

LAW REVIEW

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NEW LAWS FOR 2009

Once again the California Legislature was busy passing new laws; however 2008 was not a banner year due in large part to Governor Arnie's high number of vetoed bills. The Governor vetoed 415 of the 1,187 bills—the most in 40 years.

I like this Governor—in general and specifically regarding his vetoes which were mostly well aimed.

LOL on Texting

What surely must be the most publicized new law in California is SB 28 which bans the use of texting while driving a motor vehicle with a fine of \$76 for a first offense and \$175 for each subsequent offense including state and local fees which vary by County. Teens were banned from texting last year.

The ban does not prohibit scrolling on a hands-free phone to find a number nor does it address activities such as web surfing or game playing but instead specifically outlaws “text-based communications.” My guess is the new law will work every bit as well as last year's law supposedly banning the use of non hands-free cell phones. (Just ask my legal assistant who learned her lesson the hard way.)

Nutrition Laws

A new law, effective January 1, 2011, requires restaurant chains with 20 or more locations statewide to post calorie information on menus and indoor menu boards. Beginning January 1, 2009, brochures containing calorie content information or other nutritional information such as grams of saturated fat, grams of carbohydrates and milligrams of sodium, will be available at the restaurants for consumers who would like to make educated meal choices.

SB 441 requires vendors who operate or maintain vending machines on state property to make sure at least 35 percent of the food and at least one-third of the beverages offered in vending machines meet adopted nutritional guidelines by January 1, 2011. I wonder what the shelf life of a carrot is in a vending machine?

According to the California Department of Public Health, one in three children and one in four teens are overweight and at-risk. Obesity is the second leading cause of preventable death among Californians.

Abandoned Animals

Civil code section 1815 addresses animals abandoned on the premises after termination of a lease or foreclosure of a property. Landlords now must immediately notify animal control officers for the purpose of retrieving the animal.

Domestic Violence Lease Termination

New Civil code section 1846.7 authorizes a tenant to notify the landlord that he or she was a victim of domestic violence, sexual assault or stalking and intends to terminate the lease. The notice must attach a copy of a restraining or

protective order or a specified report by a police officer. The 30-day termination notice must be given within 60 days of the date the order was issued or the report was made.

Mobile Homes

A new Health and Safety code requires gas-burning water heaters installed in new manufactured homes, or installed as replacements in existing mobile homes and manufactured homes that are sold or leased, to be seismically braced, anchored or strapped.

Additionally, all manufactured homes and mobile homes that are sold are required to have a smoke alarm installed in each room designed for sleeping.

Short Sale

This change in the Business and Professions code seems unnecessary but certainly reflects the times. The Department of Real Estate may revoke a real estate agent's license if he or she is guilty of generating an inaccurate opinion of the value of a residence, requested in connection with a short sale in order to manipulate the lender to reject the proposed short sale or to acquire a financial advantage. There must have been a homeowner (who lost his or her house to an unscrupulous real estate agent) that has a connection to a Legislator who drafted this way-too-pointed law.

Animal Research

It is now a crime to publish names, home addresses and other information about animal researchers.

Now not only student journalists but advisors to student journalists are given stronger protection against retaliation, such as demotion and firing, from school administrators who are unhappy about what students have published.

Recycle Theft

Scavengers who recycle more than \$100 worth of materials like glass and aluminum must show identification and be paid by check versus cash. The theory being that people who pilfer from recycling bins, apparently common in San Francisco, will be able to be tracked by the police with the personal information and checks.

Mortgage Foreclosure Consultant

An addition to the Civil code requires, effective July 1, 2009, that a foreclosure consultant register with the Department of Justice and obtain a \$100,000 bond, and further prevents foreclosure consultants from obtaining a power of attorney from an owner for any purpose. There are a lot of phony experts out there. These firms are not allowed to collect fees in advance if your lender has issued a Notice of Default against you (after you have missed three or more monthly payments). If you are not in default, these firms may charge you in advance, but it is not a good idea to prepay a mortgage foreclosure consultant. There are many non-profit loan counselors that provide the same service for free. Call or e-mail for contact information.

Foreclosures

For home loans occupied by the owner made between January 1, 2003 and December 31, 2007, the lender may not file a Notice of Default until 30 days after contact is made with the borrower to “assess the borrower’s financial situation and explore options for the borrower to avoid foreclosure.” The lender must advise the borrower of the right to request a subsequent meeting within 14 days, and provide the borrower the toll-free phone number of HUD.

The law also provides that a residential tenant of a property sold in foreclosure now has 60 days to remove himself or herself from the property.

Jim Porter is an attorney with Porter Simon, with offices in Truckee, South Lake Tahoe, Incline Village and Reno and a licensed California Real Estate Broker. He was the Governor's appointee to the Bipartisan McPherson Commission on political ethics and the California Fair Political Practices Commission. He may be reached at porter@portersimon.com or at the firm's web site www.portersimon.com

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