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**CIVIL CODE - CIV**

**DIVISION 3. OBLIGATIONS [1427 - 3273.69]** ( *Heading of Division 3 amended by Stats. 1988, Ch. 160, Sec. 14.*  )

**PART 3. OBLIGATIONS IMPOSED BY LAW [1708 - 1725]** ( *Part 3 enacted 1872.*  )

**1708.** Every person is bound, without contract, to abstain from injuring the person or property of another, or infringing upon any of his or her rights.

(Amended by Stats. 2002, Ch. 664, Sec. 38.5. Effective January 1, 2003.)

**1708.5.** (a) A person commits a sexual battery who does any of the following:

- (1) Acts with the intent to cause a harmful or offensive contact with an intimate part of another, and a sexually offensive contact with that person directly or indirectly results.
- (2) Acts with the intent to cause a harmful or offensive contact with another by use of the person's intimate part, and a sexually offensive contact with that person directly or indirectly results.
- (3) Acts to cause an imminent apprehension of the conduct described in paragraph (1) or (2), and a sexually offensive contact with that person directly or indirectly results.
- (4) Causes contact between a sexual organ, from which a condom has been removed, and the intimate part of another who did not verbally consent to the condom being removed.
- (5) Causes contact between an intimate part of the person and a sexual organ of another from which the person removed a condom without verbal consent.

(b) A person who commits a sexual battery upon another is liable to that person for damages, including, but not limited to, general damages, special damages, and punitive damages.

(c) The court in an action pursuant to this section may award equitable relief, including, but not limited to, an injunction, costs, and any other relief the court deems proper.

(d) For the purposes of this section:

- (1) "Intimate part" means the sexual organ, anus, groin, or buttocks of any person, or the breast of a female.
- (2) "Offensive contact" means contact that offends a reasonable sense of personal dignity.

(e) The rights and remedies provided in this section are in addition to any other rights and remedies provided by law.

(Amended by Stats. 2021, Ch. 613, Sec. 1. (AB 453) Effective January 1, 2022.)

**1708.5.5.** (a) Notwithstanding Section 3515, consent shall not be a defense in any civil action under Section 1708.5 if the person who commits the sexual battery is an adult who is in a position of authority over the minor.

(b) For purposes of this section, an adult is in a "position of authority" if he or she, by reason of that position, is able to exercise undue influence over a minor. A "position of authority" includes, but is not limited to, a natural parent, stepparent, foster parent, relative, partner of any such parent or relative, caretaker, youth leader, recreational director, athletic manager, coach, teacher, counselor, therapist, religious leader, doctor, employee of one of those aforementioned persons, or coworker.

(c) For purposes of this section, "undue influence" has the same meaning as in Section 15610.70 of the Welfare and Institutions Code.

*(Added by Stats. 2015, Ch. 128, Sec. 1. (SB 14) Effective January 1, 2016.)*

**1708.5.6.** (a) A private cause of action for damages lies against a person who misuses sperm, ova, or embryos in violation of Section 367g of the Penal Code.

(b) A prevailing plaintiff who suffers harm as a result of a violation of Section 367g of the Penal Code may be awarded actual damages or statutory damages of not less than fifty thousand dollars (\$50,000), whichever is greater.

*(Added by Stats. 2021, Ch. 170, Sec. 1. (AB 556) Effective January 1, 2022.)*

**1708.6.** (a) A person is liable for the tort of domestic violence if the plaintiff proves both of the following elements:

(1) The infliction of injury upon the plaintiff resulting from abuse, as defined in subdivision (a) of Section 13700 of the Penal Code.

(2) The abuse was committed by the defendant, a person having a relationship with the plaintiff as defined in subdivision (b) of Section 13700 of the Penal Code.

(b) A person who commits an act of domestic violence upon another is liable to that person for damages, including, but not limited to, general damages, special damages, and punitive damages pursuant to Section 3294.

(c) The court, in an action pursuant to this section, may grant to a prevailing plaintiff equitable relief, an injunction, costs, and any other relief that the court deems proper, including reasonable attorney's fees.

(d) The rights and remedies provided in this section are in addition to any other rights and remedies provided by law.

(e) The time for commencement of an action under this section is governed by Section 340.15 of the Code of Civil Procedure.

*(Added by Stats. 2002, Ch. 193, Sec. 2. Effective January 1, 2003.)*

**1708.7.** (a) A person is liable for the tort of stalking when the plaintiff proves all of the following elements of the tort:

(1) The defendant engaged in a pattern of conduct the intent of which was to follow, alarm, place under surveillance, or harass the plaintiff. In order to establish this element, the plaintiff shall be required to support his or her allegations with independent corroborating evidence.

(2) As a result of that pattern of conduct, either of the following occurred:

(A) The plaintiff reasonably feared for his or her safety, or the safety of an immediate family member. For purposes of this subparagraph, "immediate family" means a spouse, parent, child, any person related by consanguinity or affinity within the second degree, or any person who regularly resides, or, within the six months preceding any portion of the pattern of conduct, regularly resided, in the plaintiff's household.

(B) The plaintiff suffered substantial emotional distress, and the pattern of conduct would cause a reasonable person to suffer substantial emotional distress.

(3) One of the following:

(A) The defendant, as a part of the pattern of conduct specified in paragraph (1), made a credible threat with either (i) the intent to place the plaintiff in reasonable fear for his or her safety, or the safety of an immediate family member, or (ii) reckless disregard for the safety of the plaintiff or that of an immediate family member. In addition, the plaintiff must have, on at least one occasion, clearly and definitively demanded that the defendant cease and abate his or her pattern of conduct and the defendant persisted in his or her pattern of conduct unless exigent circumstances make the plaintiff's communication of the demand impractical or unsafe.

(B) The defendant violated a restraining order, including, but not limited to, any order issued pursuant to Section 527.6 of the Code of Civil Procedure, prohibiting any act described in subdivision (a).

(b) For the purposes of this section:

(1) "Pattern of conduct" means conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of "pattern of conduct."

(2) "Credible threat" means a verbal or written threat, including that communicated by means of an electronic communication device, or a threat implied by a pattern of conduct, including, but not limited to, acts in which a defendant directly, indirectly, or through third parties, by any action, method, device, or means, follows, harasses, monitors, surveils, threatens, or interferes with

or damages the plaintiff's property, or a combination of verbal, written, or electronically communicated statements and conduct, made with the intent and apparent ability to carry out the threat so as to cause the person who is the target of the threat to reasonably fear for his or her safety or the safety of his or her immediate family.

(3) "Electronic communication device" includes, but is not limited to, telephones, cellular telephones, computers, video recorders, fax machines, or pagers. "Electronic communication" has the same meaning as the term defined in Subsection 12 of Section 2510 of Title 18 of the United States Code.

(4) "Follows" means to move in relative proximity to a person as that person moves from place to place or to remain in relative proximity to a person who is stationary or whose movements are confined to a small area but does not include following the plaintiff within the residence of the defendant. For purposes of the liability created by subdivision (a), "follows" does not include any lawful activity of private investigators licensed pursuant to Article 3 (commencing with Section 7520) of Chapter 11.3 of Division 3 of the Business and Professions Code, or of law enforcement personnel or employees of agencies, either public or private, who, in the course and scope of their employment, encourage or attempt to engage in any conduct or activity to obtain evidence of suspected illegal activity or other misconduct, suspected violation of any administrative rule or regulation, suspected fraudulent conduct, or any suspected activity involving a violation of law or business practice or conduct of a public official that adversely affects public welfare, health, or safety. For purposes of the liability created by subdivision (a), "follows" also does not include any newsgathering conduct connected to a newsworthy event.

(5) "Harass" means a knowing and willful course of conduct directed at a specific person which seriously alarms, annoys, torments, or terrorizes the person, and which serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the person.

(6) "Place under surveillance" means remaining present outside of the plaintiff's school, place of employment, vehicle, residence, other than the residence of the defendant, or other place occupied by the plaintiff. For purposes of the liability created by subdivision (a), "place under surveillance" does not include any lawful activity of private investigators licensed pursuant to Article 3 (commencing with Section 7520) of Chapter 11.3 of Division 3 of the Business and Professions Code, or of law enforcement personnel or employees of agencies, either public or private, who, in the course and scope of their employment, encourage or attempt to engage in any conduct or activity to obtain evidence of suspected illegal activity or other misconduct, suspected violation of any administrative rule or regulation, suspected fraudulent conduct, or any suspected activity involving a violation of law or business practice or conduct of a public official that adversely affects public welfare, health, or safety. For purposes of the liability created by subdivision (a), "place under surveillance" also does not include any newsgathering conduct connected to a newsworthy event.

(7) "Substantial emotional distress" shall not be construed to have the same meaning as the "severe emotional distress" requirement for intentional infliction of emotional distress. "Substantial emotional distress" does not require a showing of physical manifestations of emotional distress; rather, it requires the evaluation of the totality of the circumstances to determine whether the defendant reasonably caused the plaintiff substantial fear, anxiety, or emotional torment.

(c) A person who commits the tort of stalking upon another is liable to that person for damages, including, but not limited to, general damages, special damages, and punitive damages pursuant to Section 3294.

(d) In an action pursuant to this section, the court may grant equitable relief, including, but not limited to, an injunction.

(e) The rights and remedies provided in this section are cumulative and in addition to any other rights and remedies provided by law.

(f) This section shall not be construed to impair any constitutionally protected activity, including, but not limited to, speech, protest, and assembly.

(g) This act is an exercise of the police power of the state for the protection of the health, safety, and welfare of the people of the State of California, and shall be liberally construed to effectuate those purposes.

*(Amended by Stats. 2014, Ch. 853, Sec. 1. (AB 1356) Effective January 1, 2015.)*

**1708.8.** (a) A person is liable for physical invasion of privacy when the person knowingly enters onto the land or into the airspace above the land of another person without permission or otherwise commits a trespass in order to capture any type of visual image, sound recording, or other physical impression of the plaintiff engaging in a private, personal, or familial activity and the invasion occurs in a manner that is offensive to a reasonable person.

(b) A person is liable for constructive invasion of privacy when the person attempts to capture, in a manner that is offensive to a reasonable person, any type of visual image, sound recording, or other physical impression of the plaintiff engaging in a private, personal, or familial activity, through the use of any device, regardless of whether there is a physical trespass, if this image, sound recording, or other physical impression could not have been achieved without a trespass unless the device was used.

(c) An assault or false imprisonment committed with the intent to capture any type of visual image, sound recording, or other physical impression of the plaintiff is subject to subdivisions (d), (e), and (h).

(d) A person who commits any act described in subdivision (a), (b), or (c) is liable for up to three times the amount of any general and special damages that are proximately caused by the violation of this section. This person may also be liable for punitive damages, subject to proof according to Section 3294. If the plaintiff proves that the invasion of privacy was committed for a commercial purpose, the person shall also be subject to disgorgement to the plaintiff of any proceeds or other consideration obtained as a result of the violation of this section. A person who comes within the description of this subdivision is also subject to a civil fine of not less than five thousand dollars (\$5,000) and not more than fifty thousand dollars (\$50,000).

(e) A person who directs, solicits, actually induces, or actually causes another person, regardless of whether there is an employer-employee relationship, to violate any provision of subdivision (a), (b), or (c) is liable for any general, special, and consequential damages resulting from each said violation. In addition, the person that directs, solicits, actually induces, or actually causes another person, regardless of whether there is an employer-employee relationship, to violate this section shall be liable for punitive damages to the extent that an employer would be subject to punitive damages pursuant to subdivision (b) of Section 3294. A person who comes within the description of this subdivision is also subject to a civil fine of not less than five thousand dollars (\$5,000) and not more than fifty thousand dollars (\$50,000).

(f) (1) The transmission, publication, broadcast, sale, offer for sale, or other use of any visual image, sound recording, or other physical impression that was taken or captured in violation of subdivision (a), (b), or (c) shall not constitute a violation of this section unless the person, in the first transaction following the taking or capture of the visual image, sound recording, or other physical impression, publicly transmitted, published, broadcast, sold, or offered for sale the visual image, sound recording, or other physical impression with actual knowledge that it was taken or captured in violation of subdivision (a), (b), or (c), and provided compensation, consideration, or remuneration, monetary or otherwise, for the rights to the unlawfully obtained visual image, sound recording, or other physical impression.

(2) For the purposes of paragraph (1), "actual knowledge" means actual awareness, understanding, and recognition, obtained prior to the time at which the person purchased or acquired the visual image, sound recording, or other physical impression, that the visual image, sound recording, or other physical impression was taken or captured in violation of subdivision (a), (b), or (c). The plaintiff shall establish actual knowledge by clear and convincing evidence.

(3) Any person that publicly transmits, publishes, broadcasts, sells, or offers for sale, in any form, medium, format, or work, a visual image, sound recording, or other physical impression that was previously publicly transmitted, published, broadcast, sold, or offered for sale by another person, is exempt from liability under this section.

(4) If a person's first public transmission, publication, broadcast, or sale or offer for sale of a visual image, sound recording, or other physical impression that was taken or captured in violation of subdivision (a), (b), or (c) does not constitute a violation of this section, that person's subsequent public transmission, publication, broadcast, sale, or offer for sale, in any form, medium, format, or work, of the visual image, sound recording, or other physical impression, does not constitute a violation of this section.

(5) This section applies only to a visual image, sound recording, or other physical impression that is captured or taken in California in violation of subdivision (a), (b), or (c) after January 1, 2010, and shall not apply to any visual image, sound recording, or other physical impression taken or captured outside of California.

(6) Nothing in this subdivision shall be construed to impair or limit a special motion to strike pursuant to Section 425.16, 425.17, or 425.18 of the Code of Civil Procedure.

(7) This section shall not be construed to limit all other rights or remedies of the plaintiff in law or equity, including, but not limited to, the publication of private facts.

(g) This section shall not be construed to impair or limit any otherwise lawful activities of law enforcement personnel or employees of governmental agencies or other entities, either public or private, who, in the course and scope of their employment, and supported by an articulable suspicion, attempt to capture any type of visual image, sound recording, or other physical impression of a person during an investigation, surveillance, or monitoring of any conduct to obtain evidence of suspected illegal activity or other misconduct, the suspected violation of any administrative rule or regulation, a suspected fraudulent conduct, or any activity involving a violation of law or business practices or conduct of public officials adversely affecting the public welfare, health, or safety.

(h) In any action pursuant to this section, the court may grant equitable relief, including, but not limited to, an injunction and restraining order against further violations of subdivision (a), (b), or (c).

(i) The rights and remedies provided in this section are cumulative and in addition to any other rights and remedies provided by law.

(j) It is not a defense to a violation of this section that no image, recording, or physical impression was captured or sold.

(k) For the purposes of this section, "for a commercial purpose" means any act done with the expectation of a sale, financial gain, or other consideration. A visual image, sound recording, or other physical impression shall not be found to have been, or intended to have been, captured for a commercial purpose unless it is intended to be, or was in fact, sold, published, or transmitted.

(l) (1) For the purposes of this section, "private, personal, and familial activity" includes, but is not limited to:

(A) Intimate details of the plaintiff's personal life under circumstances in which the plaintiff has a reasonable expectation of privacy.

(B) Interaction with the plaintiff's family or significant others under circumstances in which the plaintiff has a reasonable expectation of privacy.

(C) If and only after the person has been convicted of violating Section 626.8 of the Penal Code, any activity that occurs when minors are present at any location set forth in subdivision (a) of Section 626.8 of the Penal Code.

(D) Any activity that occurs on a residential property under circumstances in which the plaintiff has a reasonable expectation of privacy.

(E) Other aspects of the plaintiff's private affairs or concerns under circumstances in which the plaintiff has a reasonable expectation of privacy.

(2) "Private, personal, and familial activity" does not include illegal or otherwise criminal activity as delineated in subdivision (g). However, "private, personal, and familial activity" shall include the activities of victims of crime in circumstances under which subdivision (a), (b), or (c) would apply.

(m) (1) A proceeding to recover the civil fines specified in subdivision (d) or (e) may be brought in any court of competent jurisdiction by a county counsel or city attorney.

(2) Fines collected pursuant to this subdivision shall be allocated, as follows:

(A) One-half shall be allocated to the prosecuting agency.

(B) One-half shall be deposited in the Arts and Entertainment Fund, which is hereby created in the State Treasury.

(3) Funds in the Arts and Entertainment Fund created pursuant to paragraph (2) may be expended by the California Arts Council, upon appropriation by the Legislature, to issue grants pursuant to the Dixon-Zenovich-Maddy California Arts Act of 1975 (Chapter 9 (commencing with Section 8750) of Division 1 of Title 2 of the Government Code).

(4) The rights and remedies provided in this subdivision are cumulative and in addition to any other rights and remedies provided by law.

(n) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

*(Amended by Stats. 2015, Ch. 521, Sec. 1. (AB 856) Effective January 1, 2016.)*

**1708.85.** (a) A private cause of action lies against a person who intentionally distributes by any means a photograph, film, videotape, recording, or any other reproduction of another, without the other's consent, if (1) the person knew, or reasonably should have known, that the other person had a reasonable expectation that the material would remain private, (2) the distributed material exposes an intimate body part of the other person, or shows the other person engaging in an act of intercourse, oral copulation, sodomy, or other act of sexual penetration, and (3) the other person suffers general or special damages as described in Section 48a.

(b) As used in this section, "intimate body part" means any portion of the genitals, and, in the case of a female, also includes any portion of the breast below the top of the areola, that is uncovered or visible through less than fully opaque clothing.

(c) There shall be no liability on the part of the person distributing material under subdivision (a) under any of the following circumstances:

(1) The distributed material was created under an agreement by the person appearing in the material for its public use and distribution or otherwise intended by that person for public use and distribution.

(2) The person possessing or viewing the distributed material has permission from the person appearing in the material to publish by any means or post the material on an internet website.

(3) The person appearing in the material waived any reasonable expectation of privacy in the distributed material by making it accessible to the general public.

(4) The distributed material constitutes a matter of public concern.

(5) The distributed material was photographed, filmed, videotaped, recorded, or otherwise reproduced in a public place and under circumstances in which the person depicted had no reasonable expectation of privacy.

(6) The distributed material was previously distributed by another person, unless the plaintiff served on the defendant, by certified mail, a notice to cease distribution of the material, and the defendant failed to cease distribution within 20 days of receiving the notice.

(d) In addition to any other relief available at law, the court may order equitable relief against the person violating subdivision (a), including a temporary restraining order, or a preliminary injunction or a permanent injunction ordering the defendant to cease distribution of material. The court may grant injunctive relief maintaining the confidentiality of a plaintiff using a pseudonym as provided in subdivision (f).

(e) The court may also grant, after holding a properly noticed hearing, reasonable attorney's fees and costs to the prevailing plaintiff.

(f) (1) A plaintiff in a civil proceeding pursuant to subdivision (a), may proceed using a pseudonym, either John Doe, Jane Doe, or Doe, for the true name of the plaintiff and may exclude or redact from all pleadings and documents filed in the action other identifying characteristics of the plaintiff. A plaintiff who proceeds using a pseudonym and excluding or redacting identifying characteristics as provided in this section shall file with the court and serve upon the defendant a confidential information form for this purpose that includes the plaintiff's name and other identifying characteristics excluded or redacted. The court shall keep the plaintiff's name and excluded or redacted characteristics confidential.

(2) In cases where a plaintiff proceeds using a pseudonym under this section, the following provisions shall apply:

(A) All other parties and their agents and attorneys shall use this pseudonym in all pleadings, discovery documents, and other documents filed or served in the action, and at hearings, trial, and other court proceedings that are open to the public.

(B) (i) Any party filing a pleading, discovery document, or other document in the action shall exclude or redact any identifying characteristics of the plaintiff from the pleading, discovery document, or other document, except for a confidential information form filed pursuant to this subdivision.

(ii) A party excluding or redacting identifying characteristics as provided in this section shall file with the court and serve upon all other parties a confidential information form that includes the plaintiff's name and other identifying characteristics excluded or redacted. The court shall keep the plaintiff's name and excluded or redacted characteristics confidential.

(C) All court decisions, orders, petitions, discovery documents, and other documents shall be worded so as to protect the name or other identifying characteristics of the plaintiff from public revelation.

(3) The following definitions apply to this subdivision:

(A) "Identifying characteristics" means name or any part thereof, address or any part thereof, city or unincorporated area of residence, age, marital status, relationship to defendant, and race or ethnic background, telephone number, email address, social media profiles, online identifiers, contact information, or any other information, including images of the plaintiff, from which the plaintiff's identity can be discerned.

(B) "Online identifiers" means any personally identifying information or signifiers that would tie an individual to a particular electronic service, device, or Internet application, website, or platform account, including, but not limited to, access names, access codes, account names, aliases, avatars, credentials, gamer tags, display names, handles, login names, member names, online identities, pseudonyms, screen names, user accounts, user identifications, usernames, Uniform Resource Locators (URLs), domain names, Internet Protocol (IP) addresses, and media access control (MAC) addresses.

(4) The responsibility for excluding or redacting the name or identifying characteristics of the plaintiff from all documents filed with the court rests solely with the parties and their attorneys. Nothing in this section requires the court to review pleadings or other papers for compliance with this provision.

(5) Upon request of the plaintiff, the clerk shall allow access to the court file in an action filed under this section only as follows:

(A) To a party to the action, including a party's attorney.

(B) To a person by order of the court on a showing of good cause for access.

(C) To any person 60 days after judgment is entered unless the court grants a plaintiff's motion to seal records pursuant to Chapter 3 of Division 4 of Title 2 of the California Rules of Court.

(g) In an action pursuant to this section, the plaintiff shall state in the caption of the complaint "ACTION BASED ON CIVIL CODE SECTION 1708.85."

(h) Nothing in this section shall be construed to alter or negate any rights, obligations, or immunities of an interactive service provider under Section 230 of Title 47 of the United States Code. Nothing in this section shall be construed to limit or preclude a plaintiff from securing or recovering any other available remedy.

(i) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

(j) The Judicial Council shall, on or before January 1, 2019, adopt or revise as appropriate rules and forms in order to implement subdivision (f).

*(Amended by Stats. 2021, Ch. 518, Sec. 1. (AB 514) Effective January 1, 2022.)*

**1708.86.** (a) For purposes of this section:

(1) "Altered depiction" means a performance that was actually performed by the depicted individual but was subsequently altered to be in violation of this section.

(2) "Authorized Representative" means an attorney, talent agent, or personal manager authorized to represent a depicted individual if the depicted individual is represented.

(3) (A) "Consent" means an agreement written in plain language signed knowingly and voluntarily by the depicted individual that includes a general description of the sexually explicit material and the audiovisual work in which it will be incorporated.

(B) A depicted individual may rescind consent by delivering written notice within three business days from the date consent was given to the person in whose favor consent was made, unless one of the following requirements is satisfied:

(i) The depicted individual is given at least 72 hours to review the terms of the agreement before signing it.

(ii) The depicted individual's authorized representative provides written approval of the signed agreement.

(4) "Depicted individual" means an individual who appears, as a result of digitization, to be giving a performance they did not actually perform or to be performing in an altered depiction.

(5) "Despicable conduct" means conduct that is so vile, base, or contemptible that it would be looked down on and despised by a reasonable person.

(6) "Digitization" means to realistically depict any of the following:

(A) The nude body parts of another human being as the nude body parts of the depicted individual.

(B) Computer-generated nude body parts as the nude body parts of the depicted individual.

(C) The depicted individual engaging in sexual conduct in which the depicted individual did not engage.

(7) "Disclose" means to publish, make available, or distribute to the public.

(8) "Individual" means a natural person.

(9) "Malice" means that the defendant acted with intent to cause harm to the plaintiff or despicable conduct that was done with a willful and knowing disregard of the rights of the plaintiff. A person acts with knowing disregard within the meaning of this paragraph when they are aware of the probable harmful consequences of their conduct and deliberately fail to avoid those consequences.

(10) "Nude" means visible genitals, pubic area, anus, or a female's postpubescent nipple or areola.

(11) "Person" means a human being or legal entity.

(12) "Plaintiff" includes cross-plaintiff.

(13) "Sexual conduct" means any of the following:

(A) Masturbation.

(B) Sexual intercourse, including genital, oral, or anal, whether between persons regardless of sex or gender or between humans and animals.

(C) Sexual penetration of the vagina or rectum by, or with, an object.

(D) The transfer of semen by means of sexual conduct from the penis directly onto the depicted individual as a result of ejaculation.

(E) Sadoomasochistic abuse involving the depicted individual.

(14) "Sexually explicit material" means any portion of an audiovisual work that shows the depicted individual performing in the nude or appearing to engage in, or being subjected to, sexual conduct.

(b) A depicted individual has a cause of action against a person who does either of the following:

(1) Creates and intentionally discloses sexually explicit material and the person knows or reasonably should have known the depicted individual in that material did not consent to its creation or disclosure.

(2) Intentionally discloses sexually explicit material that the person did not create and the person knows the depicted individual in that material did not consent to the creation of the sexually explicit material.

(c) (1) A person is not liable under this section in either of the following circumstances:

(A) The person discloses the sexually explicit material in the course of any of the following:

(i) Reporting unlawful activity.

(ii) Exercising the person's law enforcement duties.

(iii) Hearings, trials, or other legal proceedings.

(B) The material is any of the following:

(i) A matter of legitimate public concern.

(ii) A work of political or newsworthy value or similar work.

(iii) Commentary, criticism, or disclosure that is otherwise protected by the California Constitution or the United States Constitution.

(2) For purposes of this subdivision, sexually explicit material is not of newsworthy value solely because the depicted individual is a public figure.

(d) It shall not be a defense to an action under this section that there is a disclaimer included in the sexually explicit material that communicates that the inclusion of the depicted individual in the sexually explicit material was unauthorized or that the depicted individual did not participate in the creation or development of the material.

(e) (1) A prevailing plaintiff who suffers harm as a result of the violation of subdivision (b) may recover any of the following:

(A) An amount equal to the monetary gain made by the defendant from the creation, development, or disclosure of the sexually explicit material.

(B) One of the following:

(i) Economic and noneconomic damages proximately caused by the disclosure of the sexually explicit material, including damages for emotional distress.

(ii) Upon request of the plaintiff at any time before the final judgment is rendered, the plaintiff may instead recover an award of statutory damages for all unauthorized acts involved in the action, with respect to any one work, as follows:

(I) A sum of not less than one thousand five hundred dollars (\$1,500) but not more than thirty thousand dollars (\$30,000).

(II) If the unlawful act was committed with malice, the award of statutory damages may be increased to a maximum of one hundred fifty thousand dollars (\$150,000).

(C) Punitive damages.

(D) Reasonable attorney's fees and costs.

(E) Any other available relief, including injunctive relief.



(2) The remedies provided by this section are cumulative and shall not be construed as restricting a remedy that is available under any other law.

(f) An action under this section shall be commenced no later than three years from the date the unauthorized creation, development, or disclosure was discovered or should have been discovered with the exercise of reasonable diligence.

(g) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions.

*(Added by Stats. 2019, Ch. 491, Sec. 1. (AB 602) Effective January 1, 2020.)*

**1708.88.** (a) A private cause of action lies against a person 18 years of age or older who knowingly sends an image, that the person knows or reasonably should know is unsolicited, by electronic means, depicting obscene material.

(b) For purposes of this section, the following terms have the following meanings:

(1) An "image" includes, but is not limited to, a moving visual image.

(2) "Obscene material" means material, including, but not limited to, images depicting a person engaging in an act of sexual intercourse, sodomy, oral copulation, sexual penetration, or masturbation, or depicting the exposed genitals or anus of any person, taken as a whole, that to the average person, applying contemporary statewide standards, appeals to the prurient interest, that, taken as a whole, depicts or describes sexual conduct in a patently offensive way, and that, taken as a whole, lacks serious literary, artistic, political, or scientific value.

(3) An image is "unsolicited" if the recipient has not consented to or has expressly forbidden the receipt of the image.

(c) (1) A prevailing plaintiff who suffers harm as a result of receiving an image in violation of subdivision (a) may recover economic and noneconomic damages proximately caused by the receipt of the image, including damages for emotional distress.

(2) A prevailing plaintiff who suffers harm as a result of receiving an image, the receipt of which had been expressly forbidden by the plaintiff, in violation of subdivision (a), may recover the following:

(A) Economic and noneconomic damages proximately caused by the receipt of the image, including damages for emotional distress.

(B) Upon request of the plaintiff at any time before the final judgment is rendered, the plaintiff may, in lieu of those damages specified in subparagraph (A), recover an award of statutory damages of a sum of not less than one thousand five hundred dollars (\$1,500) but not more than thirty thousand dollars (\$30,000).

(C) Punitive damages.

(3) A prevailing plaintiff described in paragraph (1) or (2) may recover the following:

(A) Reasonable attorney's fees and costs.

(B) Any other available relief, including injunctive relief.

(4) The remedies provided by this section are cumulative and shall not be construed as restricting a remedy that is available under any other law.

(d) This section does not apply to any of the following:

(1) An internet service provider, mobile data provider, or operator of an online or mobile application, to the extent that the entity is transmitting, routing, or providing connections for electronic communications initiated by or at the direction of another person.

(2) Any service that transmits images or audiovisual works, including, without limitation, an on-demand, subscription, or advertising-supported service.

(3) A health care provider transmitting an image for a legitimate medical purpose.

(4) An individual who has not expressly opted-out of receiving sexually explicit images on the service in which the image is transmitted, where such an option is available.

*(Added by Stats. 2022, Ch. 504, Sec. 1. (SB 53) Effective January 1, 2023.)*

**1708.89.** (a) For purposes of this section, the following terms apply:

(1) "Doxes" means an act when a person, with intent to place another person in reasonable fear for their safety, or the safety of the other person's immediate family, by means of an electronic communication device, and without consent of the other person, and for the purpose of imminently causing that other person unwanted physical contact, injury, or harassment, by a third party, electronically distributes, publishes, emails, hyperlinks, or makes available for downloading, personal identifying information, including, but not limited to, a digital image of another person, or an electronic message of a harassing nature about another person, which would be likely to incite or produce that unlawful action.

(2) "Electronic communication" has the same meaning as the term is defined in paragraph (12) of Section 2510 of Title 18 of the United States Code.

(3) "Electronic communication device" includes, but is not limited to, telephones, cell phones, computers, internet web pages or websites, internet phones, hybrid cellular/wireless devices, personal digital assistants, video recorders, fax machines, or pagers.

(4) "Harassment" means a knowing and willful course of conduct directed at a specific person that a reasonable person would consider as seriously alarming, seriously annoying, seriously tormenting, or seriously terrorizing the person and that serves no legitimate purpose.

(5) "Identifying characteristics" means name or any part thereof, address or any part thereof, city or unincorporated area of residence, age, marital status, relationship to defendant, and race or ethnic background, telephone number, email address, social media profiles, online identifiers, contact information, or any other information, including images of the plaintiff, from which the plaintiff's identity can be discerned.

(6) "Of a harassing nature" means of a nature that a reasonable person would consider as seriously alarming, seriously annoying, seriously tormenting, or seriously terrorizing of the person and that serves no legitimate purpose.

(7) "Online identifiers" means any personally identifying information or signifiers that would tie an individual to a particular electronic service, device, or internet application, website, or platform account, including, but not limited to, access names, access codes, account names, aliases, avatars, credentials, gamer tags, display names, handles, login names, member names, online identities, pseudonyms, screen names, user accounts, user identifications, usernames, Uniform Resource Locators (URLs), domain names, Internet Protocol (IP) addresses, and media access control (MAC) addresses.

(b) A private cause of action lies against a person who doxes another person.

(c) A prevailing plaintiff who suffers harm as a result of being doxed in violation of subdivision (b) may recover any of the following:

(1) Economic and noneconomic damages proximately caused by being doxed, including, but not limited to, damages for physical harm, emotional distress, or property damage.

(2) Statutory damages of a sum of not less than one thousand five hundred dollars (\$1,500) but not more than thirty thousand dollars (\$30,000).

(3) Punitive damages.

(4) Upon the court holding a properly noticed hearing, reasonable attorney's fees and costs to the prevailing plaintiff.

(d) In addition to any other relief available at law, the court may order equitable relief against the person violating subdivision (b), including a temporary restraining order, or a preliminary injunction or a permanent injunction ordering the defendant to cease doxing activities. The court may grant injunctive relief maintaining the confidentiality of a plaintiff using a pseudonym as provided in subdivision (e).

(e) (1) A plaintiff in a civil proceeding pursuant to subdivision (b) may proceed using a pseudonym, either John Doe, Jane Doe, or Doe, for the true name of the plaintiff and may exclude or redact from all pleadings and documents filed in the action other identifying characteristics of the plaintiff. A plaintiff who proceeds using a pseudonym and excluding or redacting identifying characteristics as provided in this section shall file with the court and serve upon the defendant a confidential information form for this purpose that includes the plaintiff's name and other identifying characteristics excluded or redacted. The court shall keep the plaintiff's name and excluded or redacted characteristics confidential.

(2) In cases where a plaintiff proceeds using a pseudonym under this section, the following applies:

(A) All other parties and their agents and attorneys shall use this pseudonym in all pleadings, discovery documents, and other documents filed or served in the action, and at hearings, trial, and other court proceedings that are open to the public.

(B) (i) Any party filing a pleading, discovery document, or other document in the action shall exclude or redact any identifying characteristics of the plaintiff from the pleading, discovery document, or other document, except for a confidential information form filed pursuant to this subdivision.

(ii) A party excluding or redacting identifying characteristics as provided in this section shall file with the court and serve upon all other parties a confidential information form that includes the plaintiff's name and other identifying characteristics excluded or redacted. The court shall keep the plaintiff's name and excluded or redacted characteristics confidential.

(C) All court decisions, orders, petitions, discovery documents, and other documents shall be worded so as to protect the name or other identifying characteristics of the plaintiff from public revelation.

(3) The responsibility for excluding or redacting the name or identifying characteristics of the plaintiff from all documents filed with the court shall be the responsibility of the parties and their attorneys. This section does not require the court to review pleadings or other papers for compliance with this subdivision.

(4) Upon request of the plaintiff, the court shall limit access to the court records in an action filed under this section to the following individuals:

(A) A party to the action, including a party's attorney.

(B) A person by order of the court on a showing of good cause for access.

(C) A person 60 days after judgment is entered unless the court grants a plaintiff's motion to seal records pursuant to Chapter 3 of Division 4 of Title 2 of the California Rules of Court.

(f) In an action pursuant to this section, the plaintiff shall state in the caption of the complaint "ACTION BASED ON CIVIL CODE SECTION 1708.89."

(g) This section does not alter or negate any rights, obligations, or immunities of an interactive service provider under Section 230 of Title 47 of the United States Code. This section does not limit or preclude a plaintiff from securing or recovering any other available remedy.

(h) On or before January 1, 2026, the Judicial Council shall adopt or revise as appropriate rules and forms to implement subdivision (e).

(i) This section shall not apply against a person who solely does either of the following:

(1) Provide a person's personal identifying information or sensitive personal information in connection with the reporting of criminal activity to an employee of a law enforcement agency or with any lawfully authorized investigative, protective, or intelligence activity of any law enforcement agency or of an intelligence agency of the United States and the person making the report reasonably believes it is true.

(2) Disseminate the personally identifiable information for the purpose of, or in connection with, the reporting of conduct reasonably believed to be unlawful.

(j) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

*(Added by Stats. 2024, Ch. 557, Sec. 2. (AB 1979) Effective January 1, 2025.)*

**1708.9.** (a) It is unlawful for any person, except a parent or guardian acting toward his or her minor child, to commit any of the following acts:

(1) By force, threat of force, or physical obstruction that is a crime of violence, to intentionally injure, intimidate, interfere with, or attempt to injure, intimidate, or interfere with, any person attempting to enter or exit a facility.

(2) By nonviolent physical obstruction, to intentionally injure, intimidate, interfere with, or attempt to injure, intimidate, or interfere with, any person attempting to enter or exit a facility.

(b) For purposes of this section:

(1) "Facility" means any public or private school grounds, as described in subdivision (a) of Section 626.8 of the Penal Code, or any health facility, as described in Section 1250 of the Health and Safety Code.

(2) To "interfere" means to restrict a person's freedom of movement.

(3) To "intimidate" means to place a person in reasonable apprehension of bodily harm to himself, herself, or another person.

(4) "Nonviolent" means conduct that would not constitute a crime of violence.

(5) "Physical obstruction" means rendering ingress to or egress from a facility impassable to another person, or rendering passage to or from a facility unreasonably difficult or hazardous to another person.

(c) A person aggrieved by a violation of subdivision (a) may bring a civil action to enjoin the violation, for compensatory and punitive damages, for injunctive relief, and for the cost of suit and reasonable attorney's and expert witness' fees. With respect to compensatory damages, the plaintiff may elect, at any time prior to the rendering of a final judgment, to recover, in lieu of actual damages, an award of statutory damages in the amount of five thousand dollars (\$5,000) per violation of paragraph (1) of subdivision (a), and one thousand dollars (\$1,000) per violation of paragraph (2) of subdivision (a).

(d) The Attorney General, a district attorney, or a city attorney may bring a civil action to enjoin a violation of subdivision (a), for compensatory damages to persons or entities aggrieved by the violation, and for the imposition of a civil penalty against each respondent. The civil penalty for a violation of paragraph (1) of subdivision (a) shall not exceed fifteen thousand dollars (\$15,000), or twenty-five thousand dollars (\$25,000) for a second or subsequent violation. The civil penalty for a violation of paragraph (2) of subdivision (a) shall not exceed five thousand dollars (\$5,000), or twenty-five thousand dollars (\$25,000) for a second or subsequent violation.

(e) This section shall not be construed to impair the right to engage in any constitutionally protected activity, including, but not limited to, speech, protest, or assembly.

(f) The adoption of the act that added this section is an exercise of the police power of the state for purposes of protecting the health, safety, and welfare of the people of California, and this section shall be liberally construed to effectuate that purpose.

(g) This section shall not be construed to restrict, inhibit, prevent, or bring a chilling effect upon any actions by a person that are reasonable under the circumstances to protect, secure, provide safety to, or prevent illness in any child or adult in a facility.

*(Added by Stats. 2014, Ch. 852, Sec. 2. (AB 1256) Effective January 1, 2015. Section operative July 1, 2015, by its own provisions.)*

**1709.** One who willfully deceives another with intent to induce him to alter his position to his injury or risk, is liable for any damage which he thereby suffers.

*(Enacted 1872.)*

**1710.** A deceit, within the meaning of the last section, is either:

1. The suggestion, as a fact, of that which is not true, by one who does not believe it to be true;
2. The assertion, as a fact, of that which is not true, by one who has no reasonable ground for believing it to be true;
3. The suppression of a fact, by one who is bound to disclose it, or who gives information of other facts which are likely to mislead for want of communication of that fact; or,
4. A promise, made without any intention of performing it.

*(Enacted 1872.)*

**1710.1.** Any person who, with intent to defraud, sells or disposes of a radio, piano, phonograph, sewing machine, washing machine, typewriter, adding machine, comptometer, bicycle, firearm, safe, vacuum cleaner, dictaphone, watch, watch movement, watchcase, or any other mechanical or electrical device, appliance, contrivance, material, piece of apparatus or equipment, from which the manufacturer's nameplate, serial number or any other distinguishing number or identification mark has been removed, defaced, covered, altered or destroyed, is civilly liable to the manufacturer in the sum of five hundred dollars (\$500) per transaction and civilly liable to the purchaser for treble the actual damages sustained by the purchaser.

This section does not apply to those cases or instances where any of the changes or alterations enumerated in this section have been customarily made or done as an established practice in the ordinary and regular conduct of business by the original manufacturer or his duly appointed direct representative or under specific authorization from the original manufacturer.

*(Added by Stats. 1971, Ch. 1713.)*

**1710.2.** (a) (1) Subject to subdivision (d), an owner of real property or his or her agent, or any agent of a transferee of real property, is not required to disclose either of the following to the transferee, as these are not material facts that require disclosure:

- (A) The occurrence of an occupant's death upon the real property or the manner of death where the death has occurred more than three years prior to the date the transferee offers to purchase, lease, or rent the real property.

(B) That an occupant of that property was living with human immunodeficiency virus (HIV) or died from AIDS-related complications.

(2) As used in this section:

(A) "Agent" includes any person licensed pursuant to Part 1 (commencing with Section 10000) of Division 4 of the Business and Professions Code.

(B) "Transferee" includes a purchaser, lessee, or renter of real property.

(3) No cause of action shall arise against an owner or his or her agent or any agent of a transferee for not disclosing facts pursuant to paragraph (1).

(b) It is the intent of the Legislature to occupy the field of regulation of disclosure related to either of the following:

(1) Deaths occurring upon real property.

(2) The HIV-positive status of a prior occupant in situations affecting the transfer of real property or any estate or interest in real property.

(c) This section shall not be construed to alter the law relating to disclosure pertaining to any other physical or mental condition or disease, and this section shall not relieve any owner or agent of any obligation to disclose the physical condition of the premises.

(d) This section shall not be construed to immunize an owner or his or her agent from making an intentional misrepresentation in response to a direct inquiry from a transferee or a prospective transferee of real property, concerning deaths on the real property.

*(Amended by Stats. 2016, Ch. 548, Sec. 1. (AB 73) Effective September 24, 2016.)*

**1711.** One who practices a deceit with intent to defraud the public, or a particular class of persons, is deemed to have intended to defraud every individual in that class, who is actually misled by the deceit.

*(Enacted 1872.)*

**1712.** One who obtains a thing without the consent of its owner, or by a consent afterwards rescinded, or by an unlawful exaction which the owner could not at the time prudently refuse, must restore it to the person from whom it was thus obtained, unless he has acquired a title thereto superior to that of such other person, or unless the transaction was corrupt and unlawful on both sides.

*(Enacted 1872.)*

**1713.** The restoration required by the last section must be made without demand, except where a thing is obtained by mutual mistake, in which case the party obtaining the thing is not bound to return it until he has notice of the mistake.

*(Enacted 1872.)*

**1714.** (a) Everyone is responsible, not only for the result of his or her willful acts, but also for an injury occasioned to another by his or her want of ordinary care or skill in the management of his or her property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon himself or herself. The design, distribution, or marketing of firearms and ammunition is not exempt from the duty to use ordinary care and skill that is required by this section. The extent of liability in these cases is defined by the Title on Compensatory Relief.

(b) It is the intent of the Legislature to abrogate the holdings in cases such as *Vesely v. Sager* (1971) 5 Cal.3d 153, *Bernhard v. Harrah's Club* (1976) 16 Cal.3d 313, and *Coulter v. Superior Court* (1978) 21 Cal.3d 144 and to reinstate the prior judicial interpretation of this section as it relates to proximate cause for injuries incurred as a result of furnishing alcoholic beverages to an intoxicated person, namely that the furnishing of alcoholic beverages is not the proximate cause of injuries resulting from intoxication, but rather the consumption of alcoholic beverages is the proximate cause of injuries inflicted upon another by an intoxicated person.

(c) Except as provided in subdivision (d), no social host who furnishes alcoholic beverages to any person may be held legally accountable for damages suffered by that person, or for injury to the person or property of, or death of, any third person, resulting from the consumption of those beverages.

(d) (1) Nothing in subdivision (c) shall preclude a claim against a parent, guardian, or another adult who knowingly furnishes alcoholic beverages at his or her residence to a person whom he or she knows, or should have known, to be under 21 years of age, in which case, notwithstanding subdivision (b), the furnishing of the alcoholic beverage may be found to be the proximate cause of resulting injuries or death.

(2) A claim under this subdivision may be brought by, or on behalf of, the person under 21 years of age or by a person who was harmed by the person under 21 years of age.

**1714.01.** (a) Domestic partners shall be entitled to recover damages for negligent infliction of emotional distress to the same extent that spouses are entitled to do so under California law.

(b) For the purpose of this section, "domestic partners" has the meaning provided in Section 297 of the Family Code.

*(Added by Stats. 2001, Ch. 893, Sec. 1. Effective January 1, 2002.)*

**1714.1** (a) Any act of willful misconduct of a minor that results in injury or death to another person or in any injury to the property of another shall be imputed to the parent or guardian having custody and control of the minor for all purposes of civil damages, and the parent or guardian having custody and control shall be jointly and severally liable with the minor for any damages resulting from the willful misconduct.

Subject to the provisions of subdivision (c), the joint and several liability of the parent or guardian having custody and control of a minor under this subdivision shall not exceed twenty-five thousand dollars (\$25,000) for each tort of the minor, and in the case of injury to a person, imputed liability shall be further limited to medical, dental and hospital expenses incurred by the injured person, not to exceed twenty-five thousand dollars (\$25,000). The liability imposed by this section is in addition to any liability now imposed by law.

(b) Any act of willful misconduct of a minor that results in the defacement of property of another with paint or a similar substance shall be imputed to the parent or guardian having custody and control of the minor for all purposes of civil damages, including court costs, and attorney's fees, to the prevailing party, and the parent or guardian having custody and control shall be jointly and severally liable with the minor for any damages resulting from the willful misconduct, not to exceed twenty-five thousand dollars (\$25,000), except as provided in subdivision (c), for each tort of the minor.

(c) The amounts listed in subdivisions (a) and (b) shall be adjusted every two years by the Judicial Council to reflect any increases in the cost of living in California, as indicated by the annual average of the California Consumer Price Index. The Judicial Council shall round this adjusted amount up or down to the nearest hundred dollars. On or before July 1 of each odd-numbered year, the Judicial Council shall compute and publish the amounts listed in subdivisions (a) and (b), as adjusted according to this subdivision.

(d) The maximum liability imposed by this section is the maximum liability authorized under this section at the time that the act of willful misconduct by a minor was committed.

(e) Nothing in this section shall impose liability on an insurer for a loss caused by the willful act of the insured for purposes of Section 533 of the Insurance Code. An insurer shall not be liable for the conduct imputed to a parent or guardian by this section for any amount in excess of ten thousand dollars (\$10,000).

*(Amended by Stats. 2007, Ch. 738, Sec. 2. Effective January 1, 2008.)*

**1714.2** (a) In order to encourage citizens to participate in emergency medical services training programs and to render emergency medical services to fellow citizens, no person who has completed a basic cardiopulmonary resuscitation course which complies with the standards adopted by the American Heart Association or the American Red Cross for cardiopulmonary resuscitation and emergency cardiac care, and who, in good faith, renders emergency cardiopulmonary resuscitation at the scene of an emergency shall be liable for any civil damages as a result of any acts or omissions by such person rendering the emergency care.

(b) This section shall not be construed to grant immunity from civil damages to any person whose conduct in rendering such emergency care constitutes gross negligence.

(c) In order to encourage local agencies and other organizations to train citizens in cardiopulmonary resuscitation techniques, no local agency, entity of state or local government, or other public or private organization which sponsors, authorizes, supports, finances, or supervises the training of citizens in cardiopulmonary resuscitation shall be liable for any civil damages alleged to result from such training programs.

(d) In order to encourage qualified individuals to instruct citizens in cardiopulmonary resuscitation, no person who is certified to instruct in cardiopulmonary resuscitation by either the American Heart Association or the American Red Cross shall be liable for any civil damages alleged to result from the acts or omissions of an individual who received instruction on cardiopulmonary resuscitation by that certified instructor.

(e) This section shall not be construed to grant immunity from civil damages to any person who renders such emergency care to an individual with the expectation of receiving compensation from the individual for providing the emergency care.

*(Added by Stats. 1977, Ch. 595.)*

**1714.21.** (a) For purposes of this section, the following definitions shall apply:

- (1) "AED" or "defibrillator" means an automated external defibrillator.

(2) "CPR" means cardiopulmonary resuscitation.

(b) Any person who, in good faith and not for compensation, renders emergency care or treatment by the use of an AED at the scene of an emergency is not liable for any civil damages resulting from any acts or omissions in rendering the emergency care.

(c) A person or entity who provides CPR and AED training to a person who renders emergency care pursuant to subdivision (b) is not liable for any civil damages resulting from any acts or omissions of the person rendering the emergency care.

(d) (1) A person or entity that acquires an AED for emergency use pursuant to this section is not liable for any civil damages resulting from any acts or omissions in the rendering of the emergency care by use of an AED if that person or entity has complied with subdivision (b) of Section 1797.196 of the Health and Safety Code.

(2) A physician and surgeon or other health care professional that is involved in the selection, placement, or installation of an AED pursuant to Section 1797.196 of the Health and Safety Code is not liable for civil damages resulting from acts or omissions in the rendering of emergency care by use of that AED.

(e) The protections specified in this section do not apply in the case of personal injury or wrongful death that results from the gross negligence or willful or wanton misconduct of the person who renders emergency care or treatment by the use of an AED.

(f) This section does not relieve a manufacturer, designer, developer, distributor, installer, or supplier of an AED or defibrillator of any liability under any applicable statute or rule of law.

*(Amended by Stats. 2015, Ch. 264, Sec. 1. (SB 658) Effective January 1, 2016.)*

**1714.22.** (a) For purposes of this section, the following definitions apply:

(1) "Opioid antagonist" means naloxone hydrochloride or any other opioid antagonist that is approved by the United States Food and Drug Administration for the treatment of an opioid overdose.

(2) "Opioid overdose prevention and treatment training program" means any program operated by a local health jurisdiction or that is registered by a local health jurisdiction to train individuals to prevent, recognize, and respond to an opiate overdose, and that provides, at a minimum, training in all of the following:

(A) The causes of an opiate overdose.

(B) Mouth to mouth resuscitation.

(C) How to contact appropriate emergency medical services.

(D) How to administer an opioid antagonist.

(b) A licensed health care provider who is authorized by law to prescribe an opioid antagonist may, if acting with reasonable care, prescribe and subsequently dispense or distribute an opioid antagonist to a person at risk of an opioid-related overdose or to a family member, friend, or other person in a position to assist a person at risk of an opioid-related overdose.

(c) (1) A licensed health care provider who is authorized by law to prescribe an opioid antagonist may issue standing orders for the distribution of an opioid antagonist to a person at risk of an opioid-related overdose or to a family member, friend, or other person in a position to assist a person at risk of an opioid-related overdose.

(2) A licensed health care provider who is authorized by law to prescribe an opioid antagonist may issue standing orders for the administration of an opioid antagonist to a person at risk of an opioid-related overdose by a family member, friend, or other person in a position to assist a person experiencing or reasonably suspected of experiencing an opioid overdose.

(d) (1) A person who is prescribed or possesses an opioid antagonist pursuant to a standing order shall receive the training provided by an opioid overdose prevention and treatment training program.

(2) A person who is prescribed an opioid antagonist directly from a licensed prescriber shall not be required to receive training from an opioid prevention and treatment training program.

(e) A licensed health care provider who acts with reasonable care shall not be subject to professional review, be liable in a civil action, or be subject to criminal prosecution for issuing a prescription or order pursuant to subdivision (b) or (c).

(f) Notwithstanding any other law, a person who possesses or distributes an opioid antagonist pursuant to a prescription or standing order shall not be subject to professional review, be liable in a civil action, or be subject to criminal prosecution for this possession or distribution. Notwithstanding any other law, a person not otherwise licensed to administer an opioid antagonist, but trained as required under paragraph (1) of subdivision (d), who acts with reasonable care in administering an opioid antagonist, in good faith



and not for compensation, to a person who is experiencing or is suspected of experiencing an overdose shall not be subject to professional review, be liable in a civil action, or be subject to criminal prosecution for this administration.

*(Amended by Stats. 2021, Ch. 554, Sec. 1. (SB 823) Effective January 1, 2022.)*

**1714.23.** (a) For purposes of this section, the following definitions shall apply:

(1) "Anaphylaxis" means a potentially life-threatening hypersensitivity or allergic reaction to a substance.

(A) Symptoms of anaphylaxis may include shortness of breath, wheezing, difficulty breathing, difficulty talking or swallowing, hives, itching, swelling, shock, or asthma.

(B) Causes of anaphylaxis may include, but are not limited to, insect stings or bites, foods, drugs, and other allergens, as well as idiopathic or exercise-induced anaphylaxis.

(2) "Epinephrine auto-injector" means a disposable delivery device designed for the automatic injection of a premeasured dose of epinephrine into the human body to prevent or treat a life-threatening allergic reaction.

(b) (1) Any person described in subdivision (b) of Section 1797.197a of the Health and Safety Code who administers an epinephrine auto-injector, in good faith and not for compensation, to another person who appears to be experiencing anaphylaxis at the scene of an emergency situation is not liable for any civil damages resulting from his or her acts or omissions in administering the epinephrine auto-injector, if that person has complied with the requirements and standards of Section 1797.197a of the Health and Safety Code.

(2) (A) An authorized entity shall not be liable for any civil damages resulting from any act or omission other than an act or omission constituting gross negligence or willful or wanton misconduct connected to the administration of an epinephrine auto-injector by any one of its employees, volunteers, or agents who is a lay rescuer, as defined by paragraph (4) of subdivision (a) of Section 1797.197a of the Health and Safety Code, if the entity has complied with all applicable requirements of Section 1797.197a of the Health and Safety Code.

(B) The failure of an authorized entity to possess or administer an epinephrine auto-injector shall not result in civil liability.

(3) This subdivision does not affect any other immunity or defense that is available under law.

(c) The protection specified in paragraph (1) of subdivision (b) shall not apply in a case of personal injury or wrongful death that results from the gross negligence or willful or wanton misconduct of the person who renders emergency care treatment by the use of an epinephrine auto-injector.

(d) Nothing in this section relieves a manufacturer, designer, developer, distributor, or supplier of an epinephrine auto-injector of liability under any other applicable law.

(e) An authorizing physician and surgeon is not subject to professional review, liable in a civil action, or subject to criminal prosecution for the issuance of a prescription or order in accordance with Section 1797.197a of the Health and Safety Code unless the physician and surgeon's issuance of the prescription or order constitutes gross negligence or willful or malicious conduct.

*(Amended by Stats. 2016, Ch. 374, Sec. 2. (AB 1386) Effective January 1, 2017.)*

**1714.24.** (a) For purposes of this section, the following definitions shall apply:

(1) "Collector" includes only those entities authorized by and registered with the federal Drug Enforcement Administration to receive a controlled substance for the purpose of destruction, if the entity is in good standing with any applicable licensing authority.

(2) "Compensation" means reimbursement or funds received from a customer to compensate for the cost incurred in obtaining, installing, or maintaining a secure drug take-back bin. "Compensation" does not include reimbursement or funds received from any other person or entity, other than a customer, to compensate for the costs incurred in obtaining, installing, or maintaining a secure drug take-back bin.

(3) "Home-generated pharmaceutical waste" means a pharmaceutical that is no longer wanted or needed by the consumer and includes any delivery system, such as pills, liquids, and inhalers.

(4) "Maintains" includes owning, leasing, operating, or otherwise hosting a secure drug take-back bin on the collector's premises.

(5) "Pharmaceutical" means a prescription or over-the-counter human or veterinary drug, including, but not limited to, a drug as defined in Section 109925 of the Health and Safety Code and Section 321(g)(1) of Title 21 of the United States Code.



"Pharmaceutical" includes controlled substances included in Schedule II, III, IV, or V of the California Uniform Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and Safety Code), but does not include a controlled substance included in Schedule I.

(6) "Secure drug take-back bin" means a collection receptacle as described in Section 1317.75 of Title 21 of the Code of Federal Regulations.

(b) Any collector that maintains a secure drug take-back bin shall not be liable in a civil action, or be subject to criminal prosecution, for any injury or harm that results from the collector maintaining a secure drug take-back bin on its premises provided that the collector, not for compensation, acts in good faith to take all of the following steps to ensure the health and safety of consumers and employees and the proper disposal in the waste stream of the home-generated pharmaceutical waste contained in a secure drug take-back bin, unless the injury or harm results from the collector's gross negligence or willful and wanton misconduct:

(1) Complies with all applicable state and federal laws and regulations relating to the collection of home-generated pharmaceutical waste for disposal in secure drug take-back bins, including, but not limited to, the federal Secure and Responsible Drug Disposal Act of 2010 (Public Law 111-273).

(2) Notifies local law enforcement and any local environmental health department as to the existence and location of any secure drug take-back bin on the collector's premises and the status of the collector's registration as a collector with the federal Drug Enforcement Administration.

(3) Ensures that the secure drug take-back bin is placed in a location that is regularly monitored by employees of the registered collector.

(4) Ensures that conspicuous signage is posted on the secure drug take-back bin that clearly notifies customers as to what controlled and noncontrolled substances are and are not acceptable for deposit into the bin, as well as the hours during which collection is allowed.

(5) Ensures that public access to the secure drug take-back bin is limited to hours in which employees of the registered collector are present and able to monitor the operation of the secure drug take-back bin.

(6) Regularly inspects the area surrounding the secure drug take-back bin for potential tampering or diversion. Record logs of those inspections shall be maintained and retained for two years, reflecting the date and time of the inspection, and the initials of the employee inspecting the area. The logs shall be maintained in writing or electronically and may be combined with logs required by state or federal regulations. The logs may be used to demonstrate regular inspection of the area. Other records or reports mandated by federal or state regulations shall also be retained for a minimum of two years unless regulations mandate a longer period.

(7) Notifies local law enforcement authorities of any suspected or known tampering, theft, or significant loss of controlled substances, within one business day of discovery. If the collector maintains daily business hours, this notification shall be made within one calendar day.

(8) Notify local law enforcement as to any decision to discontinue its voluntary collection of controlled substances and provide documentation of its written notification to the federal Drug Enforcement Administration's Registration Unit as otherwise required under federal laws and regulations.

(c) Nothing in this section shall be construed to require entities that may qualify as a collector to acquire, maintain, or make available to the public a secure drug take-back bin on its premises.

*(Added by Stats. 2016, Ch. 238, Sec. 2. (SB 1229) Effective January 1, 2017.)*

**1714.25.** (a) Except for injury resulting from gross negligence or intentional misconduct in the preparation or handling of donated food, no person, gleaner, or food facility that donates food that is fit for human consumption at the time it was donated to a nonprofit charitable organization or food bank shall be liable for any damage or injury resulting from the consumption of the donated food. Food facilities may donate food directly to end recipients for consumption.

The immunity from civil liability provided by this subdivision applies regardless of compliance with any laws, regulations, or ordinances regulating the packaging or labeling of food, and regardless of compliance with any laws, regulations, or ordinances regulating the storage or handling of the food by the donee after the donation of the food. The donation of nonperishable food that is fit for human consumption but that has exceeded the labeled shelf life date recommended by the manufacturer is protected under the California Good Samaritan Food Donation Act. The donation of perishable food that is fit for human consumption but that has exceeded the labeled shelf life date recommended by the manufacturer is protected under the California Good Samaritan Food Donation Act if the person that distributes the food to the end recipient makes a good faith evaluation that the food to be donated is wholesome.

(b) A nonprofit charitable organization or a food bank that, in good faith, receives and distributes food without charge that is fit for human consumption at the time it was distributed is not liable for an injury or death due to the food unless the injury or death is a direct result of the gross negligence or intentional misconduct of the organization.

(c) Nothing in this chapter shall be construed to limit the ability of a person, gleaner, or food facility to donate food.

(d) For the purposes of this section:

(1) "Food bank" has the same meaning as defined in Section 113783 of the Health and Safety Code.

(2) "Food facility" has the same meaning as defined in Section 113789 of the Health and Safety Code.

(3) "Gleaner" means a person who harvests for free distribution to the needy, or for donation to a nonprofit organization for ultimate distribution to the needy, an agricultural crop that has been donated by the owner.

(4) "Nonprofit charitable organization" has the same meaning as defined in Section 113841 of the Health and Safety Code.

(5) "Person" means an individual, school, local educational agency as defined in Section 421 of the Education Code, corporation, partnership, limited liability company, organization, association, or governmental entity, including a retail grocer, wholesaler, hotel, motel, manufacturer, restaurant, caterer, farmer, and nonprofit food distributor or hospital. In the case of a corporation, partnership, organization, association, or governmental entity, the term includes an officer, director, partner, manager or managing member, deacon, trustee, council member, or other elected or appointed individual responsible for the governance of the entity.

*(Amended by Stats. 2017, Ch. 619, Sec. 3. (AB 1219) Effective January 1, 2018.)*

**1714.26.** (a) Except for damage or injury resulting from gross negligence or a willful act, there is no liability for any damage or injury on the part of a nonprofit charitable organization that provides vision screenings and, if applicable, provides donated or recycled eyeglasses, or a participating licensed optometrist, ophthalmologist, or trained volunteer who works with such a nonprofit charitable organization in the performance of vision screenings, if all of the following conditions are met:

(1) The vision screening is provided to address ocular health concerns and, if applicable, to provide a temporary solution in the form of donated or recycled eyeglasses until the patient can get a full examination and eyeglasses.

(2) The vision screening is not intended to replace a full ocular health examination provided by a licensed optometrist or ophthalmologist.

(3) The patient signs a waiver acknowledging that the services provided are a temporary solution until the patient can get a full examination by a licensed optometrist or ophthalmologist.

(4) Each vision screening is supervised by an attending licensed optometrist or ophthalmologist.

(5) The eyeglass prescription determinations and ocular health recommendations are provided by an attending licensed optometrist or ophthalmologist.

(6) A written prescription is not provided to the patient.

(7) The eyeglasses provided to the patients are a close or approximate match, within tolerances allowed by the attending licensed optometrist or ophthalmologist, to the prescription determined during the vision screening.

(8) The vision screening and eyeglasses are provided without a charge.

(9) The optometrist, ophthalmologist, or volunteer is authorized by the nonprofit organization to provide the vision screening and eyeglasses on behalf of the nonprofit organization and is acting within the scope of his or her authorized responsibilities and the guidelines of the nonprofit charitable organization when providing the vision screening or eyeglasses.

(10) The nonprofit charitable organization provides procedural, risk management, and quality control training, as applicable, to the participating optometrist, ophthalmologist, or volunteer who provides the vision screening or eyeglasses.

(b) The limitation of liability provided in subdivision (a) is not applicable if an action is brought by an officer of a state or local government pursuant to state or local law.

(c) The limitation of liability provided in subdivision (a) is not applicable if the conduct of the nonprofit charitable organization, optometrist, ophthalmologist, or volunteer includes any of the following types of misconduct:

(1) A crime of violence.

- (2) A hate crime.
- (3) An act involving a sexual offense.
- (4) An act involving misconduct in violation of federal or state civil rights laws.
- (5) An act performed while the defendant was under the influence of drugs or alcohol.

(d) For the purposes of this section:

- (1) "Nonprofit charitable organization" means an organization exempt from federal income tax as an organization described in Section 501(c)(3) of the Internal Revenue Code.
- (2) "Vision screening" means a test or examination of an individual using a portion of the usual examination procedures in a comprehensive eye examination and refraction, that are selected or directed by an attending licensed optometrist or ophthalmologist, and are within the guidelines of the nonprofit charitable organization.

*(Added by Stats. 2013, Ch. 68, Sec. 1. (SB 724) Effective January 1, 2014.)*

**1714.29.** (a) For purposes of this section, "trauma kit" means a first aid response kit that contains at least all of the following:

- (1) One tourniquet endorsed by the Committee on Tactical Combat Casualty Care.
- (2) One bleeding control bandage.
- (3) One pair of nonlatex protective gloves and a marker.
- (4) One pair of scissors.
- (5) Instructional documents developed by the Stop the Bleed national awareness campaign of the United States Department of Homeland Security or the American College of Surgeons Committee on Trauma, the American Red Cross, the Committee for Tactical Emergency Casualty Care, or any other partner of the United States Department of Defense.

(b) Medical materials and equipment similar to those described in paragraphs (1) to (4), inclusive, of subdivision (a) and any additional items that are approved by the medical director of the local emergency medical services agency may be included as supplements in addition to the items described in paragraphs (1) to (4), inclusive, of subdivision (a) if they adequately treat a traumatic injury and can be stored in a readily available kit.

(c) Subdivision (b) of Section 1799.102 of the Health and Safety Code, the "Good Samaritan Law," applies to any lay rescuer or person who, in good faith and not for compensation, renders emergency care or treatment by the use of a trauma kit at the scene of an emergency.

(d) A person who renders emergency care or treatment by the use of a trauma kit at the scene of an emergency and who receives compensation as a result of their employment by a property managing entity, a tenant of a building, or any other private or public employer, but is not compensated to provide emergency medical care, is not providing emergency medical care "for compensation" for purposes of Section 1799.102 of the Health and Safety Code.

(e) Section 1799.100 of the Health and Safety Code applies to a person or entity that voluntarily, and without expectation and receipt of compensation, does either of the following:

- (1) Provides training in the use of a trauma kit to provide emergency medical treatment to victims of trauma, including, but not limited to, training in the use of the trauma kit in emergency first care response to an active shooter.
- (2) Certifies persons, other than physicians and surgeons, registered nurses, and licensed vocational nurses, who are trained in the use of a trauma kit to provide emergency medical treatment to victims of trauma.

(f) This section does not require a property manager or person employed by a property managing entity to respond to an emergency with the use of trauma kits.

*(Added by Stats. 2022, Ch. 586, Sec. 2. (AB 2260) Effective January 1, 2023.)*

**1714.3.** Civil liability for any injury to the person or property of another proximately caused by the discharge of a firearm by a minor under the age of 18 years shall be imputed to a parent or guardian having custody and control of the minor for all purposes of civil damages, and such parent or guardian shall be jointly and severally liable with such minor for any damages resulting from such act, if such parent or guardian either permitted the minor to have the firearm or left the firearm in a place accessible to the minor.

The liability imposed by this section is in addition to any liability otherwise imposed by law. However, no person, or group of persons collectively, shall incur liability under this section in any amount exceeding thirty thousand dollars (\$30,000) for injury to or death of one person as a result of any one occurrence or, subject to the limit as to one person, exceeding sixty thousand dollars (\$60,000) for injury to or death of all persons as a result of any one such occurrence.

*(Amended by Stats. 1986, Ch. 1099, Sec. 1.)*

**1714.4.** (a) Any person or business entity that knowingly assists a child support obligor who has an unpaid child support obligation to escape, evade, or avoid paying court-ordered or court-approved child support shall be liable for three times the value of the assistance provided, such as the fair market value of the obligor's assets transferred or hidden. The maximum liability imposed by this section shall not exceed the entire child support obligation due. Any funds or assets collected pursuant to this section shall be paid to the child support obligee, and shall not reduce the amount of the unpaid child support obligation. Upon the satisfaction of the unpaid child support obligation, this section shall not apply.

(b) For purposes of this section, actions taken to knowingly assist a child support obligor to escape, evade, or avoid paying court-ordered or court-approved child support include, with actual knowledge of the child support obligation, helping to hide or transfer assets of the child support obligor.

(c) This section shall not apply to a financial institution unless the financial institution has actual knowledge of the child support obligation and, with that knowledge, knowingly assists the obligor to escape, evade, or avoid paying the child support obligation. However, a financial institution with knowledge of an asset transfer has no duty to inquire into the rightfulness of the transaction, nor shall it be deemed to have knowingly assisted an obligor to escape, evade, or avoid paying the child support obligation if that assistance is provided by an employee or agent of the financial institution acting outside the terms and conditions of employment or agency without the actual knowledge of the financial institution.

*(Added by Stats. 2006, Ch. 820, Sec. 2. Effective January 1, 2007.)*

**1714.41.** (a) Any person or business entity that knowingly assists a child support obligor who has an unpaid child support obligation to escape, evade, or avoid paying court-ordered or court-approved child support shall be liable for three times the value of the assistance provided, such as the fair market value of the assets transferred or hidden, or the amount of the wages or other compensation paid to the child support obligor but not reported. The maximum liability imposed by this section shall not exceed the entire child support obligation due. Any funds or assets collected pursuant to this section shall be paid to the child support obligee, and shall not reduce the amount of the unpaid child support obligation. Upon the satisfaction of the unpaid child support obligation, this section shall not apply.

(b) For purposes of this section, actions taken to knowingly assist a child support obligor to escape, evade, or avoid paying court-ordered or court-approved child support include, but are not limited to, any of the following actions taken when the individual or entity knew or should have known of the child support obligation:

(1) Hiring or employing the child support obligor as an employee in a trade or business and failing to timely file a report of new employees with the California New Employee Registry maintained by the Employment Development Department.

(2) Engaging the child support obligor as a service provider and failing to timely file a report with the Employment Development Department as required by Section 1088.8 of the Unemployment Insurance Code.

(3) When engaged in a trade or business, paying wages or other forms of compensation for services rendered by a child support obligor that are not reported to the Employment Development Department as required, including, but not limited to, payment in cash or via barter or trade.

*(Added by Stats. 2006, Ch. 820, Sec. 3. Effective January 1, 2007.)*

**1714.43.** (a) (1) Every retail seller and manufacturer doing business in this state and having annual worldwide gross receipts that exceed one hundred million dollars (\$100,000,000) shall disclose, as set forth in subdivision (c), its efforts to eradicate slavery and human trafficking from its direct supply chain for tangible goods offered for sale.

(2) For the purposes of this section, the following definitions shall apply:

(A) "Doing business in this state" shall have the same meaning as set forth in Section 23101 of the Revenue and Taxation Code.

(B) "Gross receipts" shall have the same meaning as set forth in Section 25120 of the Revenue and Taxation Code.

(C) "Manufacturer" means a business entity with manufacturing as its principal business activity code, as reported on the entity's tax return filed under Part 10.2 (commencing with Section 18401) of Division 2 of the Revenue and Taxation Code.

(D) "Retail seller" means a business entity with retail trade as its principal business activity code, as reported on the entity's tax return filed under Part 10.2 (commencing with Section 18401) of Division 2 of the Revenue and Taxation Code.

(b) The disclosure described in subdivision (a) shall be posted on the retail seller's or manufacturer's Internet Web site with a conspicuous and easily understood link to the required information placed on the business' homepage. In the event the retail seller or manufacturer does not have an Internet Web site, consumers shall be provided the written disclosure within 30 days of receiving a written request for the disclosure from a consumer.

(c) The disclosure described in subdivision (a) shall, at a minimum, disclose to what extent, if any, that the retail seller or manufacturer does each of the following:

(1) Engages in verification of product supply chains to evaluate and address risks of human trafficking and slavery. The disclosure shall specify if the verification was not conducted by a third party.

(2) Conducts audits of suppliers to evaluate supplier compliance with company standards for trafficking and slavery in supply chains. The disclosure shall specify if the verification was not an independent, unannounced audit.

(3) Requires direct suppliers to certify that materials incorporated into the product comply with the laws regarding slavery and human trafficking of the country or countries in which they are doing business.

(4) Maintains internal accountability standards and procedures for employees or contractors failing to meet company standards regarding slavery and trafficking.

(5) Provides company employees and management, who have direct responsibility for supply chain management, training on human trafficking and slavery, particularly with respect to mitigating risks within the supply chains of products.

(d) The exclusive remedy for a violation of this section shall be an action brought by the Attorney General for injunctive relief. Nothing in this section shall limit remedies available for a violation of any other state or federal law.

(e) The provisions of this section shall take effect on January 1, 2012.

*(Added by Stats. 2010, Ch. 556, Sec. 3. (SB 657) Effective January 1, 2011. Section operative January 1, 2012, pursuant to its own provisions.)*

**1714.45.** (a) In a product liability action, a manufacturer or seller shall not be liable if both of the following apply:

(1) The product is inherently unsafe and the product is known to be unsafe by the ordinary consumer who consumes the product with the ordinary knowledge common to the community.

(2) The product is a common consumer product intended for personal consumption, such as sugar, castor oil, alcohol, and butter, as identified in comment i to Section 402A of the Restatement (Second) of Torts.

(b) This section does not exempt the manufacture or sale of tobacco products by tobacco manufacturers and their successors in interest from product liability actions, but does exempt the sale or distribution of tobacco products by any other person, including, but not limited to, retailers or distributors.

(c) For purposes of this section, the term "product liability action" means any action for injury or death caused by a product, except that the term does not include an action based on a manufacturing defect or breach of an express warranty.

(d) This section is intended to be declarative of and does not alter or amend existing California law, including *Cronin v. J.B.E. Olson Corp.* (1972), 8 Cal. 3d 121, and shall apply to all product liability actions pending on, or commenced after, January 1, 1988.

(e) This section does not apply to, and never applied to, an action brought by a public entity to recover the value of benefits provided to individuals injured by a tobacco-related illness caused by the tortious conduct of a tobacco company or its successor in interest, including, but not limited to, an action brought pursuant to Section 14124.71 of the Welfare and Institutions Code. In the action brought by a public entity, the fact that the injured individual's claim against the defendant may be barred by a prior version of this section shall not be a defense. This subdivision does not constitute a change in, but is declaratory of, existing law relating to tobacco products.

(f) It is the intention of the Legislature in enacting the amendments to subdivisions (a) and (b) of this section adopted at the 1997–98 Regular Session to declare that there exists no statutory bar to tobacco-related personal injury, wrongful death, or other tort claims against tobacco manufacturers and their successors in interest by California smokers or others who have suffered or incurred injuries, damages, or costs arising from the promotion, marketing, sale, or consumption of tobacco products. It is also the intention of the Legislature to clarify that those claims that were or are brought shall be determined on their merits, without the imposition of any claim of statutory bar or categorical defense.

(g) This section shall not be construed to grant immunity to a tobacco industry research organization.

*(Amended by Stats. 1998, Ch. 485, Sec. 38. Effective January 1, 1999.)*

**1714.5.** (a) There shall be no liability on the part of one, including the State of California, county, city and county, city or any other political subdivision of the State of California, who owns or maintains any building or premises which have been designated as a shelter from destructive operations or attacks by enemies of the United States by any disaster council or any public office, body, or officer of this state or of the United States, or which have been designated or are used as mass care centers, first aid stations, temporary hospital annexes, or as other necessary facilities for mitigating the effects of a natural, manmade, or war-caused emergency, for any injuries arising out of the use thereof for such purposes sustained by any person while in or upon said building or premises as a result of the condition of said building or premises or as a result of any act or omission, or in any way arising from the designation of such premises as a shelter, or the designation or use thereof as a mass care center, first aid station, temporary hospital annex, or other necessary facility for emergency purposes, except a willful act, of such owner or occupant or his or her servants, agents or employees when such person has entered or gone upon or into said building or premises for the purpose of seeking refuge, treatment, care, or assistance therein during destructive operations or attacks by enemies of the United States or during tests ordered by lawful authority or during a natural or manmade emergency.

(b) Notwithstanding any other provision of law, no disaster service worker who is performing disaster services during a state of war emergency, a state of emergency, or a local emergency, as such emergencies are defined in Section 8558 of the Government Code, shall be liable for civil damages on account of personal injury to or death of any person or damage to property resulting from any act or omission while performing disaster services anywhere within any jurisdiction covered by such emergency, except one that is willful.

(c) For purposes of this subdivision, a disaster service worker shall be performing disaster services when acting within the scope of the disaster service worker's responsibilities under the authority of the governmental emergency organization.

(d) For purposes of this subdivision, "governmental emergency organization" shall mean the emergency organization of any state, city, city and county, county, district, or other local governmental agency or public agency, which is authorized pursuant to the California Emergency Services Act (Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code).

(e) Nothing in this section shall be construed to alter any existing legal duties or obligations. The amendments to this section made by the act amending this section shall apply exclusively to any legal action filed on or after the effective date of the act.

*(Amended by Stats. 2009, Ch. 27, Sec. 1. Effective August 6, 2009. Note: Provisions of subd. (e) were inserted by the amendment by Stats. 2009, Ch. 27.)*

**1714.55.** (a) A retail or wholesale service provider of telecommunications service, or other service, involved in providing 9-1-1 service in accordance with the Warren-911-Emergency Assistance Act (Article 6 (commencing with Section 53100) of Chapter 1 of Part 1 of Division 2 of Title 5 of the Government Code), shall not be liable for any civil claim, damage, or loss caused by an act or omission in the design, development, installation, maintenance, or provision of 9-1-1 service, unless the act or omission that proximately caused the claim, damage, or loss constituted gross negligence, wanton or willful misconduct, or intentional misconduct.

(b) For purposes of this section:

(1) "Public safety agency" means a public safety agency as defined in accordance with the Warren-911-Emergency Assistance Act (Article 6 (commencing with Section 53100) of Chapter 1 of Part 1 of Division 2 of Title 5 of the Government Code).

(2) "9-1-1 service" means a telecommunications service, or other wireline or wireless service, that provides to the user of the public telephone system the ability to reach a public safety agency by utilizing the digits 9-1-1 or otherwise facilitates the provision of emergency services pursuant to the Warren-911-Emergency Assistance Act (Article 6 (commencing with Section 53100) of Chapter 1 of Part 1 of Division 2 of Title 5 of the Government Code). "9-1-1 service" includes a 9-1-1 service that utilizes in whole or in part an Internet Protocol.

(c) This section shall not apply to services provided under tariff.

(d) This section shall not be construed to modify the liability of a manufacturer, distributor, or other person arising from a claim, damage, or loss, related to the operation or performance of an end-user device that is not related to the provision of 9-1-1 service.

*(Added by Stats. 2011, Ch. 297, Sec. 1. (AB 1074) Effective September 21, 2011.)*

**1714.6.** The violation of any statute or ordinance shall not establish negligence as a matter of law where the act or omission involved was required in order to comply with an order or proclamation of any military commander who is authorized to issue such orders or proclamations; nor when the act or omission involved is required in order to comply with any regulation, directive, or order of the Governor promulgated under the California Emergency Services Act. No person shall be prosecuted for a violation of any statute or ordinance when violation of such statute or ordinance is required in order to comply with an order or proclamation of any military commander who is authorized to issue such orders or proclamations; nor shall any person be prosecuted for a violation of any statute or ordinance when violation of such statute or ordinance is required in order to comply with any regulation, directive, or



order of the Governor promulgated under the California Emergency Services Act. The provisions of this section shall apply to such acts or omissions whether occurring prior to or after the effective date of this section.

*(Amended by Stats. 1971, Ch. 438.)*

**1714.7.** No person who is injured while getting on, or attempting to get on, a moving locomotive or railroad car, without authority from the owner or operator of the railroad, or who, having gotten on a locomotive or railroad car while in motion without such authority, is injured while so riding or getting off, shall recover any damages from the owner or operator thereof for such injuries unless proximately caused by an intentional act of such owner or operator with knowledge that serious injury is the probable result of such act, or with a wanton and reckless disregard of the probable result of such act.

*(Added by Stats. 1971, Ch. 1554.)*

**1714.8.** (a) No health care provider shall be liable for professional negligence or malpractice for any occurrence or result solely on the basis that the occurrence or result was caused by the natural course of a disease or condition, or was the natural or expected result of reasonable treatment rendered for the disease or condition. This section shall not be construed so as to limit liability for the failure to inform of the risks of treatment or failure to accept treatment, or for negligent diagnosis or treatment or the negligent failure to diagnose or treat.

(b) As used in this section, "health care provider" means any person licensed or certified pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code, or licensed pursuant to the Osteopathic Initiative Act or the Chiropractic Initiative Act, or certified pursuant to Chapter 2.5 (commencing with Section 1440) of Division 2 of the Health and Safety Code, and any clinic, health dispensary, or health facility licensed pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code.

*(Added by Stats. 1978, Ch. 1358.)*

**1714.9.** (a) Notwithstanding statutory or decisional law to the contrary, any person is responsible not only for the results of that person's willful acts causing injury to a peace officer, firefighter, or any emergency medical personnel employed by a public entity, but also for any injury occasioned to that person by the want of ordinary care or skill in the management of the person's property or person, in any of the following situations:

(1) Where the conduct causing the injury occurs after the person knows or should have known of the presence of the peace officer, firefighter, or emergency medical personnel.

(2) Where the conduct causing injury violates a statute, ordinance, or regulation, and the conduct causing injury was itself not the event that precipitated either the response or presence of the peace officer, firefighter, or emergency medical personnel.

(3) Where the conduct causing the injury was intended to injure the peace officer, firefighter, or emergency medical personnel.

(4) Where the conduct causing the injury is arson as defined in Section 451 of the Penal Code.

(b) This section does not preclude the reduction of an award of damages because of the comparative fault of the peace officer, firefighter, or emergency medical personnel in causing the injury.

(c) The employer of a firefighter, peace officer or emergency medical personnel may be subrogated to the rights granted by this section to the extent of the worker's compensation benefits, and other liabilities of the employer, including all salary, wage, pension, or other emolument paid to the employee or the employee's dependents.

(d) The liability imposed by this section shall not apply to an employer of a peace officer, firefighter, or emergency medical personnel.

(e) This section is not intended to change or modify the common law independent cause exception to the firefighter's rule as set forth in *Donohue v. San Francisco Housing Authority* (1993) 16 Cal.App.4th 658.

*(Amended by Stats. 2001, Ch. 140, Sec. 2. Effective January 1, 2002.)*

**1714.10.** (a) No cause of action against an attorney for a civil conspiracy with his or her client arising from any attempt to contest or compromise a claim or dispute, and which is based upon the attorney's representation of the client, shall be included in a complaint or other pleading unless the court enters an order allowing the pleading that includes the claim for civil conspiracy to be filed after the court determines that the party seeking to file the pleading has established that there is a reasonable probability that the party will prevail in the action. The court may allow the filing of a pleading claiming liability based upon such a civil conspiracy following the filing of a verified petition therefor accompanied by the proposed pleading and supporting affidavits stating the facts upon which the liability is based. The court shall order service of the petition upon the party against whom the action is proposed to be filed and permit that party to submit opposing affidavits prior to making its determination. The filing of the petition, proposed pleading, and

accompanying affidavits shall toll the running of any applicable statute of limitations until the final determination of the matter, which ruling, if favorable to the petitioning party, shall permit the proposed pleading to be filed.

(b) Failure to obtain a court order where required by subdivision (a) shall be a defense to any action for civil conspiracy filed in violation thereof. The defense shall be raised by the attorney charged with civil conspiracy upon that attorney's first appearance by demurrer, motion to strike, or such other motion or application as may be appropriate. Failure to timely raise the defense shall constitute a waiver thereof.

(c) This section shall not apply to a cause of action against an attorney for a civil conspiracy with his or her client, where (1) the attorney has an independent legal duty to the plaintiff, or (2) the attorney's acts go beyond the performance of a professional duty to serve the client and involve a conspiracy to violate a legal duty in furtherance of the attorney's financial gain.

(d) This section establishes a special proceeding of a civil nature. Any order made under subdivision (a), (b), or (c) which determines the rights of a petitioner or an attorney against whom a pleading has been or is proposed to be filed, shall be appealable as a final judgment in a civil action.

(e) Subdivision (d) does not constitute a change in, but is declaratory of, the existing law.

*(Amended by Stats. 2000, Ch. 472, Sec. 2. Effective January 1, 2001.)*

**1714.11.** (a) Except for damage or injury proximately caused by a grossly negligent act or omission or willful or wanton misconduct of the donor, no public employee or public entity, including, but not limited to, a fire department, a fire protection district, or the Department of Forestry and Fire Protection, that donates fire protection apparatus or equipment to a volunteer fire department, volunteer fire protection district, or volunteer fire company is liable for any damage or injury that results from the use of that apparatus or equipment by the recipient fire department, fire protection district, or fire company.

(b) (1) The immunity provided by this section only shall apply if the donor of the fire protection apparatus or equipment discloses in writing to the recipient fire department, fire protection district, or fire company any known damage to, or deficiencies in, the apparatus and equipment.

(2) A volunteer fire department, volunteer fire protection district, or volunteer fire company that receives donated fire protection apparatus or equipment shall inspect and repair the apparatus and equipment prior to use for public safety purposes.

*(Added by Stats. 2002, Ch. 388, Sec. 1. Effective January 1, 2003.)*

**1715.** Other obligations are prescribed by Divisions I and II of this Code.

*(Enacted 1872.)*

**1716.** (a) It is unlawful for a person to solicit payment of money by another by means of a written statement or invoice, or any writing that reasonably could be considered a bill, invoice, or statement of account due, but is in fact a solicitation for an order, unless the solicitation conforms to subdivisions (b) to (f), inclusive.

(b) A solicitation described in subdivision (a) shall bear on its face either the disclaimer prescribed by subparagraph (A) of paragraph (2) of subsection (d) of Section 3001 of Title 39 of the United States Code or the following notice:

"THIS IS NOT A BILL. THIS IS A SOLICITATION. YOU ARE UNDER NO OBLIGATION TO PAY THE AMOUNT STATED ABOVE UNLESS YOU ACCEPT THIS OFFER."

The statutory disclaimer or the alternative notice shall be displayed in conspicuous boldface capital letters of a color prominently contrasting with the background against which they appear, including all other print on the face of the solicitation and shall be at least as large, bold, and conspicuous as any other print on the face of the solicitation but no smaller than 30-point type.

(c) The notice or disclaimer required by this section shall be displayed conspicuously apart from other print on the page and immediately below each portion of the solicitation that reasonably could be construed to specify a monetary amount due and payable by the recipient. The notice or disclaimer shall not be preceded, followed, or surrounded by words, symbols, or other matter that reduces its conspicuousness or that introduces, modifies, qualifies, or explains the required text, such as "legal notice required by law."

(d) The notice or disclaimer may not, by folding or any other device, be rendered unintelligible or less prominent than any other information on the face of the solicitation.

(e) If a solicitation consists of more than one page or if any page is designed to be separated into portions, such as by tearing along a perforated line, the notice or disclaimer shall be displayed in its entirety on the face of each page or portion of a page that reasonably might be considered a bill, invoice, or statement of account due as required by subdivisions (b) and (c).

(f) For the purposes of this section, "color" includes black and "color prominently contrasting" excludes any color, or any intensity of an otherwise included color, that does not permit legible reproduction by ordinary office photocopying equipment used under normal operating conditions, and that is not at least as vivid as any other color on the face of the solicitation.



(g) Any person damaged by noncompliance with this section, in addition to other remedies, is entitled to damages in an amount equal to three times the sum solicited.

(h) Any person who violates this section shall be liable for a civil penalty not to exceed ten thousand dollars (\$10,000) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General or by any district attorney, county counsel, or city attorney in any court of competent jurisdiction. If the action is brought by the Attorney General, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered and one-half to the State Treasurer. If brought by a district attorney or county counsel, the entire amount of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered. If brought by a city attorney or city prosecutor, one-half of the penalty shall be paid to the treasurer of the county and one-half to the city.

(i) A violation of this section is a misdemeanor punishable by imprisonment in a county jail not exceeding six months, by a fine not exceeding two thousand five hundred dollars (\$2,500), or by both that fine and imprisonment.

*(Amended by Stats. 1996, Ch. 397, Sec. 1. Effective January 1, 1997.)*

**1717.** (a) In any action on a contract, where the contract specifically provides that attorney's fees and costs, which are incurred to enforce that contract, shall be awarded either to one of the parties or to the prevailing party, then the party who is determined to be the party prevailing on the contract, whether he or she is the party specified in the contract or not, shall be entitled to reasonable attorney's fees in addition to other costs.

Where a contract provides for attorney's fees, as set forth above, that provision shall be construed as applying to the entire contract, unless each party was represented by counsel in the negotiation and execution of the contract, and the fact of that representation is specified in the contract.

Reasonable attorney's fees shall be fixed by the court, and shall be an element of the costs of suit.

Attorney's fees provided for by this section shall not be subject to waiver by the parties to any contract which is entered into after the effective date of this section. Any provision in any such contract which provides for a waiver of attorney's fees is void.

(b) (1) The court, upon notice and motion by a party, shall determine who is the party prevailing on the contract for purposes of this section, whether or not the suit proceeds to final judgment. Except as provided in paragraph (2), the party prevailing on the contract shall be the party who recovered a greater relief in the action on the contract. The court may also determine that there is no party prevailing on the contract for purposes of this section.

(2) Where an action has been voluntarily dismissed or dismissed pursuant to a settlement of the case, there shall be no prevailing party for purposes of this section.

Where the defendant alleges in his or her answer that he or she tendered to the plaintiff the full amount to which he or she was entitled, and thereupon deposits in court for the plaintiff, the amount so tendered, and the allegation is found to be true, then the defendant is deemed to be a party prevailing on the contract within the meaning of this section.

Where a deposit has been made pursuant to this section, the court shall, on the application of any party to the action, order the deposit to be invested in an insured, interest-bearing account. Interest on the amount shall be allocated to the parties in the same proportion as the original funds are allocated.

(c) In an action which seeks relief in addition to that based on a contract, if the party prevailing on the contract has damages awarded against it on causes of action not on the contract, the amounts awarded to the party prevailing on the contract under this section shall be deducted from any damages awarded in favor of the party who did not prevail on the contract. If the amount awarded under this section exceeds the amount of damages awarded the party not prevailing on the contract, the net amount shall be awarded the party prevailing on the contract and judgment may be entered in favor of the party prevailing on the contract for that net amount.

*(Amended by Stats. 1987, Ch. 1080, Sec. 1.)*

**1717.5.** (a) Except as otherwise provided by law or where waived by the parties to an agreement, in any action on a contract based on a book account, as defined in Section 337a of the Code of Civil Procedure, entered into on or after January 1, 1987, which does not provide for attorney's fees and costs, as provided in Section 1717, the party who is determined to be the party prevailing on the contract shall be entitled to reasonable attorney's fees, as provided below, in addition to other costs. The prevailing party on the contract shall be the party who recovered a greater relief in the action on the contract. The court may determine that there is no party prevailing on the contract for purposes of this section.

Reasonable attorney's fees awarded pursuant to this section for the prevailing party bringing the action on the book account shall be fixed by the court in an amount that shall not exceed the lesser of: (1) nine hundred sixty dollars (\$960) for book accounts based upon an obligation owing by a natural person for goods, moneys, or services which were primarily for personal, family, or household purposes; and one thousand two hundred dollars (\$1,200) for all other book accounts to which this section applies; or (2) 25 percent of the principal obligation owing under the contract.

For the party against whom the obligation on the book account was asserted in the action subject to this section, if that party is found to have no obligation owing on a book account, the court shall award that prevailing party reasonable attorney's fees not to exceed nine hundred sixty dollars (\$960) for book accounts based upon an obligation owing by a natural person for goods, moneys, or services which were primarily for personal, family, or household purposes, and one thousand two hundred dollars (\$1,200) for all other book accounts to which this section applies. These attorney's fees shall be an element of the costs of the suit.

If there is a written agreement between the parties signed by the person to be charged, the fees provided by this section may not be imposed unless that agreement contains a statement that the prevailing party in any action between the parties is entitled to the fees provided by this section.

(b) The attorney's fees allowed pursuant to this section shall be the lesser of either the maximum amount allowed by this section, the amount provided by any default attorney's fee schedule adopted by the court applicable to the suit, or an amount as otherwise provided by the court. Any claim for attorney's fees pursuant to this section in excess of the amounts set forth in the default attorney's fee schedule shall be reasonable attorney's fees, as proved by the party, as actual and necessary for the claim that is subject to this section.

(c) This section does not apply to any action in which an insurance company is a party nor shall an insurance company, surety, or guarantor be liable under this section, in the absence of a specific contractual provision, for the attorney's fees and costs awarded a prevailing party against its insured.

This section does not apply to any action in which a bank, a savings association, a federal association, a state or federal credit union, or a subsidiary, affiliate, or holding company of any of those entities, or an authorized industrial loan company, a licensed consumer finance lender, or a licensed commercial finance lender, is a party.

*(Amended by Stats. 2015, Ch. 80, Sec. 1. (SB 363) Effective January 1, 2016.)*

**1718.** (a) As used in this section:

(1) "Farm machinery" means all tools and equipment used in relation to the operation of a farm.

(2) "Farm machinery repair shop" means a business which, for compensation, engages in the operation, on or off its premises, of repairing farm machinery.

(3) "Per-job basis" means each act of maintenance or repair which is performed on farm machinery.

(b) All work done by a farm machinery repair shop, including all warranty work, shall be recorded on an invoice, which shall describe all service work done and parts supplied. If more than one act of maintenance or repair is performed by a farm machinery repair shop, the invoice shall be written in such a way that the labor cost per hour and total labor cost, as well as the specific parts used and their cost, shall be recorded on a per-job basis.

However, where work is done on an agreed total-cost-per-job basis, or the work includes an agreed total cost for component unit replacement, the invoice shall describe the work done on such basis and the total cost for such work.

(c) Each farm machinery repair shop shall give to each customer, upon request, a written estimated price for labor and parts necessary, on a per-job basis. It shall not charge for work done or parts supplied in excess of the estimated price without the consent of the customer, which shall be obtained at some time after it is determined that the estimated price is insufficient and before the work not included in the estimate is done, or the parts not included in the estimate are supplied. Nothing in this section shall be construed to require a farm machinery repair shop to give a written estimated price if the shop does not agree to perform the requested repair.

(d) Any violation of this section is a misdemeanor.

*(Amended by Stats. 1973, Ch. 235.)*

**1719.** (a) (1) Notwithstanding any penal sanctions that may apply, any person who passes a check on insufficient funds shall be liable to the payee for the amount of the check and a service charge payable to the payee for an amount not to exceed twenty-five dollars (\$25) for the first check passed on insufficient funds and an amount not to exceed thirty-five dollars (\$35) for each subsequent check to that payee passed on insufficient funds.

(2) Notwithstanding any penal sanctions that may apply, any person who passes a check on insufficient funds shall be liable to the payee for damages equal to treble the amount of the check if a written demand for payment is mailed by certified mail to the person who had passed a check on insufficient funds and the written demand informs this person of (A) the provisions of this section, (B) the amount of the check, and (C) the amount of the service charge payable to the payee. The person who had passed a check on insufficient funds shall have 30 days from the date the written demand was mailed to pay the amount of the check, the amount of the service charge payable to the payee, and the costs to mail the written demand for payment. If this person fails to pay in full the amount of the check, the service charge payable to the payee, and the costs to mail the written demand within this

period, this person shall then be liable instead for the amount of the check, minus any partial payments made toward the amount of the check or the service charge within 30 days of the written demand, and damages equal to treble that amount, which shall not be less than one hundred dollars (\$100) nor more than one thousand five hundred dollars (\$1,500). When a person becomes liable for treble damages for a check that is the subject of a written demand, that person shall no longer be liable for any service charge for that check and any costs to mail the written demand.

(3) Notwithstanding paragraphs (1) and (2), a person shall not be liable for the service charge, costs to mail the written demand, or treble damages if he or she stops payment in order to resolve a good faith dispute with the payee. The payee is entitled to the service charge, costs to mail the written demand, or treble damages only upon proving by clear and convincing evidence that there was no good faith dispute, as defined in subdivision (b).

(4) Notwithstanding paragraph (1), a person shall not be liable under that paragraph for the service charge if, at any time, he or she presents the payee with written confirmation by his or her financial institution that the check was returned to the payee by the financial institution due to an error on the part of the financial institution.

(5) Notwithstanding paragraph (1), a person shall not be liable under that paragraph for the service charge if the person presents the payee with written confirmation that his or her account had insufficient funds as a result of a delay in the regularly scheduled transfer of, or the posting of, a direct deposit of a social security or government benefit assistance payment.

(6) As used in this subdivision, to "pass a check on insufficient funds" means to make, utter, draw, or deliver any check, draft, or order for the payment of money upon any bank, depository, person, firm, or corporation that refuses to honor the check, draft, or order for any of the following reasons:

(A) Lack of funds or credit in the account to pay the check.

(B) The person who wrote the check does not have an account with the drawee.

(C) The person who wrote the check instructed the drawee to stop payment on the check.

(b) For purposes of this section, in the case of a stop payment, the existence of a "good faith dispute" shall be determined by the trier of fact. A "good faith dispute" is one in which the court finds that the drawer had a reasonable belief of his or her legal entitlement to withhold payment. Grounds for the entitlement include, but are not limited to, the following: services were not rendered, goods were not delivered, goods or services purchased are faulty, not as promised, or otherwise unsatisfactory, or there was an overcharge.

(c) In the case of a stop payment, the notice to the drawer required by this section shall be in substantially the following form:

NOTICE
To: (name of drawer) (name of payee) is the payee of a check you wrote for \$ (amount). The check was not paid because
you stopped payment, and the payee demands payment. You may have a good faith dispute as to whether you owe the full amount. If you do not have a good faith dispute with the payee and fail to pay the payee the full amount of the check in cash, a service charge of an amount not to exceed twenty-five dollars (\$25) for the first check passed on insufficient funds and an amount not to exceed thirty-five dollars (\$35) for each subsequent check passed on insufficient funds, and the costs to mail this notice within 30 days after this notice was mailed, you could be sued and held responsible to pay at least both of the following:
(1) The amount of the check.
(2) Damages of at least one hundred dollars (\$100) or, if higher, three times the amount of the check up to one thousand five hundred dollars (\$1,500).
If the court determines that you do have a good faith dispute with the payee, you will not have to pay the service charge, treble damages, or mailing cost. If you stopped payment because you have a good faith dispute with the payee, you should try to work out your dispute with the payee. You can contact the payee at:
_____ (name of payee) _____
_____ (street address) _____
_____ (telephone number) _____
You may wish to contact a lawyer to discuss your legal rights and responsibilities.

(d) In the case of a stop payment, a court may not award damages or costs under this section unless the court receives into evidence a copy of the written demand that, in that case, shall have been sent to the drawer and a signed certified mail receipt showing delivery, or attempted delivery if refused, of the written demand to the drawer's last known address.

(e) A cause of action under this section may be brought in small claims court by the original payee, if it does not exceed the jurisdiction of that court, or in any other appropriate court. The payee shall, in order to recover damages because the drawer instructed the drawee to stop payment, show to the satisfaction of the trier of fact that there was a reasonable effort on the part of the payee to reconcile and resolve the dispute prior to pursuing the dispute through the courts.

(f) A cause of action under this section may be brought by a holder of the check or an assignee of the payee. A proceeding under this section is a limited civil case. However, if the assignee is acting on behalf of the payee, for a flat fee or a percentage fee, the assignee may not charge the payee a greater flat fee or percentage fee for that portion of the amount collected that represents treble damages than is charged the payee for collecting the face amount of the check, draft, or order. This subdivision shall not apply to an action brought in small claims court.

(g) Notwithstanding subdivision (a), if the payee is the court, the written demand for payment described in subdivision (a) may be mailed to the drawer by the court clerk. Notwithstanding subdivision (d), in the case of a stop payment where the demand is mailed by the court clerk, a court may not award damages or costs pursuant to subdivision (d), unless the court receives into evidence a copy of the written demand, and a certificate of mailing by the court clerk in the form provided for in subdivision (4) of Section 1013a of the Code of Civil Procedure for service in civil actions. For purposes of this subdivision, in courts where a single court clerk serves more than one court, the clerk shall be deemed the court clerk of each court.

(h) The requirements of this section in regard to remedies are mandatory upon a court.

(i) The assignee of the payee or a holder of the check may demand, recover, or enforce the service charge, damages, and costs specified in this section to the same extent as the original payee.

(j) (1) A drawer is liable for damages and costs only if all of the requirements of this section have been satisfied.

(2) The drawer shall in no event be liable more than once under this section on each check for a service charge, damages, or costs.

(k) Nothing in this section is intended to condition, curtail, or otherwise prejudice the rights, claims, remedies, and defenses under Division 3 (commencing with Section 3101) of the Commercial Code of a drawer, payee, assignee, or holder, including a holder in due course as defined in Section 3302 of the Commercial Code, in connection with the enforcement of this section.

*(Amended by Stats. 1998, Ch. 931, Sec. 14. Effective September 28, 1998.)*

**1720.** (a) If an obligee fails to give a timely response to an inquiry of an obligor concerning any debit or credit applicable to an obligation, he shall not be entitled to interest, financing charges, service charges, or any other similar charges thereon, from the date of mailing of the inquiry to the date of mailing of the response.

(b) For the purpose of subdivision (a):

(1) An "inquiry" is a writing which is posted by certified mail to the address of the obligee to which payments are normally tendered, unless another address is specifically indicated on the statement for such purpose, then to such address.

(2) A "response" is a writing which is responsive to an inquiry and mailed to the last known address of the obligor.

(3) A response is "timely" if it is mailed within 60 days from the date on which the inquiry was mailed.

(c) This section shall only apply to an obligation created pursuant to a retail installment account as defined by Section 1802.7.

*(Amended by Stats. 1971, Ch. 1019.)*

**1721.** In an action for the intentional and malicious destruction of real or personal property at a site where substantial improvements to real property are under construction, upon judgment in favor of the plaintiff, the court may, in its discretion, award the plaintiff an amount not to exceed three times the amount of actual damages, and may award reasonable attorney's fees.

*(Added by Stats. 1983, Ch. 474, Sec. 1.)*

**1722.** (a) (1) Whenever a contract is entered into between a consumer and a retailer with 25 or more employees relating to the sale of merchandise which is to be delivered by the retailer or the retailer's agent to the consumer at a later date, and the parties have agreed that the presence of the consumer is required at the time of delivery, the retailer and the consumer shall agree, either at the time of the sale or at a later date prior to the delivery date, on a four-hour time period within which any delivery shall be made.

Whenever a contract is entered into between a consumer and a retailer with 25 or more employees for service or repair of merchandise, whether or not the merchandise was sold by the retailer to the consumer, and the parties have agreed that the presence of the consumer is required at the time of service or repair, upon receipt of a request for service or repair under the contract, the retailer and the consumer shall agree, prior to the date of service or repair, on a four-hour period within which the service or repair shall be commenced. Once a delivery, service, or repair time is established, the retailer or the retailer's agent shall deliver the merchandise to the consumer, or commence service or repair of the merchandise, within that four-hour period.

(2) If the merchandise is not delivered, or service or repair are not commenced, within the specified four-hour period, except for delays caused by unforeseen or unavoidable occurrences beyond the control of the retailer, the consumer may bring an action in small claims court against the retailer for lost wages, expenses actually incurred, or other actual damages not exceeding a total of six hundred dollars (\$600).

(3) No action shall be considered valid if the consumer was not present at the time, within the specified period, when the retailer or the retailer's agent attempted to make the delivery, service, or repairs or made a diligent attempt to notify the consumer by telephone or in person of its inability to do so because of unforeseen or unavoidable occurrences beyond its control. If notification is by telephone, the retailer or the retailer's agent shall leave a telephone number for a return telephone call by the consumer to the retailer or its agent, to enable the consumer to arrange a new two-hour period for delivery, service, or repair with the retailer or the retailer's agent.

(4) In any small claims action, logs and other business records maintained by the retailer or the retailer's agent in the ordinary course of business shall be prima facie evidence of the time period specified for the delivery, service, or repairs and of the time when the merchandise was delivered, or of a diligent attempt by the retailer or the retailer's agent to notify the consumer of delay caused by unforeseen or unavoidable occurrences.

(5) It shall be a defense to the action if a diligent attempt was made to notify the consumer of the delay caused by unforeseen or unavoidable occurrences beyond the control of the retailer or the retailer's agent, or the retailer or the retailer's agent was unable to notify the consumer of the delay because of the consumer's absence or unavailability during the four-hour period, and, in either instance, the retailer or the retailer's agent makes the delivery, service, or repairs within two hours of a newly agreed upon time or, if the consumer unreasonably declines to arrange a new time for the delivery, service, or repairs.

(b) (1) Cable television companies shall inform their subscribers of their right to service connection or repair within a four-hour period, if the presence of the subscriber is required, by offering the four-hour period at the time the subscriber calls for service connection or repair. Whenever a subscriber contracts with a cable television company for a service connection or repair which is to take place at a later date, and the parties have agreed that the presence of the subscriber is required, the cable company and the subscriber shall agree, prior to the date of service connection or repair, on the time for the commencement of the four-hour period for the service connection or repair.

(2) If the service connection or repair is not commenced within the specified four-hour period, except for delays caused by unforeseen or unavoidable occurrences beyond the control of the company, the subscriber may bring an action in small claims court against the company for lost wages, expenses actually incurred or other actual damages not exceeding a total of six hundred dollars (\$600).

(3) No action shall be considered valid if the subscriber was not present at the time, within the specified period, that the company attempted to make the service connection or repair or made a diligent attempt to notify the subscriber by telephone or in person of its inability to do so because of unforeseen or unavoidable occurrences beyond its control. If notification is by telephone, the cable television company or its agent shall leave a telephone number for a return telephone call by the subscriber to the company or its agent, to enable the consumer to arrange a new two-hour period for service connection or repair.

(4) In any small claims action, logs and other business records maintained by the company or its agents in the ordinary course of business shall be prima facie evidence of the time period specified for the commencement of the service connection or repair and the time that the company or its agents attempted to make the service connection or repair, or of a diligent attempt by the company to notify the subscriber in person or by telephone of a delay caused by unforeseen or unavoidable occurrences.

(5) It shall be a defense to the action if a diligent attempt was made to notify the subscriber of a delay caused by unforeseen or unavoidable occurrences beyond the control of the company or its agents, or the company or its agents were unable to notify the subscriber because of the subscriber's absence or unavailability during the four-hour period, and, in either instance, the cable television company commenced service or repairs within a newly agreed upon two-hour period.

(6) No action shall be considered valid against a cable television company pursuant to this section when the franchise or any local ordinance provides the subscriber with a remedy for a delay in commencement of a service connection or repair and the subscriber has elected to pursue that remedy. If a subscriber elects to pursue his or her remedies against a cable television company under this section, the franchising or state or local licensing authority shall be barred from imposing any fine, penalty, or other sanction against the company, arising out of the same incident.

(c) (1) Utilities shall inform their subscribers of their right to service connection or repair within a four-hour period, if the presence of the subscriber is required, by offering the four-hour period at the time the subscriber calls for service connection or repair. Whenever a subscriber contracts with the utility for a service connection or repair, and the parties have agreed that the presence of the subscriber is required, and the subscriber has requested a four-hour appointment, the utility and the subscriber shall agree, prior to the date of service connection or repair, on the time for the commencement of the four-hour period for the service connection or repair.

(2) If the service connection or repair is not commenced within the four-hour period provided under paragraph (1) or another period otherwise agreed to by the utility and the subscriber, except for delays caused by unforeseen or unavoidable circumstances beyond the control of the utility, the subscriber may bring an action in small claims court against the utility for lost wages, expenses actually incurred, or other actual damages not exceeding a total of six hundred dollars (\$600).

(3) No action shall be considered valid if the subscriber was not present at the time, within the specified period, that the utility attempted to make the service connection or repair or made a diligent attempt to notify the subscriber by telephone or in person of its inability to do so because of unforeseen or unavoidable occurrences beyond its control. If notification is by telephone, the utility or its agent shall leave a telephone number for a return telephone call by the subscriber to the utility or its agent, to enable the consumer to arrange a new two-hour period for service connection or repair.

(4) In any small claims action, logs and other business records maintained by the utility or its agents in the ordinary course of business shall be prima facie evidence of the time period specified for the commencement of the service connection or repair and of the time that the utility attempted to make the service connection or repair, or of a diligent attempt by a utility to notify the subscriber in person or by telephone of a delay caused by unforeseen or unavoidable occurrences.

(5) It shall be a defense to the action if a diligent attempt was made by the utility to notify the subscriber of a delay caused by unforeseen or unavoidable occurrences beyond the control of the utility, and the utility commenced service within a newly agreed upon two-hour period.

(d) Any provision of a delivery, service, or repair contract in which the consumer or subscriber agrees to modify or waive any of the rights afforded by this section is void as contrary to public policy.

*(Amended by Stats. 2002, Ch. 279, Sec. 1. Effective January 1, 2003.)*

**1723.** (a) Every retail seller which sells goods to the public in this state that has a policy as to any of those goods of not giving full cash or credit refunds, or of not allowing equal exchanges, or any combination thereof, for at least seven days following purchase of the goods if they are returned and proof of their purchase is presented, shall conspicuously display that policy either on signs posted at each cash register and sales counter, at each public entrance, on tags attached to each item sold under that policy, or on the retail seller's order forms, if any. This display shall state the store's policy, including, but not limited to, whether cash refund, store credit, or exchanges will be given for the full amount of the purchase price; the applicable time period; the types of merchandise which are covered by the policy; and any other conditions which govern the refund, credit, or exchange of merchandise.

(b) This section does not apply to food, plants, flowers, perishable goods, goods marked "as is," "no returns accepted," "all sales final," or with similar language, goods used or damaged after purchase, customized goods received as ordered, goods not returned with their original package, and goods which cannot be resold due to health considerations.

(c) (1) Any retail store which violates this section shall be liable to the buyer for the amount of the purchase if the buyer returns, or attempts to return, the purchased goods on or before the 30th day after their purchase.

(2) Violations of this section shall be subject to the remedies provided in the Consumers Legal Remedies Act (Title 1.5 (commencing with Section 1750) of Part 4).

(3) The duties, rights, and remedies provided in this section are in addition to any other duties, rights, and remedies provided by state law.

*(Added by Stats. 1990, Ch. 422, Sec. 2.)*

**1724.** (a) As used in this section:

(1) "Authorized person" means a person who has come to possess or access the data lawfully and who continues to maintain the legal authority to possess, access, or use that data, under state or federal law, as applicable.

(2) "Data" has the same meaning as defined in Section 502 of the Penal Code.

(b) It is unlawful for a person to sell data, or sell access to data, that the person has obtained or accessed pursuant to the commission of a crime.

(c) It is unlawful for a person, who is not an authorized person, to purchase or use data from a source that the person knows or reasonably should know has obtained or accessed that data through the commission of a crime.

(d) This section shall not be construed to limit the constitutional rights of the public, the rights of whistleblowers, and the press regarding matters of public concern, including, but not limited to, those described in *Bartnicki v. Vopper*, (2001) 532 U.S. 514.

(e) This section does not limit providing or obtaining data in an otherwise lawful manner for the purpose of protecting a computer system or data stored in a computer system or protecting an individual from risk of identity theft or fraud.

(f) The court in an action pursuant to this section may award equitable relief, including, but not limited to, an injunction, costs, and any other relief the court deems proper.

(g) Liability under this section shall not limit or preclude liability under any other law.

(h) A violation of this section shall not constitute a crime.

*(Added by Stats. 2021, Ch. 594, Sec. 1. (AB 1391) Effective January 1, 2022.)*

**1725.** (a) Unless permitted under subdivision (c), no person accepting a negotiable instrument as payment in full or in part for goods or services sold or leased at retail shall do any of the following:

(1) Require the person paying with a negotiable instrument to provide a credit card as a condition of acceptance of the negotiable instrument, or record the number of the credit card.

(2) Require, as a condition of acceptance of the negotiable instrument, or cause the person paying with a negotiable instrument to sign a statement agreeing to allow his or her credit card to be charged to cover the negotiable instrument if returned as no good.

(3) Record a credit card number in connection with any part of the transaction described in this subdivision.

(4) Contact a credit card issuer to determine if the amount of any credit available to the person paying with a negotiable instrument will cover the amount of the negotiable instrument.

(b) For the purposes of this section, the following terms have the following meanings:

(1) "Check guarantee card" means a card issued by a financial institution, evidencing an agreement under which the financial institution will not dishonor a check drawn upon itself, under the terms and conditions of the agreement.

(2) "Credit card" has the meaning specified in Section 1747.02, and does not include a check guarantee card or a card that is both a credit card and a check guarantee card.

(3) "Negotiable instrument" has the meaning specified in Section 3104 of the Commercial Code.

(4) "Retail" means a transaction involving the sale or lease of goods or services or both, between an individual, corporation, or other entity regularly engaged in business and a consumer, for use by the consumer and not for resale.

(c) This section does not prohibit any person from doing any of the following:

(1) Requiring the production of reasonable forms of positive identification, other than a credit card, which may include a driver's license or a California state identification card, or where one of these is not available, another form of photo identification, as a condition of acceptance of a negotiable instrument.

(2) Requesting, but not requiring, a purchaser to voluntarily display a credit card as an indicia of creditworthiness or financial responsibility, or as an additional identification, provided the only information concerning the credit card which is recorded is the type of credit card displayed, the issuer of the card, and the expiration date of the card. All retailers that request the display of a credit card pursuant to this paragraph shall inform the customer, by either of the following methods, that displaying the credit card is not a requirement for check writing:

(A) By posting the following notice in a conspicuous location in the unobstructed view of the public within the premises where the check is being written, clearly and legibly: "Check writing ID: credit card may be requested but not required for purchases."

(B) By training and requiring the sales clerks or retail employees requesting the credit card to inform all check writing customers that they are not required to display a credit card to write a check.

(3) Requesting production of, or recording, a credit card number as a condition for cashing a negotiable instrument that is being used solely to receive cash back from the person.

(4) Requesting, receiving, or recording a credit card number in lieu of requiring a deposit to secure payment in event of default, loss, damage, or other occurrence.

(5) Requiring, verifying, and recording the purchaser's name, address, and telephone number.

(6) Requesting or recording a credit card number on a negotiable instrument used to make a payment on that credit card account.

(d) This section does not require acceptance of a negotiable instrument whether or not a credit card is presented.

(e) Any person who violates this section is subject to a civil penalty not to exceed two hundred fifty dollars (\$250) for a first violation, and to a civil penalty not to exceed one thousand dollars (\$1,000) for a second or subsequent violation, to be assessed and collected in a civil action brought by the person paying with a negotiable instrument, by the Attorney General, or by the district attorney or city attorney of the county or city in which the violation occurred. However, no civil penalty shall be assessed for a violation of this section if the defendant shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error made notwithstanding the defendant's maintenance of procedures reasonably adopted to avoid such an error. When collected, the civil penalty shall be payable, as appropriate, to the person paying with a negotiable instrument who brought the action or to the general fund of whichever governmental entity brought the action to assess the civil penalty.

(f) The Attorney General, or any district attorney or city attorney within his or her respective jurisdiction, may bring an action in the superior court in the name of the people of the State of California to enjoin violation of subdivision (a) and, upon notice to the defendant of not less than five days, to temporarily restrain and enjoin the violation. If it appears to the satisfaction of the court that the defendant has, in fact, violated subdivision (a), the court may issue an injunction restraining further violations, without requiring proof that any person has been damaged by the violation. In these proceedings, if the court finds that the defendant has violated subdivision (a), the court may direct the defendant to pay any or all costs incurred by the Attorney General, district attorney, or city attorney in seeking or obtaining injunctive relief pursuant to this subdivision.

(g) Actions for collection of civil penalties under subdivision (e) and for injunctive relief under subdivision (f) may be consolidated.

*(Amended by Stats. 1995, Ch. 458, Sec. 1. Effective January 1, 1996.)*