

# The California Merchant



March, 2008

Vol. 20, No 3

## Great rates for 2008!

As you probably know, your association, California Merchants Safety Association (C.M.S.A.), is no longer working with the State Compensation Insurance Fund. We have partnered with Heffernan Insurance Brokers to bring our members a new workers' compensation insurance program with **AMAZING** rates.

Check out the 2008 base rates comparison below and make sure to get a quote for your company A.S.A.P!!!

Workers' Comp Class Code	New Heffernan 2008 base rate*	Compare	SCIF 2008 base rate	Class Code Description
8017	\$4.52	<u>vs.</u>	\$6.52	Stores- Retail- N.O.C.
8018	\$7.61	<u>vs.</u>	\$10.98	Stores- Wholesale- N.O.C.
8387	\$5.44	<u>vs.</u>	\$7.86	Auto Service Stations
8389	\$5.92	<u>vs.</u>	\$8.54	Auto Repair Shops
8392	\$9.21	<u>vs.</u>	\$13.30	Auto or Truck Storage Garages
8061	\$5.69	<u>vs.</u>	\$8.21	Store, Groceries
8391	\$4.24	<u>vs.</u>	\$6.12	Auto Truck Dealers- employees
8324	\$6.08	<u>vs.</u>	\$8.77	Auto Gas Stations
9516	\$5.25	<u>vs.</u>	\$7.58	Television, Video, Audio Equip. - service/repair
9519	\$8.03	<u>vs.</u>	\$11.59	Household Appliance- service/repair
7198	\$11.28	<u>vs.</u>	\$16.28	Parcel Delivery Companies
7232	\$10.86	<u>vs.</u>	\$15.67	Mail Delivery Service Companies

\* All 2008 rates are the filed base rates and do not include any individually earned merits or credits. Actual rates may be lower.

**Our new workers' compensation program through Heffernan Insurance Brokers offers a substantial savings over the State Fund rates. To participate in this new program, be sure to get your quote today!!!**

Call **Heffernan Insurance Brokers** at: **(866) 500-6359** and let them know you are a member of Western Regional Master Builders Association. If you currently use a broker for your insurance needs, you may have your broker call **Tangram Insurance** to get the same program and rates, at **(800) 676-2213 ext. 662** and speak to **Riley Binford**.

**Don't miss out on these savings! Call today for a quote!!!**



HEFFERNAN INSURANCE BROKERS

A Member of the Heffernan Group

**(866) 500-6359**

# Tax season: Changes for 2007 year

It's that taxing time of year again. While Congress was busy making last-minute fixes on the tax law, the IRS was scrambling to reprogram its processing system. Since many people use tax preparation software, the companies also had to update their forms. If you use software, it's even more important this year to check the Web site for updates.

With the mortgage crisis peaking at the end of last year, there have been a few changes in the 2007 tax law. Homeowners facing foreclosure have one bright spot in that they don't have to pay taxes on mortgage debt that was forgiven in 2007. The limit is \$2 million or \$1 million for a married person filing separately. Previously, loan forgiveness was often taxed as income.

If you were fortunate enough to have left over cash and felt charitable, hopefully you wrote a check. If you gave cash and didn't get a detailed written receipt, you cannot make a deduction. The IRS now requires donations to be backed up by proper records, such as check, bank copy of the check, electronic funds transfer record, credit card or credit union statement, or W2 in the case of payroll deduc-

tion.

Previously, for amounts under \$250, a taxpayers notes or check register were enough proof. You don't have to provide the check or other documentation to the IRS with your return, but if you are audited you will be required to provide the check or other documentation.

If you get stuck, there are numerous places to get help. Here are a few:

- \* If your income was \$54,000 or less, you can use Free File to prepare you taxes online for free through the IRS' partners in the Free File Alliance. Go to the IRS Web site and follow the links to Free File.

- \* Tax Counseling for the Elderly helps people 60 and older. There are 9,000 sites nation wide. To find one near you, call AARP at (888) 227-7669 or check their Web site at [www.aarp.org/money/taxaid](http://www.aarp.org/money/taxaid).

- \* Military personnel and spouses get help both here and abroad through a program coordinated by the Armed Forces Tax Council. The IRS provides tax software and training.

Please see 2007, page 7

## Consumers sound off with complaints about mistakes in prepared tax returns

According to a Better Business Bureau (BBB) analysis, nearly one-third (32.5 percent) of complaints against tax preparation companies allege that the preparer made an error or mistake in the tax return, often requiring the consumer to pay fines or added fees to rectify the problem.

"Few things are as certain as death and taxes, but it's also true that few things are as scary – that's why more than half of the 120 million American taxpayers enlist the help of a tax preparer ever year," said Steve Cox, BBB Spokesperson. "However, many consumers end up being held responsible when their tax preparer makes mistakes or errors on their return, and this can mean fees and fines adding up to thousands of dollars that they owe to Uncle Sam."

While mistakes and errors made up the most common complaint category against tax preparers, 19.5 percent of complaints allege the tax preparer was simply unresponsive. Typically, the tax preparer did not return repeated calls or



attempts by the complainant to get assistance, answers to questions, or copies of their tax information. Many complainants noted that they were frantic as they faced filing deadlines or audits and were not receiving any help from their tax preparer.

Disputes over billing accounted for 19 percent of complaints to BBB. Typically consumers were shocked when they received a high bill for having their taxes prepared or felt that they did not receive the level of service they paid for.

Almost 7 percent of complainants say the tax preparation company was

rude, and 6 percent of complainants say they didn't receive their refund. Unfortunately, and perhaps most shocking, 6.3 percent of complainants allege that the tax preparer never filed their tax return at all.

"Consumers looking for trustworthy help filing their taxes should not wait until the last minute – they need to take their time, shop around and find a preparer who is both qualified and has a strong track record of providing customer service," added Cox. "Some consumers who rushed through the process in 2007 are still dealing with the mess their tax preparer made as they head into the 2008 tax season."

From 2005-2007, the Internal Revenue Service opened nearly 700 tax return preparer investigations. And, in April 2006, the Government Accountability Office issued findings from a limited study of commercial tax preparation chains in major metropolitan areas, noting that all the returns completed in those offices were wrong in one way or another. The report cited

Please see RETURNS, page 6



## LAW TALK

By Bruce Rudman  
Law Offices of Abdulaziz, Grossbart & Rudman



### When it's risky to file libel charges

It seems that virtually every day, a case from the Court of Appeal concerns the subject of an "Anti-SLAPP Motion." The subject is not familiar to many people, including lawyers, though it is likely that the use of the law has allowed many people to hide behind some false or damaging statements made about others. A bit of history is in order.

In some cases, a competitor may state something that hurts one's reputation in the business community; a journalist may describe someone's actions; a complete stranger may call someone a thief or a crook, or may make any statement that is believed to be damaging to one's reputation. The first instinct would be to file a suit for libel (for printed statements), or slander (for oral statements). While your gut instinct may be to file such an action, in most cases that action will be stricken by an Anti-SLAPP Motion and you will have to pay attorney's fees and costs of the other party. This is in part due to the First Amendment right to free speech, and in part due to California's enactment of what is known as the "Anti-SLAPP" statute.

A "SLAPP" suit is defined as a "Strategic Lawsuit Against Public Participant." In simple terms, it is a lawsuit filed to keep someone from saying something about someone or its business. Anti-SLAPP is essentially a motion targeted at a SLAPP suit, intended to protect free speech. Unfortunately, the effect of the law is that it also protects harmful speech as well, by making it very expensive to sue someone who has made statements or done an act that someone contends was damaging to their reputation.

SLAPP suits were common in the seventies and eighties, particularly

where a business entity or persons did not like what someone said about them – even where the statements were protected by the Constitution – they would file an action for libel or slander in the courts. Some commentators blamed the Church of Scientology who was alleged to file suit any time that someone said something they did not like.

As a result of such suits, which are intended to "chill" (stop) protected speech, the Legislature enacted the Anti-SLAPP statute, which allows a defendant (person being sued) in any lawsuit where speech or conduct is the basis of the allegations to seek to have that lawsuit thrown out of court. These motions have become very popular, and the various appellate courts have applied them to a number of different areas far beyond their original stated intentions. In fact, these motions make bringing legitimate defamation cases very difficult.

While the Anti-SLAPP Motion has been used primarily for libel or slander cases where it is obvious that the conduct may fall under the First Amendment, they also have been filed in a number of other cases, including malicious prosecution actions and wrongful termination actions, among others.

In one civil case where we represented a harmed contractor in such a case, the defendant hired a "specialist" to file an Anti-SLAPP Motion. In its pleading to the Superior Court of San Diego, the defendant likened their motion to a "nuclear weapon" which required the Plaintiff (person filing the suit) to "climb Mt. Everest" to prove its case. That statement is not that far off.

Every Anti-SLAPP Motion starts a

two-step inquiry: First, whether the speech falls within the specific types of speech or conduct intended to be protected by the Statute, and if so, whether the Plaintiff has made a substantial showing that it can prevail on the merits if the case goes to trial.

The defendant in this type of action need only file a motion with the court, alleging that the statement or conduct that gives rise to the basis of the Complaint filed with the court falls within the types of speech governed by the Statute. The heavy burden then shifts to the Plaintiff to prove they can prove their case, including defeating all defenses raised by the Defendants.

As to the first prong of the test, the question is whether the act, speech or conduct arises from the constitutionally protected right of petition or free speech in one of four contexts:

It arises from statements made in any "official" proceedings, as well as those before the legislative, judicial or executive branches of government (i.e., statements made to a court, to the legislature, or statements to a governor, mayor, or agency head);

It arises from statements made that relate to any issue under consideration in any "official" proceedings, as well as those before the legislative, judicial or executive branches of government (i.e., statements about a court proceeding, a pending act of the legislature, or statements about the actions of a governor, mayor, or agency head);

It concerns a statement made in open public or in a public forum, in connection with a matter of public interest (i.e., politics, abortion, drug use, education, etc.); or

It concerns other conduct in further-

Please see SLANDER, page 7



# SAFETY MATTERS



## Lifting, carrying and transporting heavy loads

For almost every worker, ergonomic hazards are present. Injuries caused by repetitive motions, poor lifting and handling practices are some of the most common.

The following safety tips provide helpful ergonomic guidelines for the variety of different 'lifting' situations workers may encounter.

### Pre-Lift

- \* Consider the weight of the load being lifted. Will you need help or mechanical assistance? Is the load too heavy for one person?

- \* Consider the size and/or shape of the load. Do they create any additional challenges?

- \* Determine if you will have to turn or change direction while carrying the load.

- \* Find out if the route you will take with the load is clear of obstructions, slip, trip or fall hazards.

- \* Make sure you have a back support belt and are wearing it properly.

### Safe Lifting

When lifting a load from ground level:

- \* Get as close as possible to the load.
- \* Bend your knees, not your back.
- \* Get a good grip on the object and test its weight.

- \* Keep the load close to your body and lift using your legs.

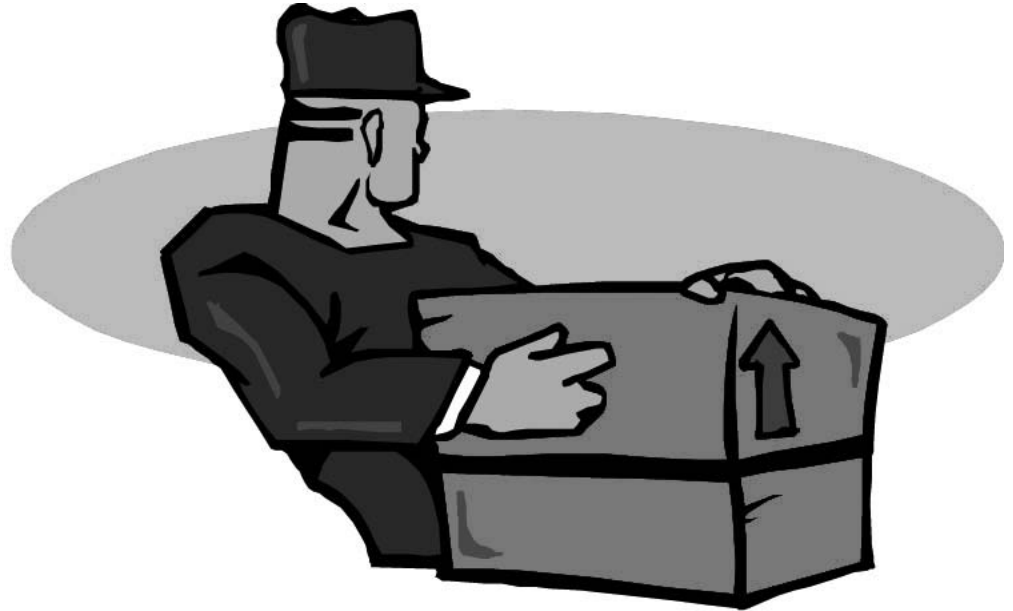
- \* Be aware of your balance and what part of your body is doing the work - it should be your legs.

When lifting a load from overhead:

- \* Make certain you are standing on a stable surface before you attempt the lift.

- \* Test the load to be sure you can lift it safely.

- \* Take the object off the shelf or support carefully, maintaining your bal-



ance.

- \* Maintain control of the load, and bring it down to waist level.

When lifting from a shelf, desk or counter:

- \* Pull the load close to your body and test its weight.

- \* Shift the weight of the load to your legs by keeping it close.

- \* Avoid reaching and lifting at the same time.

### Carrying

- \* Look ahead to make certain your path is clear.

- \* Avoid stairs if possible. If you take stairs, use the banister or wall to help you maintain your balance.

- \* Have someone else open doors, gates or other closed entries for you.

- \* Change direction by moving your feet, not your hips.

- \* Keep shoulders, hips and feet pointing the same direction.

- \* Never twist at the waist while carrying a load.

- \* Set the load down if it becomes too

heavy or unstable.

### Moving Carts, Hanging Loads

- \* Remember to push, not pull whenever possible.

- \* Position the load so that your legs supply the force.

- \* Use hands and arms for control and direction of the load.

- \* Keep hands and fingers inside the load whenever possible.

- \* Watch for pinch or shear points on carts, dollies or hoists.

### Setting Loads Down

- \* Bend your knees, not your waist.

- \* Set down the corner or edge of the object closest to you first, keeping your fingers out from under the load.

Safe lifting, carrying and transporting techniques can help you avoid sprains, strains and other painful injuries at work. Whatever the task, make sure to ask for help when a load is too heavy for you to handle on your own!

# Setting up a tailgate/toolbox safety meeting

**T**ailgate or Toolbox safety meetings are 10-15 minute on-the-job meetings held to keep employees alert to work-related accidents and illnesses.

Tailgate/toolbox safety meetings have proved their worth by alerting employees to workplace hazards, and by preventing accidents, illnesses and on-the-job injuries.

## Why Have Them?

All California employers must have a safety program that includes employee training in safe work practices. Tailgate/toolbox safety meetings can be used to address actual problems on the job or in the shop. The supervisor leading the meeting can draw on the experience of workers, and use that experience to remind all employees – especially newer ones – of the dangers of working with particular kinds of machinery, tools, equipment and materials.

## What to Talk About?

Talk about work prac-



tices, machinery, tools, equipment materials, attitudes, and anything else that may cause or contribute to a work-related accident or illness. Keep the topic relevant to the job or tasks at hand.

An excellent source for construction related topics is the publication Cal/OSHA Pocket Guide for the Construction Industry. Supervisors can choose individual sections or topics and relate them to their specific site requirements. Copies can be ordered from the Division

of Occupational Safety and Health.

Choose a topic you think needs safety review. If you notice that spills aren't being cleaned up promptly, discuss it. If there has been an accident or a near-accident on the job, talk about it. What happened? Where did it happen? How can it be prevented from happening again?

Encourage employees to suggest topics. They often know what and where the dangers are.

## How to Run a Good Meeting

1. Hold the meeting on the job, preferably where everyone can sit and relax.

2. Hold meetings at the beginning of shift or after a break.

3. Choose the topic carefully. Topics should be about health and safety problems on the job. Research the problem before the meeting. For machinery, consult the

manufacturer's operations manual. For handling toxic substances, get a copy of the material safety data sheet. Your company's insurance carrier is another good source of information. Cal/OSHA also supplies a wide range of printed material on worksite safety and health.

4. Don't choose too broad a topic.

5. Encourage employee participation - keep your meeting short.

## Resources:

Cal/OSHA Pocket Guide for the Construction Industry. Copies can be ordered from the Cal/OSHA publications website at: <http://www.dir.ca.gov/dosh/puborder.asp>, or obtained from a Cal/OSHA District Office.

Cal/OSHA Construction Safety Orders can be reviewed at: <http://www.dir.ca.gov/Title8/sub4.html>

*Note: The information provided is not meant to be either a substitute for or legal interpretation of the occupational safety and health regulations. Readers are cautioned to refer directly to Title 8 of the California Code of Regulations for detailed information regarding the regulation's scope, specifications, and exceptions and for other requirements that may be applicable to their operations.*



## OSHA CORNER

Cal/OSHA Safety Publications

Please visit the following address on the web to download helpful safety posters, guides and pamphlets for a safer workplace.

<http://www.dir.ca.gov/dosh/PubOrder.asp>

# Returns: Don't fall for the promise of a big refund

Continued from page 2

mistakes such as not reporting business income, failing to take the most advantageous education tax benefit, failing to itemize deductions and, in some cases, even failing to claim available deductions.

BBB wants consumers to know and understand that when the IRS detects a false return, the taxpayer – not the tax preparer – must pay any additional taxes, as well as any other associated interest, fees and penalties. In the end, the taxpayer is responsible for all information submitted to the IRS.

Many tax preparers provide quality services to their clients, but BBB encourages consumers to use the same caution in selecting tax preparation help that they would use in selecting other professional services, such as those provided by doctors or lawyers. And BBB complaint data bears out the need for consumers to be careful and choosy. BBB offers the following advice when searching for help with taxes:

Ask around. Get referrals from friends and family on who they use, and check the BBB Reliability Report on tax preparation services free-of-charge at [www.bbb.org](http://www.bbb.org).

Look for credentials. Ideally, tax preparers should either be a certified public accountant, a tax attorney, or an enrolled agent. All three can represent taxpayers before the IRS in all mat-

ters, including an audit. Also, find out if the preparer is affiliated with a professional organization that holds its members to a code of ethics.

Don't fall for the promise of a big refund. Be wary of any tax preparation service that promises larger refunds than the competition, and avoid any tax preparers who base their fee on a percent-

age of the amount of the refund.


Think about accessibility. Many tax preparation services only set up shop for the months leading up to April 15. In case the IRS finds errors, or in case of an audit, consumers need to be able to contact their tax preparer throughout the year.

Read the contract and know what you're paying


for. Consumers must read tax preparation service contracts closely to ensure they understand issues such as, how much it is going to cost for the service, how the cost will be affected if preparation is more complicated and time consuming than expected, and whether the tax preparer will represent the consumer in case of an audit.

**FREE Theme Park Discount Coupons!!!**  
**Available to all W.R.M.B.A. members and their employees**


Call the Association office to request these and other coupons!




Knott's Berry Farm




Legoland




Long Beach Aquarium




Universal Studios-Florida




L.A. Zoo



San Diego Zoo and Wild Animal Park



San Diego Zoo's Wild Animal Park



Sea World... ..AND MORE!!!

**To receive these discounted admission coupons...  
 call the Association office at  
 (800) 823-4038**

# Slander

Continued from page 3

ance of the right of petition or speech, in connection with a matter of public interest or a public issue.

It seems that virtually all speech can be argued to fall under one of these categories, particularly category number three. Thankfully, in recent months some courts have begun to find situations that do not involve “public issues.” However, those situations are rare. Virtually every statement concerning a product that is sold or produced for the public can be argued to implicate a public issue, or be of public interest. Some courts have held that large numbers of people must be concerned, or a significant percentage of a close group, to be a sufficient interest.

Thus, while there are exceptions where speech or conduct will not be found to fall within these areas, those are truly the exception and not the norm. In the typical case, the court will find that the speech will fall within one of those four areas. Once that happens, the burden shifts to the plaintiff to prove that it will prevail on the merits of its case to a substantial degree. This means that right out of the gate, as soon as the Plaintiff has filed its lawsuit, it will be forced to prove that there are no valid constitutional or legal defenses to the speech that was made, and that factually, they will prevail at trial. This is a very hard burden to prove, and one that must be met or the Complaint will be stricken.

The most difficult part of the statute is that if the Complaint is stricken following an Anti-SLAPP Motion, the defendant that brought the motion will be entitled to all of its attorney’s fees in defending the action in bringing the motion. This can be a very expensive to defend. In some cases, the costs to bring and defend the motion can be substantial – published cases detail claims for costs to bring and defend such preliminary motions of as much as \$80,000. That amount may become the obligation of the losing Plaintiff. However, unfortunately if the Plaintiff prevails, the Plaintiff is not entitled to recover its attorney’s fees in defending the motion, except under very rare and seldom existent circumstances.

The moral of the story is that because it is common that the Plaintiff may not be able to meet its burden of proof, causing the plaintiff to have its case thrown out of court, parties should think very carefully before filing a lawsuit that arises from speech or conduct. Otherwise, they may be damaged and offended twice by the defendant – first from the defamatory speech, and second by having

Please see RUDMAN, page 8

## Web Corner

*The Internet is a growing resource for merchant industries. Web Corner is a place for you to share websites that have helped you in your business life. Please send recommendations to greleht@aol.com for inclusion in the column.*



### Research before you buy

With the economy in a downturn, people are more careful with purchases. These websites allow consumers to compare, review and research before they plunk down their money.

[www.consumerreports.org](http://www.consumerreports.org)  
[www.bizrate.com](http://www.bizrate.com)  
[www.pricegrabber.com](http://www.pricegrabber.com)  
[www.mysimon.com](http://www.mysimon.com)  
[www.dealtime.com](http://www.dealtime.com)

## 2007

Continued from page 2

See IRS Publication 3, “Armed Forces’ Tax Guide” on the IRS Web site, [www.irs.gov](http://www.irs.gov), or call (800) 829-3676.

The IRS doesn’t just take your money. They also provide assistance at their Web site. You can order publications on any tax topic, forms and instructions. They also have an interactive tool you can use for making certain calculations.

If you want phone assistance, the IRS has several toll-free numbers. Individuals can call (800) 829-1040; for businesses (800) 829-4933. The hearing impaired should call (800) 829-4059.

The Taxpayer Advocate is an independent office within the IRS. It doesn’t help you file your return, but it will help with unresolved tax issues or problems with the IRS. The toll free number is (877)-777-4778.

If you hire someone to calculate your tax, be sure to get the right preparer. It’s advisable to hire an enrolled agent. These are tax professionals who are licensed by the federal government and can prepare tax returns, as well as answer questions about federal and state tax laws. They can also represent you in disputes with the IRS. A list of enrolled agents is available on the Web site of the National Association of Tax Professionals, [aft www.taxprofessionals.com](http://www.taxprofessionals.com).

CALIFORNIA MERCHANT  
4153 Northgate Blvd., #6  
Sacramento CA 95834

Periodicals  
Postage PAID at  
Sacramento, CA

8 The California Merchant March, 2008

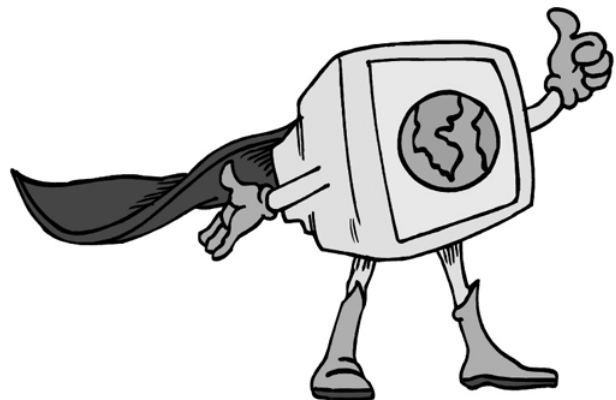
## Rudman

Continued from page 7

to pay the alleged wrongdoer its attorney's fees.

*Abdulaziz, Grossbart & Rudman provides this information as a service to its friends & clients. The presentation and/or documents are of a general nature and are intended to highlight areas of the subject matter and should not be used as a substitute for specific legal advice. You should seek the aid and advice of a competent attorney and/or accountant instead of relying on the presentation and/or documents. Bruce D. Rudman can be reached at Abdulaziz, Grossbart & Rudman, P.O. Box 15458, North Hollywood, CA 91615-5458; (818) 760-2000; Facsimile (818) 760-3908; or by E-Mail at [bdr@agrlaw.net](mailto:bdr@agrlaw.net). On the Internet, visit our Website at [www.agrlaw.net](http://www.agrlaw.net)*

**Your association has a new website!  
Reach us at**



**[www.califmerchants.com](http://www.califmerchants.com)**

\*CALIFORNIA MERCHANT\* (USPS 002498) is published monthly except bi-monthly in July/August and November/December by SMC Publishers, 4153 Northgate Blvd., #6, Sacramento CA 95834. Annual subscription is \$12, available with membership in the California Merchant Safety Association. For membership information, call 1-800-823-4038. Periodicals Postage Paid at Sacramento, CA.

POSTMASTER: Send address changes to \*The California Merchant\* at 4153 Northgate Blvd., #6, Sacramento CA 95834.