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BUSINESS AND PROFESSIONS CODE - BPC

DIVISION 7. GENERAL BUSINESS REGULATIONS [16000 - 18107] (*Division 7 added by Stats. 1941, Ch. 61.*)

PART 3. REPRESENTATIONS TO THE PUBLIC [17500 - 17943] (*Part 3 added by Stats. 1941, Ch. 63.*)

CHAPTER 1. Advertising [17500 - 17606] (*Chapter 1 added by Stats. 1941, Ch. 63.*)

ARTICLE 6. Water Treatment Devices [17577 - 17577.6] (*Article 6 added by Stats. 1986, Ch. 1278, Sec. 1.*)

17577. (a) The Legislature finds and declares that there have been situations where homeowners have been subjected to fraud, deception, and unfair dealing by certain promoters of water treatment devices. Water contamination problems throughout the nation have created concern among homeowners concerning the quality and healthfulness of home water for drinking. Some promoters of water treatment devices have made false, misleading, and unfair statements in connection with sale of water treatment devices, including, but not limited to, false, misleading, and unfair statements regarding general levels of water contamination, water contamination problems actually or potentially affecting particular homeowners, actual or potential health risks associated with the consumption of water, and the features and performance of water treatment devices. As a result of false, misleading, and unfair statements, including statements that have the purpose or effect of alarming the public about the condition of water, many homeowners have been pressured into purchasing water treatment devices without the opportunity to verify the accuracy of the sales representations.

(b) The Legislature also finds and declares that current law does not afford homeowners who enter transactions for the acquisition of water treatment devices the right in all instances to cancel the transaction within three days of its consummation. Moreover, homeowners may be subjected to the loss of their homes through the foreclosure of liens securing financing of water treatment devices.

(c) The Legislature further finds and declares that the protection of homeowners and consumers from untrue and misleading statements and from unfair dealing is of the utmost importance.

(d) The intent and purposes of this article are to safeguard the public against deceit; to ensure, foster, and encourage fair dealing in the sale of water treatment devices; to prohibit misleading representations; to prohibit certain liens on real property; and to afford homeowners a reasonable and meaningful opportunity to rescind transactions for the acquisition of water treatment devices.

(e) This article shall be liberally construed to effectuate the intent and to achieve the purposes described in subdivision (d).

(*Added by Stats. 1988, Ch. 1053, Sec. 1.*)

17577.1. For the purposes of this article, the following terms have the following meanings:

(a) "Contaminant" or "contamination" means any health-related physical, chemical, biological, or radiological substance or matter in water.

(b) "Water treatment device" means any product that (1) is designed to alter the chemical or physical properties or characteristics of water or plumbing or the seller, lessor, or renter claims can alter the chemical or physical properties or characteristics of water or plumbing and (2) is used or sold, leased, or rented for use on residential real property primarily for personal, family, or household purposes. "Water treatment device" does not include any device that is regulated pursuant to Chapter 7.5 (commencing with Section 4040) of Part 1 of Division 5 of the Health and Safety Code.

(c) "Person" means any individual, partnership, firm, corporation, or association, or any employee or agent thereof.

(*Amended by Stats. 1989, Ch. 1360, Sec. 9.*)

17577.2. It is unlawful for any person to do any of the following in connection with the sale, lease, rental, offer to sell, lease, rent, or other disposition of water treatment devices:

(a) Make any untrue or misleading oral or written statements regarding the presence of one or more contaminants in water, or the performance of water treatment devices, including, but not limited to, the following oral or written statements:

(1) (A) Any contaminant exists in the water of any person to whom the statement is directed unless the statement is true, is reasonably based on factual data, and at least a written summary of the factual data, that has been prepared or approved by the source of the factual data, is disclosed to the person to whom the statement is directed before that person executes any contract for the purchase, lease, or rental of a water treatment device.

(B) Any contaminant may exist in the water of any person to whom the statement is directed unless the statement is true and is reasonably based on factual data.

(2) A relationship between water quality and acute or chronic illness exists as a scientific certainty unless that statement is true.

(3) The public water system, utility, or treatment plant that supplies water to the person to whom the statement is directed does not test, treat, or remove particular substances from water treated by it unless the statement is true.

(4) A water treatment device removes particular contaminants or other substances from water unless the statement is true, is reasonably based on factual data in existence at the time the statement is made, and the requirements of subparagraphs (A) through (C) are satisfied.

(A) If the particular contaminants or other substances mentioned in the statement described in paragraph (4) are not necessarily in the water of the person to whom the statement is made, the following disclosure or its equivalent must be clearly and conspicuously made: "The contaminants or other substances removed or reduced by this water treatment device are not necessarily in your water."

(B) If the statement described in paragraph (4) is oral, the disclosure described in subparagraph (A) shall be made orally and shall immediately follow the statement. If the statement is in writing, the disclosure shall be in writing and shall be placed immediately next to the written statement.

(C) Notwithstanding subparagraph (A), no statement about the ability of a water treatment device to remove particular contaminants or other substances shall be used to imply falsely that any of those contaminants or other substances are present in the water of the person to whom the statement is made.

(5) Use news events, reports, or descriptions of water quality problems or health hazards associated with water systems or suppliers different from the systems or suppliers of the intended consumer unless, at the same time, the seller sets forth conspicuously and prominently a statement, if true, that the seller has no information that the intended consumer's water supply has the water quality problems or health hazards referred to in the news events, reports, or descriptions.

(6) A water treatment device would provide a health benefit or diminish a health risk unless it would do so.

(7) A water treatment device will solve or contribute to the solution of any problem unless the statement is true.

(b) Perform precipitation tests of the individual consumer's drinking water without also clearly informing the consumer of the results, scope, and limits of the test. Precipitation tests may only be used to demonstrate the hardness or other nonhealth-related characteristics of the water being tested.

(c) Notwithstanding subdivision (a), make product performance claims or product benefit claims that the device affects the health or the safety of drinking water, unless the device complies with Article 3 (commencing with Section 116825) of Chapter 5 of Part 12 of Division 104 of the Health and Safety Code. This subdivision does not apply to the making of truthful and nonmisleading claims regarding the removal or reduction of contaminants not associated with a health or safety claim pursuant to Article 3 (commencing with Section 116825) of Chapter 5 of Part 12 of Division 104 of the Health and Safety Code.

(d) Use pictures, exhibits, graphs, charts, other graphic portrayals, endorsements, or testimonials in any untrue or misleading manner.

(e) Fail to disclose clearly and conspicuously, in writing, to the purchaser, lessee, or renter, prior to the time of purchase, lease, or rent, the importance of maintaining the water treatment device according to the manufacturer's instructions, including, if applicable, replacement of screens and filters. In addition, a separate printed gummed label, tag, or other convenient form of reminder of the importance of proper maintenance shall be provided to the purchaser, lessee, or renter.

(Amended by Stats. 2013, Ch. 403, Sec. 1. (AB 119) Effective January 1, 2014.)

17577.3. (a) A contract or offer which is subject to approval, for the sale, lease, or rental of a water treatment device shall be deemed a home solicitation contract or offer, as defined in subdivision (a) of Section 1689.5 of the Civil Code regardless of where the contract or offer was made, and shall be subject to the provisions of Sections 1689.5 to 1689.13, inclusive, of the Civil Code if the contract or offer arises out of a scheduled presentation to promote the sale, lease, or rental of a water treatment device to a person invited to attend the presentation at a location other than a private residence.

(b) A water treatment device or any other materials that are the subject of a contract offer described in subdivision (a) may be delivered and installed during the rescission period provided in Sections 1689.5 to 1689.13, inclusive, of the Civil Code. Notwithstanding any other law, if a buyer exercises his or her right to rescind the contract in accordance with those rescission provisions, the seller shall be responsible for all costs in removing the installed water treatment device or any other materials and shall remove that device or any other materials within 20 days of the rescission. If the seller's services result in the alteration of property of the buyer, the seller shall restore the property to substantially as good condition as it was at the time the services were rendered.

(c) A water treatment device or any other materials that are the subject of a contract offer described in subdivision (a) shall be delivered and installed in accordance with Section 7163 and the federal Truth in Lending Act (15 U.S.C. Sec. 1601 et seq.), as applicable.

(Amended by Stats. 2018, Ch. 932, Sec. 1. (SB 981) Effective January 1, 2019.)

17577.4. Any violation of this article is a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding two thousand five hundred dollars (\$2,500), or by both.

(Added by Stats. 1986, Ch. 1278, Sec. 1.)

17577.5. (a) No contract or offer for the sale, lease, or rental of a home water treatment device and no purchase money loan, as defined in subdivision (b), shall provide for a lien on real property. Any lien taken in violation of this section is void and unenforceable.

(b) For the purpose of this section, "purchase money loan" means a loan or an advance under an open-end credit account if both of the following occur:

(1) The primary purpose of the loan or the primary purpose of establishing the open-end credit account is to finance all or a portion of the purchase price or any of the lease or rental payments for a water treatment device.

(2) The creditor knows the primary purpose of the loan or the primary purpose of establishing the open-end credit account when the loan is initially made or the open-end credit account is established.

(c) The creditor shall be deemed to know that the primary purpose of the loan or the primary purpose of establishing the open-end credit account is the primary purpose described in paragraph (1) of subdivision (b) if any of the following occur:

(1) The consumer's application for credit or any other document in the creditor's possession before the loan is made or the open-end account is established indicates the primary purpose of the loan or the open-end credit account.

(2) The seller, lessor, or renter arranges or guarantees the loan or open-end account, or participates in the preparation of the consumer's application for credit or other loan documents, or receives from the creditor a loan commission, brokerage, or referral fee.

(d) For the purpose of this section, "open-end credit" has the same meaning as used in Section 226.2 of Title 12 of the Code of Federal Regulations.

(e) This section does not apply to mechanics liens established pursuant to Chapter 4 (commencing with Section 8400) of Title 2 of Part 6 of Division 4 of the Civil Code.

(Amended by Stats. 2010, Ch. 697, Sec. 10. (SB 189) Effective January 1, 2011. Operative July 1, 2012, by Sec. 105 of Ch. 697.)

17577.6. (a) A buyer, lessee, or renter of a water treatment device may bring an action against any person who violates this article for the recovery of actual damages, exemplary damages, reasonable attorney's fees and costs, and appropriate equitable relief.

(b) The rights and remedies provided in this article are in addition to, and not a limitation of, any other rights and remedies provided by law.

(c) Any action brought pursuant to this section shall be commenced within three years of the discovery by the party of the alleged violation.

(d) Any waiver of this article shall be void and unenforceable as contrary to public policy.

(Added by Stats. 1988, Ch. 1053, Sec. 10.)