

## First Supplement to Memorandum 71-2

Subject: Study 39 - Attachment, Garnishment, Execution (State Administrator of Earnings Protection Act)

Summary

At the November meeting, Professor Warren made clear his opinion that any state wage garnishment law, in order to receive exemption from the federal CCPA, must be administered by a state official having adequate enforcement powers and empowered to act for the state in relation to the federal Wage and Hours Administrator. A handful of state administrative offices were suggested. This memorandum considers the three which seem most likely candidates: The Consumer Frauds Unit of the Attorney General's Office, the Division of Labor Law Enforcement (Department of Industrial Relations), and the new Department of Consumer Affairs.

Analysis

The Commission has not yet fully examined the matter of the functions of the proposed state administrator. Tentatively, the administrator may perform functions falling into the four following general categories:

(1) Promulgation of regulations. (The administrator will promulgate the formula for withholding on other than a weekly pay period, will prescribe forms, and will make other regulations to give meaning to vague terms used in the federal law);

(2) Investigation-enforcement. (The administrator should have full investigatory powers, including the subpoena power, and may be authorized to act to secure compliance by persuasion, by civil suit, or by injunction);

(3) Education. (The administrator may act as counsel to the public,

including employers, on rights and duties under the act, and may establish programs to inform debtors about creditors; the administrator will need to make appropriate studies in order to make informed rules and regulations);

(4) Liaison. (Under a regulation from the Wages and Hours Division, the administrator must represent and act on behalf of the state in relation to the federal Administrator, keeping him informed of legislative and judicial actions with regard to, and of the current state of, the California wage garnishment law).

In settling upon an administrator of the state law, the Commission should consider not only the similarity of existing powers and duties of possible designees to those that will be required of the state administrator, but also the possibility of undue burden upon any office resulting from its being chosen to administer the wage garnishment law, and the probable responsiveness of each office to the task of administration. In the latter regard, it should be noted that the Department of Consumer Affairs is a new, as yet unstaffed, office.

It should be noted at the outset that the staff has proposed that the Labor Commissioner enforce both claims for unpaid wages (no additional statutory authority needed) and claims for the penalty for wrongful discharge because of any one garnishment (see Tentative Recommendation--Memorandum 71-3). Accordingly, the provisions dealing with these matters will not appear in the Earnings Protection Act and we are not concerned about the administration of these functions--they will continue to be administered by the Labor Commissioner. See attached pink pages and Tentative Recommendation attached to Memorandum 71-3.

Consumer Frauds Unit, Office of the Attorney General

The Consumer Frauds Unit works without specific statutory authority, and, for that reason, its structure and operation are difficult to piece together. At present, the Unit has a heavy workload, a limited staff, and no definite budget.

Commonly, the Unit is concerned with deceptive sales practices, but its work extends also to illegal attachments.<sup>1</sup> The chief tool of the Unit appears to be the injunctive action,<sup>2</sup> though the office may also seek civil penalties in cases of false advertising.<sup>3</sup> As of 1969, the bulk of complaints handled by the Unit came from the white, middle class community.<sup>4</sup>

The Consumer Frauds Unit has the benefit of the Attorney General's power to subpoena, without court order, documents and business records.<sup>5</sup>

The Attorney General retains public relations officers, and members of the staff of the Consumer Frauds Unit engage in public counselling and information on a limited basis.

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1. See California Dep't of Justice, Office of Atty. Gen., Press Release, Oct. 21, 1968; California Dep't of Justice, Office of Atty. Gen., Memorandum to the Press, Oct. 15, 1968, cited 16. U.C.L.A. L. Rev. 958 (1969). The latter memorandum also indicates the Consumer Frauds Unit's interest in the wage garnishment problem.
  2. The Attorney General may seek injunctions against consumer abuses both under statutory authority and under the common law. See Bus. & Prof. Code § 17535; Civil Code § 3369; Civil Code § 1812.63; Govt. Code § 12535; People v. Centr-O-Mart, 34 Cal.2d 702, 214 P.2d 378 (1950); People v. Arthur Murray, Inc., 238 Cal. App.2d 333, 47 Cal. Rptr. 700 (1965); Don Wilson Builders v. Superior Court, 220 Cal. App.2d 77, 33 Cal. Rptr. 621 (1963).
  3. Bus. & Prof. Code § 17536.
  4. See 16 U.C.L.A. L. Rev. 883 at 965-966 (1969).
  5. Govt. Code §§ 11180-11182. See Bonelli v. Superior Court, 56 Cal.2d 524, 527, 364 P.2d 462, 464, 15 Cal. Rptr. 630, 632 (1961).

Department of Consumer Affairs

The Department of Consumer Affairs is a new organization, as yet largely unstaffed and unfunded. No description of the Department's record being possible, the best description of the Department is contained in the statutes which established it. They are set out in the attached yellow pages.

Division of Labor Law Enforcement (Labor Commissioner), Department of Industrial Relations (see attached pink sheets).

The Division of Labor Law Enforcement enforces and administers all labor laws not specifically delegated to any other agency,<sup>6</sup> including laws pertaining to payment of wages.<sup>7</sup> The Labor Commissioner may take assignments of claims for unpaid wages and may sue to recover them,<sup>8</sup> and this power extends to wage claims following wrongful discharge pursuant to garnishment.<sup>9</sup>

The Labor Commissioner has full investigatory powers, including subpoena power (witnesses and papers), and the power to examine witnesses under oath and to take depositions and affidavits.<sup>10</sup> The Labor Commissioner is instructed to diligently inquire into violations of the wage payment laws.<sup>11</sup>

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6. Labor Code §§ 95, 410.

7. Labor Code § 217. See Labor Code §§ 64, 98, 98.5, 99, 103, 104, 210, 1775.

8. Labor Code §§ 96, 98.

9. Labor Code §§ 2922, 2924.

10. Labor Code § 92. Willfully ignoring the Labor Commissioner's subpoena is a misdemeanor. Labor Code § 93. Refusal to give information or statistics upon request, or refusal to permit entry to gather same, is a misdemeanor. Labor Code § 90.

11. Labor Code § 217.

"The division [of Labor Law Enforcement] may prosecute actions for the collection of wages, penalties, and demands of persons who, in the judgment of the Labor Commissioner are financially unable to employ counsel . . ."<sup>12</sup>

This provision, while probably used by the Commissioner to control his workload, in view of the persons likely to need the administrator's aid under a wage garnishment law, probably would raise no serious federal questions about effectiveness of state enforcement if the Labor Commissioner were made state administrator.

Under recent provisions, the Labor Commissioner is given power to issue rules and regulations for the licensing and regulation of nurses' registry and artists' managers.<sup>13</sup>

It does not appear that the Labor Commissioner regularly engages in counselling or public information, though he makes regular reports to the State Board of Education regarding labor violations involving minors.<sup>14</sup> Other divisions of the Department of Industrial Relations do, however, carry on extensive programs of counselling and public information.<sup>15</sup>

Respectfully submitted,

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Legal Counsel

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12. Labor Code § 98.

13. Labor Code §§ 1700.29 (artists' managers); 1710.41 (nurses' registry).

14. Labor Code § 1306.

15. Division of Industrial Welfare, Division of Industrial Safety, Division of Industrial Accidents.

LABOR CODE PROVISIONS

COLLECTION OF WAGES AND THE LIKE  
BY LABOR COMMISSIONER

96. The Labor Commissioner and his deputies and representatives authorized by him in writing may take assignments of:

- (a) Wage claims and incidental expense accounts and advances.
- (b) Mechanics' and other liens of employees.
- (c) Claims based on "stop orders" for wages and on bonds for labor.
- (d) Claims for damages for misrepresentations of conditions of employment.
- (e) Claims for unreturned bond money of employees.
- (f) Claims for penalties for nonpayment of wages.
- (g) Claims for the return of workmen's tools in the illegal possession of another person.
- (h) Claims for vacation pay, severance pay, or other compensation supplemental to a wage agreement.
- (i) Awards for workmen's compensation benefits in which the Workmen's Compensation Appeals Board has found that the employer has failed to secure payment of compensation and where the award remains unpaid more than 10 days after having become final.
- (j) Claims for loss of wages as the result of discharge from employment for one garnishment of wages prior to a final order or judgment of a court.

§ 96

§ 97. **Validity of assignments.** The Labor Commissioner, his deputies and representatives shall not be bound by any rule requiring the consent of the spouse of a married claimant, the filing of a lien for record before it is assigned, or prohibiting the assignment of a claim for penalty before the claim has been incurred or any other technical rule with reference to the validity of assignments. (Stats.1937, c. 90, p. 191, § 97, as amended Stats.1939, c. 1114, p. 3059, § 2.)

§ 98. **Actions for collection of claims.** The division may prosecute actions for the collection of wages, penalties, and demands of persons who, in the judgment of the Labor Commissioner are financially unable to employ counsel, in cases in which the Labor Commissioner believes such claims are valid and enforceable.

The division may also prosecute actions for the return of workmen's tools which are in the illegal possession of another person. (Stats.1937, c. 90, p. 191, § 98, as amended Stats.1939, c. 468, p. 1816, § 2.)

§ 98.5 **Certification to small claims court of amount due; effect**

In any action to recover unpaid wages, penalties, or to enforce other demands of employees for amounts not to exceed the maximum amount of a case within the jurisdiction of a small claims court as provided in Section 117 of the Code of Civil Procedure, the Labor Commissioner shall certify in writing to the Judge of the small claims court that he has heard and determined the validity of such claims and demands and that the sum specified therein is the amount found due and payable. The certificate of the Labor Commissioner shall be considered by the small claims court but shall not, by itself, be sufficient evidence to support a judgment. (Added Stats.1963, c. 953, p. 2211, § 1.)

**§ 99. Filing of claims and liens.** The division may file preferred claims, mechanics' liens, and other liens of employees in the name of the Labor Commissioner, his deputy or representative or in the names of the employees, whenever the facts have been investigated and found to support the claims. A statement that such facts have been found shall be alleged in the preferred claim or lien if it is filed in the name of the Labor Commissioner, his deputy or representative. (Stats.1937, c. 90, p. 192, § 99.)

**§ 100. Joinder of claimants.** The division may join various claimants in one preferred claim or lien as well as list them with the data regarding their claims in an exhibit and join them, in case of suit, in one cause of action in cases where no valid reason exists for making separate causes of action for each individual employee. (Stats.1937, c. 90, p. 192, § 100.)

**100.5 Preferred claims**

Preferred claims for work performed or personal services rendered are provided for in Sections 1204, 1205, 1206, 1207, and 1208 of the Code of Civil Procedure, and subdivision (6) of Section 950 of the Probate Code. (As amended Stats.1965, c. 157, p. 1114, § 1.)

**§ 101. Court costs; fees**

No court costs of any nature shall be payable by the division, in any civil action to which the division is a party. Any sheriff, marshal, or constable requested by the Labor Commissioner or his deputy or representative shall serve the summons in the action upon any person within his jurisdiction or levy an attachment, garnishment, or execution in the action upon the property of any defendant without cost to the division except for keeper's fees, mileage fees, and storage charges. (As amended Stats.1959, c. 210, p. 2119, § 1.)

**§ 101.5 Filing and recording fees.** No fees shall be payable for the filing or recording of any document or paper in the performance of any official service by the division. The amount ordinarily charged for such filing or recording shall be made a part of any judgment recovered by the division and shall be paid by the division if sufficient money is collected over and above the wages or demands actually due the claimants. (Added Stats.1951, c. 1136, p. 2904, § 1.)

**§ 102. Costs of sheriff, marshal, and constable; specification upon return of summons or process; inclusion in judgment.** The sheriff, marshal, or constable shall specify when the summons or process is returned, what costs he would ordinarily have been entitled to for such service, and such costs and the other regular court costs which would have accrued if the action was not by the division shall be made a part of any judgment recovered by the division and shall be paid by the division if sufficient money is collected over and above the wages or demands actually due the claimants. (Stats.1937, c. 90, p. 192, § 102.)

**§ 103. Actions in other states for collection of claims; assignments for collection.** The division may, to the extent provided for by any reciprocal agreement entered into pursuant to Section 64 of this code, or by the laws of any other state, maintain actions in the courts of such other state for the collection of such claims for wages, judgments and other demands and may assign such claims, judgments and demands to the labor department or agency of such other state for collection to the extent that the same may be permitted or provided for by the laws of such state or by reciprocal agreement. (Added Stats.1953, c. 877, p. 2233, § 2.)

**§ 104. Claims assigned by other states; actions; collection.** The division may, upon the written request of the labor department or other corresponding agency of any other state or of any person, board, officer or commission of such state authorized to act for and on behalf of such labor department or corresponding agency, maintain actions in the courts of this State upon assigned claims for wages, judgments and demands arising in such other state in the same manner and to the same extent that such actions by the division are authorized when arising in this State; provided, however, that such actions may be commenced and maintained only in those cases where such other state by appropriate legislation or by reciprocal agreement extends a like comity to cases arising in this State. (Added Stats.1953, c. 877, p. 2233, § 3.)

PAYMENT OF WAGES REGULATIONS

**§ 200. Definitions.** As used in this article: (a) "Wages" includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation.

(b) "Labor" includes labor, work, or service whether rendered or performed under contract, subcontract, partnership, station plan, or other agreement if the labor to be paid for is performed personally by the person demanding payment. (Stats.1937, c. 90, p. 197, § 200.)



**§ 201. Time for payment on discharge or layoff; seasonal employment; mail.** If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. An employer who lays off a group of employees by reason of the termination of seasonal employment in the curing, canning, or drying of any variety of perishable fruit, fish or vegetables, shall be deemed to have made immediate payment when the wages of said employees are paid within such reasonable time as may be necessary for computation and payment thereof; provided, however, that such reasonable time shall not exceed 72 hours, and further provided that payment shall be made by mail to any such employee who so requests and designates a mailing address therefor. (Stats.1937, c. 90, p. 197, § 201, as amended Stats.1947, c. 769, p. 1849, § 1.)

**§ 201.5 Motion picture industry; discharge or layoff; payment within reasonable time**

An employer who lays off a group of employees engaged in the production of motion pictures whose unusual or uncertain terms of employment require special computation in order to ascertain the amount due, shall be deemed to have made immediate payment within the meaning of Section 201 if the wages of such employees are paid within such reasonable time as may be necessary for computation or payment thereof; provided, however, that such reasonable time shall not exceed 24 hours after discharge excluding Saturdays, Sundays, and holidays; and provided further, such payment may be mailed and the date of mailing is the date of payment.

The Legislature finds and determines that special provision must be made for the payment of wages on discharge of persons engaged in the production of motion pictures because their employment at various locations is often far removed from the employer's principal administrative offices and the unusual hours of their employment in this industry is often geared to the completion of a portion of a picture which time of completion may have no relation to normal working hours. (Added Stats.1957, c. 1118, p. 2419, § 1.)

**§ 202. Time for payment of resignation.** If an employee not having a written contract for a definite period quits his employment, his wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his intention to quit, in which case the employee is entitled to his wages at the time of quitting. (Stats.1937, c. 90, p. 197, § 202.)

**§ 203.** Failure to make payment within required time; penalty; employee avoiding payment; limitation of actions. If an employer wilfully fails to pay, without abatement or reduction, in accordance with sections 201 and 202, any wages of an employee who is discharged or who quits, the wages of such employees shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but such wages shall not continue for more than thirty days. No employee who secretes or absents himself to avoid payment to him, or who refuses to receive the payment when fully tendered to him, including any penalty then accrued under this section, shall be entitled to any benefit under this section for the time during which he so avoids payment.

Suit may be filed for such penalties at any time before the expiration of the statute of limitations on an action for the wages from which the penalties arise. (Stats.1937, c. 90, p. 197, § 203, as amended Stats. 1939, c. 1096, p. 3026, § 1.)

**§ 203.1 Payment of wages or fringe benefits with bad check; penalty**

If an employer in the building and construction industry pays an employee in the regular course of employment or in accordance with Sections 201 and 202 any wages or fringe benefits, or both, by check, draft or voucher, which check, draft or voucher is subsequently refused payment because the employer or maker has no account with the bank, institution or person on which drawn or insufficient funds to his account at the time of presentation, so long as the same is presented within 30 days of receipt by the employee of the check, draft or voucher, such wages or fringe benefits, or both, shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but such wages and fringe benefits shall not continue for more than 30 days, provided, however, that the said penalty shall not apply if the employer can establish to the satisfaction of the Labor Commission or an appropriate court of law that the said violation of this section was unintentional. (Added Stats.1963, c. 846, p. 2072, § 1.)

**§ 203.5 Failure of bonding company to pay verified claim for wages**

If a bonding company issuing a bond to secure the payment of wages for labor or the surety on such a bond wilfully fails to pay, without abatement or reduction, any verified claim made for wages, found to be due and payable, the claim for wages shall continue as a penalty against the bonding company or surety from the date on which demand for payment was made at the same rate until paid as the wages upon which the claim is based, except that the claim shall not continue as a penalty for more than 30 days.

The provisions of this section shall apply only with respect to labor and material bonds filed pursuant to the State Contract Act under a contract awarded by, and entered into with, the state. (Added Stats.1965, c. 633, p. 1964, § 1.)

Sec. 3. Section 204 of the Labor Code is amended to read:  
204. All wages, other than those mentioned in Section 201, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month; provided, however, that salaries of executive, administrative, and professional employees of employers covered by the Fair Labor Standards Act, as set forth pursuant to Section 13(a)(1) of the Fair Labor Standards Act, as amended through March 1, 1969, in Part 541 of Title 29 of the Code of Federal Regulations, as that part now reads or may be amended to read at any time hereafter, may be paid once a month on or before the 26th day of the month during which the labor was performed if the entire month's salaries, including the unearned portion between the date of payment and the last day of the month, are paid at that time.

However when such employees are covered by a collective bargaining agreement that provides different pay arrangements, those arrangements will apply to the covered employees.

The requirements of this section shall be deemed satisfied by the payment of wages for weekly or biweekly payroll if such wages are paid not more than seven calendar days following the close of the payroll period.

§ 204

**§ 204.1 Employees of vehicle dealers; commission wages; monthly payment**

Commission wages paid to any person employed by an employer licensed as a vehicle dealer by the Department of Motor Vehicles are due and payable once during each calendar month on a day designated in advance by the employer as the regular payday. Commission wages are compensation paid to any person for services rendered in the sale of such employer's property or services and based proportionately upon the amount or value thereof.

The provisions of this section shall not apply if there exists a collective bargaining agreement between the employer and his employees which provides for the date on which wages shall be paid.

(Added Stats. 1967, c. 1170, p. 2859, § 2.)

**Sec. 2. Section 204.2 is added to the Labor Code, to read:**

204.2. Salaries of executive, administrative, and professional employees of employers covered by the Fair Labor Standards Act, as set forth pursuant to Section 13(a)(1) of the Fair Labor Standards Act of 1938, as amended through March 1, 1969, (Title 29, Section 213(a)(1), United States Code) in Part 541 of Title 29 of the Code of Federal Regulations, as that part now reads, earned for labor performed in excess of 40 hours in a calendar week are due and payable on or before the 26th day of the calendar month immediately following the month in which such labor was performed. However, when such employees are covered by a collective bargaining agreement that provides different pay arrangements, those arrangements will apply to the covered employees.

§ 204.2

**§ 204a. Employees of several employers; plan for central place of payment; notice to labor commissioner.** When workers are engaged in an employment that normally involves working for several employers in the same industry interchangeably, and the several employers, or some of them, cooperate to establish a plan for the payment of wages at a central place or places and in accordance with a unified schedule of pay days, all the provisions of this chapter except 201, 202, and 208 shall apply. All such workers, including those who have been discharged and those who quit, shall receive their wages at such central place or places.

This section shall not apply to any such plan until 10 days after notice of their intention to set up such a plan shall have been given to the Labor Commissioner by the employers who cooperate to establish the plan. Having once been established, no such plan can be abandoned except after notice of their intention to abandon such plan has been given to the Labor Commissioner by the employers intending to abandon the plan. (Added Stats.1941, c. 11, p. 422, § 1.)

**§ 204b. Weekly payments**

Section 204 shall be inapplicable to employees paid on a weekly basis on a regular day designated by the employer in advance of the rendition of services as the regular payday.

Labor performed by a weekly-paid employee during any calendar week and prior to or on the regular payday shall be paid for not later than the regular payday of the employer for such weekly-paid employee falling during the following calendar week.

Labor performed by a weekly-paid employee during any calendar week and subsequent to the regular payday shall be paid for not later than seven days after the regular payday of the employer for such weekly-paid employee falling during the following calendar week. (Added Stats.1959, c. 1564, p. 3898, § 1.)

**§ 205. Agricultural and domestic employment; payment periods.** In agricultural, viticultural, and horticultural pursuits, in stock or poultry raising, and in household domestic service, when the employees in such employments are boarded and lodged by the employer, the wages due any employee remaining in such employment shall become due and payable once in each calendar month on a day designated in advance by the employer as the regular pay day. No two successive pay days shall be more than 31 days apart, and the payment shall include all wages up to the regular pay day. Notwithstanding the provisions of this section, wages of workers employed by a farm labor contractor shall be paid on pay roll periods at least once every two weeks on a business day designated in advance by the farm labor contractor. Payment on such pay day shall include all wages earned up to and including the fourth day before such pay day. (Stats.1937, c. 90, p. 197, § 205, as amended Stats.1951, c. 1746, p. 4160, § 1.)

**§ 206. Payment of undisputed amount.** In case of a dispute over wages, the employer shall pay, without condition and within the time set by this article, all wages, or parts thereof, conceded by him to be due, leaving to the employee all remedies he might otherwise be entitled to as to any balance claimed. (Stats.1937, c. 90, p. 198, § 206.)

**§ 206.5 Execution of release of claim or right on account of wages due**

No employer shall require the execution of any release of any claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of such wages has been made. Any release required or executed in violation of the provisions of this section shall be null and void as between the employer and the employee and the violation of the provisions of this section shall be a misdemeanor. (Added Stats.1959, c. 1066, p. 3127, § 1.)

**§ 207. Posting of notice of regular pay days.** Every employer shall keep posted conspicuously at the place of work, if practicable, or otherwise where it can be seen as employees come or go to their places of work, or at the office or nearest agency for payment kept by the employer, a notice specifying the regular pay days and the time and place of payment, in accordance with this article. (Stats. 1937, c. 90, p. 198, § 207.)

**§ 208. Place of payment.** Every employee who is discharged shall be paid at the place of discharge, and every employee who quits shall be paid at the office or agency of the employer in the county where the employee has been performing labor. All payments shall be made in the manner provided by law. (Stats.1937, c. 90, p. 198, § 208.)

**§ 209. - Payment in event of strike.** In the event of any strike, the unpaid wages earned by striking employees shall become due and payable on the next regular pay day, and the payment or settlement thereof shall include all amounts due the striking employees without abatement or reduction. The employer shall return to each striking employee any deposit, money, or other guaranty required by him from the employee for the faithful performance of the duties of the employment. (Stats.1937, c. 90, p. 198, § 209.)

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**§ 210. Forfeiture for failure to make payments; action for recovery; disposition of money recovered**

In addition to and entirely independent and apart from any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 204, 204b, and 205, shall forfeit to the State the sum of ten dollars (\$10) for each failure to pay each employee. The penalty shall be recovered by the Division of Labor Law Enforcement in a civil action. Such action shall be brought in the name of the people of the State of California and the division and the attorneys thereof may proceed and act for and on behalf of the people in bringing such actions. All money recovered therein shall be paid into the State Treasury to the credit of the General Fund. (As amended Stats.1961, c. 208, p. 1219, § 1.)

**§ 211. Actions to recover civil penalties; fees for service of summons; joinder of causes of action; demand for payment.** When action to recover such penalties is brought, no court costs shall be payable by the State or the division. Any sheriff, marshal or constable who serves the summons in the action upon any defendant within his jurisdiction shall do so without cost to the division. The sheriff, marshal or constable shall specify in his return what costs he would ordinarily have been entitled to for such service, and such costs and the other regular court costs that would have accrued were the action not on behalf of the State shall be made a part of any judgment recovered by the plaintiff and shall be paid out of the first money recovered on the judgment. Several causes of action for the penalties may be united in the same action without being separately stated. A demand is a prerequisite to the bringing of any action under this section or section 210. The division on behalf of the State may accept and receipt for any penalties so paid, with or without suit. (Stats.1937, c. 90, p. 198, § 211.)

**§ 212. Prohibited forms of payment; instruments protested or dishonored; effect of notice.** No person, or agent or officer thereof, shall issue in payment of wages due, or to become due, or as an advance on wages to be earned:

(a) Any order, check, draft, note, memorandum, or other acknowledgment of indebtedness, unless it is negotiable and payable in cash, on demand, without discount, at some established place of business in the State, the name and address of which must appear on the instrument, and at the time of its issuance and for a reasonable time thereafter, which must be at least 30 days, the maker or drawer has sufficient funds in, or credit, arrangement, or understanding with the drawee for its payment.

(b) Any script, coupon, cards, or other thing redeemable, in merchandise or purporting to be payable or redeemable otherwise than in money.

Where an instrument mentioned in subdivision (a) is protested or dishonored, the notice or memorandum of protest or dishonor is admissible as proof of presentation, nonpayment and protest and is presumptive evidence of knowledge of insufficiency of funds or credit with the drawee. (Stats.1937, c. 90, p. 199, § 212, as amended Stats. 1947, c. 395, p. 968, § 1.)

**§ 213. Exceptions.** Nothing contained in section 212 shall:

(a) Prohibit an employer from guaranteeing the payment of bills incurred by an employee for the necessaries of life or for the tools and implements used by the employee in the performance of his duties.

(b) Apply to counties, municipal corporations, quasi municipal corporations or school districts.

(c) Apply to students of nonprofit schools, colleges, universities, and other nonprofit educational institutions. (Stats.1937, c. 90, p. 199, § 213, as amended Stats.1939, c. 1075, p. 2999, § 1.)

**§ 214. Place of prosecution for illegal form of payment.** Prosecution under section 212 may be brought either at the place where the alleged illegal order, check, draft, note, memorandum or other acknowledgment of wage indebtedness is issued or at the place where it is made payable. (Stats.1937, c. 90, p. 199, § 214.)

**§ 215. Violations; misdemeanor**

Any person, or the agent, manager, superintendent or officer thereof, who violates any provision of Sections 204, 204b, 205, 207, 208, 209, or 212 is guilty of a misdemeanor. Any failure to keep posted any notice required by Section 207 is prima facie evidence of a violation of such sections. (As amended Stats.1961, c. 139, p. 1146, § 1.)

**§ 216. Refusal to make payment; false denial of amount or validity of wages; misdemeanor**

In addition to any other penalty imposed by this article, any person, or an agent, manager, superintendent, or officer thereof is guilty of a misdemeanor, who:

(a) Having the ability to pay, willfully refuses to pay wages due and payable after demand has been made.

(b) Falsely denies the amount or validity thereof, or that the same is due, with intent to secure for himself, his employer or other person, any discount upon such indebtedness, or with intent to annoy, harass, oppress, hinder, delay, or defraud, the person to whom such indebtedness is due. (As amended Stats.1959, c. 1358, p. 3029, § 1.)

**§ 217. Enforcement.** The Division of Labor Law Enforcement shall inquire diligently for any violations of this article, and, in cases which it deems proper, shall institute the actions for the penalties provided for in this article and shall enforce this article. (Stats.1937, c. 90, p. 200, § 217, as amended Stats.1945, c. 1431, p. 2690, § 31.)

**§ 218. Authority of district attorney and wage claimant.** Nothing in this article shall limit the authority of the district attorney of any county or prosecuting attorney of any city to prosecute actions, either civil or criminal, for violations of this article or to enforce the provisions thereof independently and without specific direction of the division. Nothing in this article shall limit the right of any wage claimant to sue directly or through an assignee for any wages or penalty due him under this article. (Stats.1937, c. 90, p. 200, § 218.)

**§ 219. More frequent and larger payments; private agreements in violation of provisions.** Nothing in this article shall in any way limit or prohibit the payment of wages at more frequent intervals, or in greater amounts, or in full when or before due, but no provision of this article can in any way be contravened or set aside by a private agreement, whether written, oral, or implied. (Stats.1937, c. 90, p. 200, § 219.)

**§ 220. Public employees.** Nothing in sections 200 to 211 and 215 to 219, inclusive, shall apply to the payment of wages of employees directly employed by the State or any county, incorporated city or town or other municipal corporation. All other employments are for the purposes of these sections private employments and subject to the provisions thereof. (Stats.1937, c. 90, p. 200, § 220.)

**§ 220.2 Public employees; benefits; contributions; payments by employing agencies**  
Contributions to vacation \* \* \* allowances, pension or retirement funds, sick leave, and \* \* \* health and welfare benefits on behalf of persons employed by \* \* \* any county, political subdivision, incorporated city or town or other municipal corporations may be made in the same manner and on the same basis as made by private employers.

Payments made by the employing agency to any such fund on behalf of any employee shall be in lieu of benefits such as vacation allowance, pension or retirement fund, sick leave, \* \* \* and health and welfare benefits which are now or may hereafter be granted directly by the employing agency in accordance with law.

This section shall only apply to nonpermanent laborers, workmen, and mechanics employed on an hourly or per diem basis.

The employing agency is empowered to determine the equitable application of this section to insure that the employees receive benefits comparable to, but not in excess of those provided in comparable private employment.

The employing agency shall make payments only to plans which meet the following standards:

1. A plan office is located within the State of California.
2. Any fund connected with the plan is required to be audited at least annually by an independent, licensed certified public accountant.
3. Each trustee or administrator of the fund or plan authorized to receive, handle, deal with or draw upon the assets of the fund or plan is required to be bonded.

(Added by Stats.1959, c. 2051, p. 4743, § 1. Amended by Stats.1960, c. 1230, p. —, § 1.)

(11)



**§ 221. Repayment of wages to employer.** It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee. (Added Stats.1937, c. 357, p. 774.)

**§ 222. Withholding of part of wage.** It shall be unlawful, in case of any wage agreement arrived at through collective bargaining, either wilfully or unlawfully or with intent to defraud an employee, a competitor, or any other person, to withhold from said employee any part of the wage agreed upon. (Added Stats.1937, c. 357, p. 774, as amended Stats.1939, c. 1062, p. 2990, § 1.)

**§ 222.5 Cost of pre-employment physical examination or physical examination required by law**

No person shall withhold or deduct from the compensation of any employee, or require any prospective employee or applicant for employment to pay, any fee for, or cost of, any pre-employment medical or physical examination taken as a condition of employment, nor shall any person withhold or deduct from the compensation of any employee, or require any employee to pay any fee for, or costs of, medical or physical examinations required by any law or regulation of federal, state or local governments or agencies thereof. (As amended Stats.1957, c. 1113, p. 2414, § 1.)

**§ 223. Payment of less than statutory or contractual wage scale.** Where any statute or contract requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract. (Added Stats.1937, c. 357, p. 774.)

**§ 224. Authorized deductions**

The provisions of Sections 221, 222 and 223 shall in no way make it unlawful for an employer to withhold or divert any portion of an employee's wages when the employer is required or empowered so to do by state or federal law or when a deduction is expressly authorized in writing by the employee to cover insurance premiums, hospital or medical dues, or other deductions not amounting to a rebate or deduction from the standard wage arrived at by collective bargaining or pursuant to wage agreement or statute, or when a deduction to cover health and welfare or pension plan contributions is expressly authorized by a collective bargaining or wage agreement.

Nothing in this section or any other provision of law shall be construed as authorizing an employer to withhold or divert any portion of an employee's wages to pay any tax, fee or charge prohibited by Section 50026 of the Government Code, whether or not the employee authorizes such withholding or diversion.

(Amended by Stats.1968, c. 359, p. 1226, § 2.)

**§ 225. Violations; misdemeanor.** The violation of any provision of Sections 221, 222, 222.5, or 223 is a misdemeanor. (Added Stats. 1937, c. 357, p. 774, as amended Stats. 1945, c. 1191, p. 2244, § 2.)

**§ 226. Itemized statements; contents**

Every employer shall semimonthly or at the time of each payment of wages furnish each of his employees either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately, an itemized statement in writing showing: (1) all deductions \* \* \*; (2) the inclusive dates of the period for which the employee is paid; (3) the name of the employee or his social security number; and (4) the name of the employer; provided, all deductions made on written orders of the employee may be aggregated and shown as one item. (As amended Stats. 1963, c. 1089, p. 2340, § 1.)

§226

**§ 227. Health, welfare or pension fund or vacation plan; failure to make agreed payments; offense**

Whenever an employer has agreed with any employee to make payments to a health or welfare fund, pension fund or vacation plan, or other such plan for the benefit of the employee, or has entered into a collective bargaining agreement providing for such payments, it shall be unlawful for such an employer willfully or with intent to defraud to fail to make the payments required by the terms of any such agreement. A violation of any provision of this section is a misdemeanor. (As amended Stats. 1959, c. 824, p. 2643, § 1.)

**§ 227.5 Annual statement of payments to employee benefit funds**

Whenever an employer has agreed with any employee to make payments to a health or welfare fund, pension fund or vacation plan, or such other plan for the benefit of the employee, or has entered into a collective bargaining agreement providing for such payments, the employer upon written request of the employee shall furnish such employee annually a statement indicating whether or not such payments have been made and for what periods. (Added Stats. 1963, c. 898, p. 2141, § 1.)

**§ 228. Payments to apprenticeship funds**

The payments under Section 227 of this code shall be deemed to include payments to apprenticeship funds.

This amendment is hereby declared to be merely a clarification of the original intention of the Legislature and is not a substantive change. (Added Stats. 1961, c. 1218, p. 2955, § 1.)

**§ 229. Actions to enforce payment of wages; effect of arbitration agreements**

Actions to enforce the provisions of this article for the collection of due and unpaid wages claimed by an individual may be maintained without regard to the existence of any private agreement to arbitrate. This section shall not apply to claims involving any dispute concerning the interpretation or application of any collective bargaining agreement containing such an arbitration agreement. (Added Stats. 1959, c. 1939, p. 4532, § 1.)

**§ 230. Jury duty; notice to employer; right to time off**

No employer shall discharge an employee for taking time off to serve as required by law on an inquest jury or trial jury, if such employee, prior to taking such time off, gives reasonable notice to the employer that he is required to serve.  
(Added by Stats.1968, c. 1270, p. 2395, § 1.)

SPECIAL PROVISIONS

**§ 250. Seasonal labor defined.** As used in this article "seasonal labor" means all labor performed by any person hired in this State to perform services outside of this State for a period greater than one month, where the wages are to be paid in this State, not at fixed intervals, but at the termination of such employment. (Stats.1937, c. 90, p. 201, § 250.)

**§ 251. Seamen's wages; wage payments regulated by federal statute.** This article shall not apply to wages earned by seamen or other persons, where payment is regulated by Federal statute. (Stats. 1937, c. 90, p. 201, § 251.)

**§ 252. Payment in presence of labor commissioner.** Upon application of either the employer or the employee, the wages earned in seasonal labor shall be paid in the presence of the Labor Commissioner, or his deputy or agent. (Stats.1937, c. 90, p. 201, § 252.)

**§ 253. Hearing of wage disputes; decision.** The Labor Commissioner shall hear and decide all wage disputes arising in connection with seasonal labor and shall allow or reject any deductions made from such wages. He shall reject all deductions made for gambling and liquor debts incurred by the employee during such employment. (Stats.1937, c. 90, p. 201, § 253.)

**§ 254. Findings and award.** After a final hearing by the Labor Commissioner, he shall file in the office of his division a copy of the findings of fact and his award. (Stats.1937, c. 90, p. 201, § 254.)

**§ 255. Effect of award; judicial review.** The amount of the award of the Labor Commissioner shall, in the absence of fraud, be conclusively presumed to be the amount of the wages due and unpaid to the employee at the time of the termination of the employment but shall be subject to review by the courts in the manner provided by the Code of Civil Procedure. (Stats.1937, c. 90, p. 201, § 255.)

**§ 256.** Civil penalty. The Labor Commissioner may impose a civil penalty in an amount not exceeding 30 days pay as waiting time under the terms of section 203. (Stats.1937, c. 90, p. 201, § 256.)

Derivation: Stats.1913, c. 193, p. 343, § 5; Stats.1935, c. 49, p. 383, § 4.

**§ 257.** Statutes incorporated by reference. All provisions of Article 1 of this chapter, except sections 204, 205, 207, 208, 209, 210, 211 and 215 are applicable to this article. (Stats.1937, c. 90, p. 201, § 257.)

**§ 270.** Mining; required deposit; violation; misdemeanor. No person, or agent or officer thereof, engaged in the business of extracting or of extracting and refining or reducing minerals other than petroleum, except persons having a free and unencumbered title to the fee of the property being worked and except mining partnerships in respect to the members of the partnership, shall fail or neglect, before commencing work in any period for which a single payment of wages is made, to have on hand or on deposit with a bank or trust company, in the county where such property is located or if there is no bank or trust company in the county, then in the bank or trust company nearest the property, cash or readily salable securities of a market value sufficient to pay the wages of every person employed on the mining property, or in connection therewith, for such period.

Any person, or agent or officer thereof, who violates this section is guilty of a misdemeanor. (Added Stats.1945, c. 628, p. 1155, § 3.)

**§ 270.5** Logging; operating saw mill; required deposit; violation; misdemeanor

No person, agent or officer thereof, or logging contractor, or sawmill operations contractor, engaged in the business of logging or operating a sawmill for converting logs into lumber, except in the case of logging or sawmill operations of persons having a free and unencumbered title to the fee of real property in this State, of a market value sufficient to pay the wages of every person employed in connection with such operations in any period for which a single payment of wages is made, shall fail or neglect, before commencing work in any period for which such single payment of wages is made, or for four calendar weeks, whichever is the longer, (a) to have on hand or on deposit with a bank or trust company, in the county where such business is conducted, or if there is no bank or trust company in the county, then in the bank or trust company nearest such operations, cash or readily salable securities of a market value sufficient to pay the wages of every person employed in connection with such operations for such period, or (b) to deposit with the Labor Commissioner the bond of a surety company authorized to do business within the State, acceptable to him, conditioned upon the payment of all wages found by the Labor Commissioner to be due and unpaid in connection with such operations.

The cash and securities on deposit hereinbefore referred to shall not be commingled with other deposits, securities or property of the employer and shall be held in trust and shall not be used for any other purpose than paying the wages due employees. Such moneys so held in trust shall not be subject to garnishment, attachment or execution by any other creditor of the employer.

Any person, agent or officer thereof, or logging contractor, or sawmill operations contractor, who violates this section is guilty of a misdemeanor. (Added Stats. 1957, c. 593, p. 1690, § 1, as amended Stats.1961, c. 318, p. 1350, § 1; Stats.1963, c. 178, p. 911, § 1.)

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**§ 270.6 Door-to-door selling or telephone solicitation; required deposit; violation; misdemeanor**

No person or agent or officer thereof, without a permanent and fixed place of business or residence in this state who uses or employs any person in the door-to-door selling of any merchandise, or in any similar itinerant activity, or in any telephone solicitation, shall fail or neglect before commencing work in any period for which any single payment of wages is made or for four calendar weeks, whichever is longer.

(a) To have on hand or on deposit with a bank or trust company in the county where such business is conducted, or if there is no bank or trust company in the county, then in the bank or trust company nearest such operations, cash or readily salable securities of a market value sufficient to pay the wages of every person employed in connection with such operations for such period, or

(b) To deposit with the Labor Commissioner the bond of a surety company authorized to do business within the state, acceptable to him, conditioned upon the payment of all wages found to be due and unpaid in connection with such operations under any provision of this code, or

(c) To deposit with the Labor Commissioner a time certificate of deposit indicating that the person, agent or officer subject to the provisions of this section has deposited with a bank or trust company cash payable to the order of the Labor Commissioner sufficient to pay the wages of every person employed in connection with such operations for such period.

The cash and securities on deposit hereinbefore referred to shall not be commingled with other deposits, securities, or property of the employer and shall be held in trust and shall not be used for any other purpose than paying the wages due employees. Such moneys so held in trust shall not be subject to garnishment, attachment or execution by any other creditor of the employer.

Any person, or agent or officer thereof, who violates this section is guilty of a misdemeanor. (Added Stats.1965, c. 329, p. 1437, § 1.)

**§ 271. Theatrical enterprises; required deposit; violation; misdemeanor.** No person, or agent or officer thereof, engaged in the business of promoting a theatrical enterprise where living individuals are used or employed in the presentation, except persons having a free and unencumbered title to the fee of the property on which the theatrical enterprise is produced, shall fail or neglect, before producing such enterprise in any period for which a single payment of wages is made, to have on hand or on deposit with a bank or trust company, in the county in which such enterprise is to be produced, or if there is no bank or trust company in the county, then in the bank or trust company nearest the place where such enterprise is produced, cash or readily salable securities of a market value sufficient to pay the wages of every individual used or employed in the production of such enterprise, or in connection therewith for such period. The provisions of this section shall not apply to the use or employment of individuals by a radio or television broadcasting enterprise; provided, there is on hand or on deposit with a bank or trust company in this State cash or readily salable securities of a market value sufficient to pay the wages of every individual used or employed in such enterprise, or in connection therewith.

**Theatrical enterprise defined.** Theatrical enterprise as used in this section means the production of any circus, vaudeville, carnival, revues, variety shows, musical comedies, operettas, opera, drama, theatrical, endurance contest, walkathon, marathon, derby, or other entertainments, exhibitions, or performances.

**Violation.** Any person, or agent or officer thereof, who violates this section is guilty of a misdemeanor. (Added Stats.1945, c. 628, p. 1155, § 3.)

**§ 272. Notice of place of deposit; effect of violation**

Every person, agent, or officer thereof engaged in the businesses specified in \* \* \* Section 270, 270.5, 270.6, or 271, shall keep conspicuously posted upon the premises where persons are employed, a notice specifying the name and address of the bank or trust company where the required cash or readily salable securities are on deposit, or the name of the surety or sureties on the bond deposited pursuant to Section 270.5 or 270.6. Failure to keep the notice conspicuously posted is prima facie evidence of a violation of \* \* \* Section 270, 270.5, 270.6, or 271. (As amended Stats.1957, c. 503, p. 1890, § 2; Stats.1965, c. 320, p. 1438, § 2.)

## CHAPTER 4. CONSUMER AFFAIRS

### Article 1. General Provisions and Definitions

300. This chapter may be cited as the Consumer Affairs Act.

301. It is the intent of the Legislature and the purpose of this chapter to promote and protect the interests of the people as consumers. The Legislature declares that government advances the interests of consumers by facilitating the proper functioning of the free enterprise market economy through (a) educating and informing the consumer to insure rational consumer choice in the marketplace; (b) protecting the consumer from the sale of goods and services through the use of deceptive methods, acts, or practices which are inimical to the general welfare of consumers; (c) fostering competition; and (d) promoting effective representation of consumers' interests in all branches and levels of government.

302. As used in this chapter, the following terms have the following meanings:

(a) "Department" means the Department of Consumer Affairs.

(b) "Director" means the Director of the Department of Consumer Affairs.

(c) "Consumer" means any individual who seeks or acquires, by purchase or lease, any goods, services, money, or credit for personal, family, or household purposes.

(d) "Person" means an individual, partnership, corporation, association, or other group, however organized.

(e) "Individual" does not include a partnership, corporation, association, or other group, however organized.

### Article 2. Director and Employees

305. The director shall administer and enforce the provisions of this chapter. Every power granted or duty imposed upon the director under this chapter may be exercised or performed in the name of the director by a deputy or assistant director, subject to such conditions and limitations as the director may prescribe.

306. The director, in accordance with the State Civil Service Act, may appoint and fix the compensation of such clerical or other personnel as may be necessary to carry out the provisions of this chapter. All such personnel shall perform their respective duties under the supervision and the direction of the director.

### Article 3. Powers and Duties

310. The director shall have the following powers and it shall be his duty to:

(a) Recommend and propose the enactment of such legislation as necessary to protect and promote the interests of consumers.

(b) Represent the consumer's interests before federal and state legislative hearings and executive commissions.

(c) Assist, advise, and cooperate with federal, state, and local agencies and officials to protect and promote the interests of consumers.

(d) Study, investigate, research, and analyze matters affecting the interests of consumers.

(e) Hold public hearings, subpoena witnesses, take testimony, compel the production of books, papers, documents, and other evidence, and call upon other state agencies for information.

(f) Propose and assist in the creation and development of consumer education programs.

(g) Promote ethical standards of conduct for business and consumers and undertake activities to encourage public responsibility in the production, promotion, sale and lease of consumer goods and services.

(h) Advise the Governor and Legislature on all matters affecting the interests of consumers.

(i) Exercise and perform such other functions, powers and duties as may be deemed appropriate to protect and promote the interests of consumers as directed by the Governor or the Legislature.

311. The director may create an interdepartmental committee to assist and advise him in the implementation of his duties. The members of such committee shall consist of the heads of state departments, or their designees. Members of such committee shall serve without compensation but shall be reimbursed for the expenses actually and necessarily incurred by them in the performance of their duties.

312. The director shall submit to the Governor and the Legislature during the month of December prior to each regular session of the Legislature a full and accurate report of the activities of the department relating to consumer affairs. Such report shall include recommendations, when appropriate, for legislation which will protect and promote the interests of consumers. A copy shall be filed with the Secretary of State.

### Article 3.5. Consumer Advisory Council

315. There is in the department a Consumer Advisory Council.

316. (a) The Consumer Advisory Council consists of five members appointed by the Governor, two of whom shall represent business, one of whom shall represent labor, and two of whom shall represent voluntary consumer agencies.

(b) One Member of the Senate, appointed by the Senate Committee on Rules, and one Member of the Assembly, appointed by the Assembly Rules Committee shall meet with, and participate in, the work of the council to the extent that such participation is not incompatible with their positions as Members of the Legislature. The Members of the Legislature



appointed to the council shall serve at the pleasure of the appointing power. For the purposes of this chapter such Members of the Legislature shall constitute a joint legislative committee on the subject of this chapter and shall have the powers and duties imposed upon such committee by the Joint Rules of the Senate and Assembly.

317. (a) The Governor shall, on or before July 15, 1971, make the required appointments to the council. The terms of the members first appointed shall expire as follows, to be determined by lot: two members, July 15, 1972; two members, July 15, 1973, and one member, July 15, 1974. Thereafter, each appointment shall be for a four-year term.

(b) No member shall serve more than two consecutive terms.

(c) The members of the council shall serve without compensation but shall be reimbursed for the expenses actually and necessarily incurred by them in the performance of their duties. All meetings of the council shall be open and public, and all persons shall be permitted to attend any meeting of the council.

318. The Consumer Advisory Council shall recommend to the director the enactment of such legislation as it deems necessary to protect and promote the interests of the people as consumers, and shall make such studies as it deems necessary, or as directed by the Governor or the director and may render reports thereon from time to time to the people of the state.

319. In carrying out the provisions of this chapter, the Consumer Advisory Council, with the approval of the director shall hold public hearings and call upon other state agencies for information.

#### Article 4. Representation of Consumers

320. Whenever there is pending before any state commission, regulatory agency, department, or other state agency, or any state or federal court, any matter or proceeding which does not involve the adjudication of an alleged violation by any person named as a defendant or respondent or the suspension or revocation of a license issued by any agency of the state and the director finds that the determination of such matter or proceeding may affect substantially the interests of consumers within California, the director, or the Attorney General at the request of the director, may intervene in such matter or proceeding in any appropriate manner to represent the interests of consumers. The director, or any officer or employee designated by the director for that purpose, or the Attorney General, may thereafter present to such agency, court, or department, in conformity with the rules of practice and procedure thereof, such evidence and argument as he shall determine to be necessary for the effective protection of the interests of consumers.

#### Article 5. Consumer Complaints

325. It shall be the duty of the director to receive complaints from consumers concerning (a) unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in the conduct of any trade or commerce; (b) the production, distribution, sale, and lease of any goods and services undertaken by any person which may endanger the public health, safety, or welfare; (c) violations of provisions of this code relating to businesses and professions licensed by any agency of the department, and regulations promulgated pursuant thereto; and (d) other matters consistent with the purposes of this chapter, whenever appropriate.

326. (a) Upon receipt of any complaint pursuant to Section 325, the director may notify the person against whom the complaint is made of the nature of the complaint and may request appropriate relief for the consumer.

(b) The director shall also transmit any valid complaint to the state or federal agency whose authority provides the most effective means to secure such relief.

The director shall, if appropriate, advise the consumer of the action taken on the complaint and of any other means which may be available to the consumer to secure relief.

(c) If the director receives a complaint or receives information from any source indicating a probable violation of any law or rule or order of any regulatory agency of the state, or if a pattern of complaints from consumers develops, the director shall transmit any complaint he considers to be valid to any appropriate law enforcement or regulatory agency any evidence or information he may have concerning such probable violation or pattern of complaints or request the Attorney General to undertake appropriate legal action. It shall be the continuing duty of the director to discern patterns of complaints and to ascertain the nature and extent of action taken with respect to such probable violations or pattern of complaints.

327. The director shall submit to the Governor and the Legislature as part of his annual report information concerning his activities pursuant to Section 326, including the number and general patterns of consumer complaints, the action taken on such complaints, the results of such action, if available, and recommendations which will further the state's capability to resolve consumer complaints.

#### Article 6. Information

335. The director shall disseminate to the public in such form and manner as he deems most appropriate information, statistics, and other data concerning the following:

(a) Functions, duties, powers, and activities of the department and of those agencies whose authority provides relief from commercial and trade practices which are inimical to the interests of the consumer.

(b) Commercial and trade practices which are detrimental to consumers.

(c) Goods and services which are unsafe, unhealthful or inimical to the general welfare of consumers.

(d) General economic conditions.

(e) Test results, analyses, and studies of consumer products and services in the possession of state and federal agencies.

(f) Consumer education which the director may develop on his own initiative or obtain from other sources.

(g) Legislation of interest to consumers.

336. The director shall include as part of his annual report information regarding his activities pursuant to this article and his success in obtaining and disseminating information with respect to information available from other departments of the state.

SEC. 7. Article 5 (commencing with Section 12050) of Chapter 1 of Part 2 of Division 3 of Title 2 of the Government Code is repealed.

SEC. 8. The Department of Consumer Affairs succeeds to the duties, powers, purposes, responsibilities, and jurisdiction vested in the Office of Consumer Counsel by Article 5 (commencing with Section 12050) of Chapter 1 of Part 2 of Division 3 of Title 2 of the Government Code.

SEC. 9. The Department of Consumer Affairs may use the unexpended balances of funds available for use by the Office of Consumer Counsel in the Agriculture and Services Agency in connection with the performance of the functions of the Office of Consumer Counsel in the Agriculture and Services Agency that are vested in the Department of Consumer Affairs by this act. Such funds shall be used by the Department of Consumer Affairs only for the purposes for which they were originally appropriated or otherwise made available to the Office of Consumer Counsel in the Agriculture and Services Agency.

SEC. 10. The Department of Consumer Affairs shall have the possession and control of all records, papers, offices, equipment, supplies, moneys, funds, appropriations, land and other property, real or personal, held for the benefit or use of the Office of Consumer Counsel in the Agriculture and Services Agency in the performance of the duties, powers, purposes, responsibilities, and jurisdiction of the Office of Consumer Counsel that are vested in the Department of Consumer Affairs by this act.