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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 4. OBLIGATIONS ARISING FROM PARTICULAR TRANSACTIONS [1738 - 3273.69] (*Part 4 enacted 1872.*)

TITLE 1.85. CONSUMER CREDIT CONTRACTS [1799.90 - 1799.104] (*Title 1.85 added by Stats. 1975, Ch. 847.*)

1799.90. As used in this title:

(a) "Consumer credit contract" means any of the following obligations to pay money on a deferred payment basis, where the money, property, services or other consideration which is the subject matter of the contract is primarily for personal, family or household purposes:

(1) Retail installment contracts, as defined in Section 1802.6.

(2) Retail installment accounts, as defined in Section 1802.7.

(3) Conditional sales contracts, as defined in Section 2981.

(4) Loans or extensions of credit secured by other than real property, or unsecured, for use primarily for personal, family or household purposes.

(5) Loans or extensions of credit for use primarily for personal, family or household purposes where such loans or extensions of credit are subject to the provisions of Article 7 (commencing with Section 10240) of Chapter 3 of Part I of Division 4 of the Business and Professions Code, Division 7 (commencing with Section 18000), Division 9 (commencing with Section 22000), or Division 10 (commencing with Section 24000) of the Financial Code, whether secured by real property or otherwise.

(6) Lease contracts, as defined in Section 2985.7.

(b) "Creditor" means an individual, partnership, corporation, association or other entity, however designated, who enters into or arranges for consumer credit contracts in the ordinary course of business.

(*Amended by Stats. 1997, Ch. 800, Sec. 1. Effective January 1, 1998.*)

1799.91. (a) Each creditor who obtains the signature of more than one person on a consumer credit contract shall deliver to each person who does not in fact receive any of the money, property, or services which are the subject matter of the consumer credit contract, prior to that person's becoming obligated on the consumer credit contract, a notice in English and the languages set forth in subdivision (b) of Section 1632 in a clear and conspicuous manner in at least 10-point Arial equivalent type as follows:

NOTICE TO COSIGNER

You are being asked to guarantee this debt. Think carefully before you do. If the borrower doesn't pay the debt, you will have to. Be sure you can afford to pay if you have to, and that you want to accept this responsibility.

You may have to pay up to the full amount of the debt if the borrower does not pay. You may also have to pay late fees or collection costs, which increase this amount.

The creditor can collect this debt from you without first trying to collect from the borrower. The creditor can use the same collection methods against you that can be used against the borrower, such as suing you, garnishing your wages, etc. If this debt is ever in default, that fact may become a part of your credit record.

This notice is not the contract that makes you liable for the debt.

(b) Whenever notice is required to be given under subdivision (a) or (d) and the consumer credit contract is written in a language other than English or a language set forth in subdivision (b) of Section 1632, the creditor shall deliver the notice as required in

subdivision (a) or (d) in English and in the language in which the consumer contract is written.

(c) The requirements of subdivisions (a) and (b) do not apply to a creditor offering or extending open-end credit, as defined in Regulation Z, to joint applicants if all of the following conditions are satisfied:

(1) The application or agreement signed by each applicant clearly and conspicuously discloses that after credit approval each applicant shall have the right to use the open-end credit plan to the extent of any limit set by the creditor and may be liable for all amounts extended under the plan to any joint applicant.

(2) After credit approval, the creditor issues for the use of each applicant any credit device such as a credit card which may be used to obtain credit under the open-end credit plan and sends the credit device to the address specified in the application or otherwise delivers the credit device in a manner specified in the application or agreement signed by each applicant.

This paragraph does not apply to a creditor who does not issue a credit card or other credit device in order to obtain credit under the creditor's open-end credit plan.

(d) A lessor under a lease shall deliver to each person who does not in fact receive the vehicle which is the subject of the lease contract, prior to that person becoming liable on the lease contract, the following notice in English and the languages set forth in subdivision (b) of Section 1632 in a clear and conspicuous manner in at least 10-point Arial equivalent type in lieu of the notice required by subdivision (a):

NOTICE TO COSIGNER

You are being asked to guarantee this lease. Think carefully before you do. If the lessee doesn't pay, you will have to. Be sure you can afford to pay if you have to, and that you want to accept this responsibility.

You may have to pay up to the full amount owed on the lease if the lessee does not pay. You may also have to pay late fees or other collection costs, which increase this amount.

The lessor can collect on the lease from you without first trying to collect from the lessee. The lessor can use the same collection methods against you that can be used against the lessee, such as suing you, garnishing your wages, etc. If this lease is ever in default, that fact may become part of your credit record.

This notice is not the contract that makes you liable for the lease obligation.

(e) "Regulation Z" has the meaning set forth in Section 1802.18.

(f) The word "your" in the last sentence of the third paragraph of the notice in English set forth in subdivisions (a) and (d) shall be italicized.

(g) (1) On or before January 1, 2023, the Department of Financial Protection and Innovation shall make available for download on its internet website translations of the notices set forth in subdivisions (a) and (d), which may be used to satisfy the requirements of this section.

(2) If additional languages are added to Section 1632 by subsequent amendment, the department shall make available for download on its internet website translations of the notices set forth in subdivisions (a) and (d) in the new language.

(Amended by Stats. 2022, Ch. 149, Sec. 1. (SB 633) Effective January 1, 2023.)

1799.92. (a) The notice required by Section 1799.91 shall be provided on a separate sheet that meets the following requirements:

(1) It shall not contain any other text except as is necessary to identify the creditor and consumer credit contract or lessor and lease to which the statement refers.

(2) It shall provide for the date and the person's acknowledgment of receipt.

(3) It shall be attached to and precede the consumer credit contract or lease.

(b) The creditor or lessor may develop the separate sheet described in subdivision (a) so long as it conforms to the requirements of this title.

(Amended by Stats. 2022, Ch. 149, Sec. 2. (SB 633) Effective January 1, 2023.)

1799.93. (a) The creditor shall not obtain the signature of any person entitled to notice under Section 1799.91 if the consumer credit contract contains blank spaces to be filled in after the person's signature has been obtained.

(b) The creditor shall give each person entitled to notice under Section 1799.91 a copy of the debt instrument and security agreement or deed of trust, if any, evidencing the consumer credit contract and, if separate therefrom, a copy of the notice required by Section 1799.91 and a copy of the document evidencing that person's obligations.

(Amended by Stats. 1985, Ch. 987, Sec. 3.)

1799.94. The text of the statement required by Section 1799.91 of this title shall not be construed to alter or affect the rights and obligations of the parties to any consumer credit contract.

(Added by Stats. 1975, Ch. 847.)

1799.95. No action shall be brought, nor shall any security interest be enforced, by any creditor or any assignee of a creditor on any consumer credit contract which fails to comply with this title against any person, however designated, who is entitled to notice under Section 1799.91 and who does not in fact receive any of the money, property or services which are the subject matter of the consumer credit contract.

Nothing herein shall affect the rights of any bona fide purchaser for value of property sold pursuant to the enforcement of a security interest if the purchase was made without notice of any facts constituting a violation of this title.

(Amended by Stats. 1985, Ch. 987, Sec. 4.)

1799.96. If federal law or regulations require or permit the use of a notice substantially similar to that required by Section 1799.91, the use of such federally sanctioned notice and an accurate translation thereof into the languages set forth in subdivision (b) of Section 1632 shall constitute compliance with Section 1799.91. However, the other provisions of this title shall remain unaffected.

(Amended by Stats. 2022, Ch. 149, Sec. 3. (SB 633) Effective January 1, 2023.)

1799.97. (a) No consumer credit contract shall provide for a security interest in any religious books, religious artifacts, or religious materials, valued at less than five hundred dollars (\$500), unless the religious books, artifacts, or materials are specifically pledged as collateral.

(b) Any provision in any contract which provides for a security interest in violation of subdivision (a) shall be void and unenforceable.

(Added by Stats. 1984, Ch. 732, Sec. 1.)

1799.98. (a) Nothing in this title shall be construed to make applicable or affect or operate as a waiver of any of the provisions of any of the following:

(1) Title 13 (commencing with Section 2787) of Part 4 of Division 3 of this code.

(2) Parts 1 (commencing with Section 700), 2 (commencing with Section 760), 3 (commencing with Section 900), and 4 (commencing with Section 1100) of Division 4 of the Family Code.

(3) Sections 4301 and 4302 of the Family Code.

(b) The delivery of notice pursuant to Section 1799.91 is not evidence that the person to whom the notice was delivered entered or did not enter the transaction in the capacity of a surety.

(Amended (as amended by Stats. 1992, Ch. 163, Sec. 10) by Stats. 1993, Ch. 219, Sec. 28.5. Effective January 1, 1994.)

1799.99. (a) This section applies to transactions, other than consumer credit contracts as defined in Section 1799.90, which are subject to 16 C.F.R. 444.3, 12 C.F.R. 227.14, or 12 C.F.R. 535.3, whichever is applicable to the creditor.

(b) Unless the persons who are obligated under the transaction are married to each other, no action shall be brought, nor shall any security interest be enforced, against any person entitled to receive notice under 16 C.F.R. 444.3, 12 C.F.R. 227.14, or 12 C.F.R. 535.3, whichever is applicable to the creditor, if that person did not receive the notice in the manner prescribed by the applicable regulation and an accurate Spanish translation of the notice.

(Amended by Stats. 1988, Ch. 160, Sec. 15.)

1799.100. (a) It is unlawful for any person to take a security interest in any household goods, as defined in subdivision (g), in connection with a consumer credit contract or other credit obligation incurred primarily for personal, family, or household purposes unless (1) the person takes possession of the household goods or (2) the purchase price of the household goods was financed through the consumer credit contract or credit obligation.

(b) An agreement or other document creating a nonpossessory security interest in personal property as defined in subdivision (d) in connection with a consumer credit contract or other credit obligation incurred primarily for personal, family, or household purposes shall contain a statement of description reviewed and signed by the consumer indicating each specific item of the personal property in which the security interest is taken. A consumer credit contract or other credit obligation subject to the Unruh Act (Chapter 1 (commencing with Section 1801) of Title 2) that complies with the provisions of subdivision (a) of Section 1803.3, or of subdivision (f) of Section 1810.1, shall be deemed to comply with this subdivision.

(c) Notwithstanding any other provision of law, a person who has a nonpossessory security interest in personal property, described in subdivision (d), taken in connection with a consumer credit contract or other credit obligation incurred primarily for personal, family, or household purposes shall only enforce the security interest by judicial action unless the property is abandoned or freely and voluntarily surrendered by the consumer.

(d) The provisions of subdivisions (b) and (c) apply only to the following types of personal property:

(1) Any goods, as defined in paragraph (44) of subdivision (a) of Section 9102 of the Commercial Code, except for vessels, vehicles, and aircraft, that are used or bought for use primarily for personal, family, or household purposes and that has a fair market value of less than one thousand dollars (\$1,000) per individual item at the time the security interest is created.

(2) The property described in Section 704.050 and subdivision (a) of Section 704.060 of the Code of Civil Procedure, except for vessels, vehicles, and aircraft.

(e) Any security interest taken in violation of either subdivision (a) or (b) is void and unenforceable.

(f) Any person injured by a violation of this section may bring a civil action for the recovery of damages, equitable relief, and attorney's fees and costs.

(g) For the purpose of this section:

(1) "Household goods" means and includes clothing, furniture, appliances, one radio, one television, linens, china, crockery, kitchenware, personal effects, and wedding rings. "Household goods" does not include works of art, electronic entertainment equipment (except one radio and one television), items acquired as antiques, and jewelry (except wedding rings).

(2) "Antique" means any item over one hundred years of age, including such items that have been repaired or renovated without changing their original form or character.

(Amended by Stats. 1999, Ch. 991, Sec. 3.5. Effective January 1, 2000. Operative July 1, 2001, by Sec. 75 of Ch. 991.)

1799.101. (a) For the purposes of this section, the following terms are defined as follows:

(1) "Adverse information" means information directly or indirectly indicating that a delinquency has occurred, because a cosigner has not complied with the contractual provisions of a consumer credit contract.

(2) "Collection action" means requesting a cosigner to pay all or part of the obligation on a consumer credit contract.

(3) "Cosigner" means a natural person, other than the primary obligor or the spouse of the primary obligor, who renders himself or herself liable for the obligation on a consumer credit contract without compensation. The term includes a person whose signature is requested by a creditor as a condition to granting credit to another person. A person who does not receive goods, services, or money in return for executing a consumer credit contract does not receive compensation within the meaning of this section. "Cosigner" does not include a joint applicant for open-end credit pursuant to subdivision (c) of Section 1799.91. A person is a cosigner within the meaning of this section whether or not he or she is designated as such on a consumer credit contract or other document creating the consumer credit contract obligation for the cosigner.

(4) "Delinquency" means a failure to make timely payment to the creditor of all or a portion of any installment under a consumer credit contract.

(5) "Notice" means a writing which describes, recites, or otherwise refers to a delinquency.

(6) "Obligation" means an indebtedness incurred by an individual for personal, family, or household purposes.

(7) "Person" means an individual, firm, partnership, association, limited liability company, or corporation.

(8) "Primary obligor" means one or more persons, other than a cosigner, who sign a consumer credit contract and assume an obligation as debtor under that contract.

(b) Except as provided in subdivisions (d) and (e), no creditor shall provide any adverse information with respect to any cosigner, to a consumer credit reporting agency regarding a delinquency on a consumer credit contract entered into on or after July 1, 1992, unless, at or before the time the information is provided to the consumer credit reporting agency, written notice of the delinquency is provided to the cosigner.

(c) No creditor shall provide any information regarding the cosigner's obligation on a consumer credit contract to a debt collector, as defined in subdivision (c) of Section 1788.2, until notice has been provided to the cosigner under subdivision (b).

(d) The notice requirements of subdivisions (b) and (c) do not apply to any cosigner whose address, as shown in the creditor's records respecting the consumer credit contract, is the same as the primary obligor.

(e) The notice requirements of subdivisions (b) and (c) shall be satisfied by mailing a copy of the required notice to the cosigner at the cosigner's address, as shown in the creditor's records respecting the consumer credit contract. However, if more than one cosigner reside at the same address, as shown in the creditor's records respecting the consumer credit contract, a notice addressed to any cosigner at that address shall be deemed notice to all the cosigners residing at that address.

(f) Nothing in this section shall require any particular form or language with respect to a notice of delinquency sent to either a primary obligor or cosigner.

(g) Within a reasonable time after a creditor has reported to a credit reporting agency that a delinquency or delinquencies that have been reported to the consumer credit reporting agency and included in the cosigner's file maintained by the consumer credit reporting agency have been cured, the consumer credit reporting agency shall indicate in the file that the payment was made.

(h) Nothing in this section shall be construed to require notice of a delinquency to be provided to a cosigner in any instance not expressly specified in this section, or to provide notice to persons other than cosigners.

(i) This section shall become operative on July 1, 1992.

(Amended by Stats. 1994, Ch. 1010, Sec. 42. Effective January 1, 1995.)

1799.102. (a) A cosigner who suffers a loss as a result of a violation of Section 1799.101 may bring an action to recover actual damages or two hundred fifty dollars (\$250), whichever is greater, and reasonable attorney fees.

(b) The cosigner shall, not less than 30 days prior to bringing an action pursuant to subdivision (a), notify the person alleged to have violated Section 1799.101 of the cosigner's intention to bring an action. The notice shall include a statement of the specific evidence that proves the loss suffered by the cosigner. If within 25 days after the date of receiving the notice, the person alleged to have violated Section 1799.101 tenders to the cosigner an amount equal to the loss, or otherwise resolves the matter to the cosigner's satisfaction, the cosigner shall be barred from further recovery of that loss, including reasonable attorney fees.

(c) This section shall become operative on July 1, 1992.

(Added by Stats. 1990, Ch. 1549, Sec. 2. Section operative July 1, 1992, by its own provisions.)

1799.103. No consumer credit contract or guarantee of a consumer credit contract shall provide for a security interest in any investment property, as defined in paragraph (49) of subdivision (a) of Section 9102 of the Commercial Code, that is pledged as collateral, unless (a) the contract either specifically identifies the investment property as collateral or (b) the secured party is a securities intermediary, as defined in paragraph (14) of subdivision (a) of Section 8102 of the Commercial Code, or commodity intermediary, as defined in paragraph (17) of subdivision (a) of Section 9102 of the Commercial Code, with respect to the investment property. The identification of an account shall include the name of the holder, account number, and name of the institute holding the investment property. In the event that a consumer credit contract or guarantee does not comply with this section, the security interest in the investment property is void.

(Amended by Stats. 1999, Ch. 991, Sec. 4. Effective January 1, 2000. Operative July 1, 2001, by Sec. 75 of Ch. 991.)

1799.104. Any waiver of the provisions of this title is contrary to public policy, and is void and unenforceable.

(Added by Stats. 2002, Ch. 815, Sec. 19. Effective January 1, 2003.)