal for stores to market and sell expired baby food, and as a pediatrician I find this very concerning. I introduced AB 688 so that infants have the nourishment they need for healthy physical and mental development."

State and local health departments, the Attorney General, local district attorneys and other agencies of local government are empowered to enforce AB 688. Fines are ten dollars per day per expired product sold or offered for sale, with additional penalties that may be assessed at the same rate of ten dollars per day per product sold or offered for sale.

In September, the CFC conducted a statewide poll that found 74% of voters supported AB 688. The CFC thanks Gov. Brown for signing this important food and drug safety law.



### 2011 LEGISLATIVE SUMMARY

The following is a brief report on key consumer rights bills (partial list).

#### SIGNED BY GOVERNOR

**AB 22 (Mendoza)** will prohibit a prospective employer from using consumer credit reports in the hiring process.

**AB 56 (Hill)** will implement numerous safety-related measures regarding the operation of natural gas pipeline facilities regulated by the Public Utilities Commission (PUC).

**AB 183 (Ma)** will help to reduce sales of alcoholic beverages to underage or intoxicated persons by requiring a cashier for an alcohol sales transaction in a retail store.

**AB 313 (Monning)** will require licensed residential care facilities for the elderly (RCFE) to provide written notification to all affected residents and their designated emergency contacts when its license is in jeopardy from serious deficiencies, revocation or suspension, or court proceedings with powers to revoke its license.

**AB 621 (Calderon)** will make sure drivers receive the benefits of car rental insurance when injured by an out of state or out of country driver and require the car rental company to act as the agent for service of process for claims against insureds who reside outside of California.

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**AB 688 (Pan)** will ban the sale of expired infant formula, baby food, and over-the-counter medicine.

**AB 793 (Eng)** will prohibit insurance brokers or agents from participating in the origination of a reverse mortgage, or referring a prospective client to any party that is associated with the origination of a reverse mortgage.

**AB 1319 (Butler)** will prohibit the manufacturing, selling, or distribution of any liquid, food, or beverage in a can or jar containing bisphenol A at a level above 0.1 parts per billion if it's intended primarily for consumption by infants or children three years of age or younger.

**SB 24 (Simitian)** will provide an important upgrade to California's landmark data breach notification law.

**SB 397 (Yee)** will authorize counties to develop an electronic voter registration system where qualified persons may submit their affidavit of voter registration electronically.

**SB 602 (Yee)** will ensure that government and third parties cannot access private digital reading records without proper justification.

**SB 646 (Pavley)** will improve enforcement of California's Lead-Containing Jewelry Law.

**SB 850 (Leno)** will protect patient privacy by expanding the Confidentiality of Medical Information Act to both written and electronic health records.

#### VETOED BY GOVERNOR

**SB 408 (Hernandez)** would have imposed greater scrutiny of the records of corporations purchasing hospitals before licenses to operate are granted.

**SB 931 (Evans)** would have required payroll cardholder agreements to offer workers basic protections and the means to avoid unreasonable fees to access wages.

# A Breath of Fresh Air from Jerry Brown



On issues ranging from household toxics to food safety to elder abuse to personal privacy, Governor Jerry Brown has demonstrated much greater support for consumer protection than his predecessor. The 2011 end of session tally stands at 34 signatures and four vetoes on Consumer Federation of California-supported bills that made it as far as the governor's desk.

In his final year in office, former governor Arnold Schwarzenegger agreed with consumers on only ten of 27 bills that made it to his desk.

Legislation signed into law this session includes a ban on retailers selling

protections (see article on next page).

Important consumer protection bills vetoed by Governor Brown include SB 408 (Hernandez), which would have imposed greater scrutiny of the records of corporations purchasing hospitals before licenses to operate are granted; and SB 931 (Evans), which would have protected workers who are paid through a payroll debit card from unfair transaction fees imposed by banks that issue these cards. In both cases, Governor Brown's veto messages suggested his openness to working with proponents next year to resolve the issues that kept him from signing the bills this year.

Three key consumer bills that were stopped in the legislature this year are AB 52 (Feuer), which would regulate health insurance and HMO rate hikes; SB 810 (Leno), which would establish a single payer health insurance system; and SB 147 (Leno), which would allow Californians to purchase re-safe home furnishings that are not saturated with highly toxic flame retardant chemicals. Opposition by insurers to the first two measures and by chemical manufac-

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baby food, infant formula and over-the-counter medications after the product's expiration date (AB 688 Pan); a prohibition on food containers for baby food with unsafe levels of toxic bisphenol A (BPA) (AB 1319 Butler); a new safeguard against sales of alcohol to underage persons (AB 183 Ma); and several new laws improving consumer privacy

turers to the third bill remains fierce. These bills will be back in 2012, and a concerted effort by consumer advocates will be needed to push these bills through to the governor's desk.

After several drought years, our new governor just demonstrated his appreciation for common sense consumer legislation. It's a welcome change.

# Billionaire Sponsors Zombie Insurance Initiative

BY RICHARD HOLOBER

In 2010, Mercury Insurance donated \$16 million to Proposition 17. Voters rejected the measure, which would have allowed insurance companies to raise rates on motorists with perfect driving records.

But like a zombie that is killed, only to walk again, Mercury Insurance Chairman George Joseph recently gave \$8.2 million to bring Prop 17 back from the grave for the 2012 ballot. It's the latest chapter in a billionaire's quest to derail the consumer protections voters enacted when they approved Proposition 103.

In 1988, Mercury and other insurers spent \$70 million against Prop 103. The measure gave the Insurance Commissioner the authority to reject excessive rate hikes.

Besides funding Prop 17, Mercury spent seven million dollars on political

contributions and lobbyists since 2000. Mercury's largesse failed to roll back Prop 103's anti-gouging protections.

Prop 103 sets standards for review of proposed premium rate increases. It allows insurers to make a fair profit, but also allows the Commissioner to stop rate hikes that are not justified. A study by the Consumer Federation of America found that Prop 103 saved California motorists \$62 billion in premium payments over a 16 year period.

George Joseph's 2012 ballot measure would allow insurers to raise rates on motorists who have had a break in continuous insurance coverage. Prop 103 prohibits this, because a break in coverage has no effect on a driver's risk of causing an accident.

Eliminating this rule would fatten Mercury's profits. In Nevada, where discrimination against motorists with-

out continuous coverage is allowed, Mercury's

rate quote went up over 70% when an applicant switched his answer on current coverage from "yes" to "no".

Mercury's initiative would raise rates on graduating students who need to drive to work, folks getting behind the wheel after recuperating from a disability that stopped them from driving, and workers who get a new job that is only accessible by car after commuting to a previous job by mass transit.

Forbes Magazine recently pegged Mr. Joseph's net worth at \$1.1 billion. His 2012 initiative provides a textbook example of a member of the wealthiest 1% lavishing money on a self-enrichment scheme.



## A Near Privacy Sweep in California

It was a near legislative sweep for privacy advocates this year as Governor Brown signed all but one of the key privacy bills that reached his desk. These include:

**SB 602 (Yee)** will ensure that government and others cannot access private digital reading records without justification. Stored data may include books browsed, how long a page is viewed, and electronic notes written in the margins. It's easy to see the detailed portrait of a reader this data could paint.

**AB 22 (Mendoza)** will prohibit a prospective employer from using consumer credit reports in the hir-

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## 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.



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# Privacy

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ing process unless it's directly related to the job. Credit reports have no value in predicting a worker's ability to perform job duties. Millions of Americans' credit histories have been damaged by near-record unemployment. Credit reports all too often contain errors. Allowing credit reports to influence hiring decisions only punishes the victims of the Great Recession.

**SB 24 (Simitian)** will provide an important upgrade to California's landmark data breach notification law. It spells out which key details must be included in that notification letter, and would make sure the Attorney General hears about the breach. SB 24 will help consumers make sense of these notices, and help arm us to stop identity theft.

**SB 850 (Leno)** will expand the Confidentiality of Medical Information Act

to cover electronic health records. The need for this bill was underscored a few weeks ago when an insurance billing business failed to safeguard electronic records. 300,000 Californians' medical records, including social security numbers, were viewable for months to anyone with an internet connection.

**SB 204 (Alquist)** will authorize restitution to an identity theft victim for expenses to monitor a credit report and for the costs to repair a credit rating.

And finally, **SB 636 (Corbett)** will prohibit internet posting of addresses and phone numbers of individuals participating in the Safe at Home Program - which provides anonymity to victims of domestic violence, stalking, and sexual assault.

Disappointing civil liberties advocates was the Governor's veto of **SB 914**

**(Leno)**. The legislation was a response to a recent California Supreme Court decision (*People v. Diaz*) allowing police to rummage through all of the private information on a smart phone as part of an arrest, including text messages and e-mails.

SB 914 would have clarified that an arrestee's smart phone can only be accessed with a warrant, except in circumstances where there is an immediate threat to public safety or the arresting officer. The bill acknowledged that accessing the detailed, private information contained on a smart phone is fundamentally different than searching an arrested person's wallet, cigarettes or pockets.

Senator Mark Leno has announced he will bring this legislation back next year.