

AMENDED IN SENATE MAY 31, 2011
AMENDED IN SENATE MAY 4, 2011
AMENDED IN SENATE APRIL 14, 2011

SENATE BILL

No. 823

Introduced by Senator Corbett

February 18, 2011

An act to amend Section 1770 of the Civil Code, and to add Section 13985 to the Government Code, relating to California products, ~~and making an appropriation therefor.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 823, as amended, Corbett. Consumer protections: Made in California Program.

Existing law makes unlawful certain acts identified as unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods to any consumer.

This bill would include in that list of acts representing a product as made in California, by using a specified Made in California label, unless the product complies with standards adopted by the Governor's Office of Economic Development, to the extent those standards are adopted. The bill would establish the Made in California Program within the office, as provided, and would create the ~~continuously appropriated~~ Made in California Fund as a special fund in the State Treasury, *which upon an appropriation of those funds by the Legislature, would be available* for that purpose. The bill would require the office to report to the Legislature on January 1, 2013, and annually thereafter, regarding expenditures and progress of the program.

Vote: majority. Appropriation: ~~yes~~-no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1770 of the Civil Code is amended to
- 2 read:
- 3 1770. (a) The following unfair methods of competition and
- 4 unfair or deceptive acts or practices undertaken by any person in
- 5 a transaction intended to result or which results in the sale or lease
- 6 of goods or services to any consumer are unlawful:
- 7 (1) Passing off goods or services as those of another.
- 8 (2) Misrepresenting the source, sponsorship, approval, or
- 9 certification of goods or services.
- 10 (3) Misrepresenting the affiliation, connection, or association
- 11 with, or certification by, another.
- 12 (4) Using deceptive representations or designations of
- 13 geographic origin in connection with goods or services.
- 14 (5) Representing that goods or services have sponsorship,
- 15 approval, characteristics, ingredients, uses, benefits, or quantities
- 16 which they do not have or that a person has a sponsorship,
- 17 approval, status, affiliation, or connection which he or she does
- 18 not have.
- 19 (6) Representing that goods are original or new if they have
- 20 deteriorated unreasonably or are altered, reconditioned, reclaimed,
- 21 used, or secondhand.
- 22 (7) Representing that goods or services are of a particular
- 23 standard, quality, or grade, or that goods are of a particular style
- 24 or model, if they are of another.
- 25 (8) Disparaging the goods, services, or business of another by
- 26 false or misleading representation of fact.
- 27 (9) Advertising goods or services with intent not to sell them
- 28 as advertised.
- 29 (10) Advertising goods or services with intent not to supply
- 30 reasonably expectable demand, unless the advertisement discloses
- 31 a limitation of quantity.
- 32 (11) Advertising furniture without clearly indicating that it is
- 33 unassembled if that is the case.

1 (12) Advertising the price of unassembled furniture without
2 clearly indicating the assembled price of that furniture if the same
3 furniture is available assembled from the seller.

4 (13) Making false or misleading statements of fact concerning
5 reasons for, existence of, or amounts of price reductions.

6 (14) Representing that a transaction confers or involves rights,
7 remedies, or obligations which it does not have or involve, or
8 which are prohibited by law.

9 (15) Representing that a part, replacement, or repair service is
10 needed when it is not.

11 (16) Representing that the subject of a transaction has been
12 supplied in accordance with a previous representation when it has
13 not.

14 (17) Representing that the consumer will receive a rebate,
15 discount, or other economic benefit, if the earning of the benefit
16 is contingent on an event to occur subsequent to the consummation
17 of the transaction.

18 (18) Misrepresenting the authority of a salesperson,
19 representative, or agent to negotiate the final terms of a transaction
20 with a consumer.

21 (19) Inserting an unconscionable provision in the contract.

22 (20) Advertising that a product is being offered at a specific
23 price plus a specific percentage of that price unless (A) the total
24 price is set forth in the advertisement, which may include, but is
25 not limited to, shelf tags, displays, and media advertising, in a size
26 larger than any other price in that advertisement, and (B) the
27 specific price plus a specific percentage of that price represents a
28 markup from the seller's costs or from the wholesale price of the
29 product. This subdivision shall not apply to in-store advertising
30 by businesses which are open only to members or cooperative
31 organizations organized pursuant to Division 3 (commencing with
32 Section 12000) of Title 1 of the Corporations Code where more
33 than 50 percent of purchases are made at the specific price set forth
34 in the advertisement.

35 (21) Selling or leasing goods in violation of Chapter 4
36 (commencing with Section 1797.8) of Title 1.7.

37 (22) (A) Disseminating an unsolicited prerecorded message by
38 telephone without an unrecorded, natural voice first informing the
39 person answering the telephone of the name of the caller or the
40 organization being represented, and either the address or the

1 telephone number of the caller, and without obtaining the consent
2 of that person to listen to the prerecorded message.

3 (B) This subdivision does not apply to a message disseminated
4 to a business associate, customer, or other person having an
5 established relationship with the person or organization making
6 the call, to a call for the purpose of collecting an existing
7 obligation, or to any call generated at the request of the recipient.

8 (23) The home solicitation, as defined in subdivision (h) of
9 Section 1761, of a consumer who is a senior citizen where a loan
10 is made encumbering the primary residence of that consumer for
11 the purposes of paying for home improvements and where the
12 transaction is part of a pattern or practice in violation of either
13 subsection (h) or (i) of Section 1639 of Title 15 of the United States
14 Code or subsection (e) of Section 226.32 of Title 12 of the Code
15 of Federal Regulations.

16 A third party shall not be liable under this subdivision unless
17 (A) there was an agency relationship between the party who
18 engaged in home solicitation and the third party or (B) the third
19 party had actual knowledge of, or participated in, the unfair or
20 deceptive transaction. A third party who is a holder in due course
21 under a home solicitation transaction shall not be liable under this
22 subdivision.

23 (24) (A) Charging or receiving an unreasonable fee to prepare,
24 aid, or advise any prospective applicant, applicant, or recipient in
25 the procurement, maintenance, or securing of public social services.

26 (B) For purposes of this paragraph, the following definitions
27 shall apply:

28 (i) “Public social services” means those activities and functions
29 of state and local government administered or supervised by the
30 State Department of Health Care Services, the State Department
31 of Public Health, or the State Department of Social Services, and
32 involved in providing aid or services, or both, including health
33 care services and medical assistance, to those persons who, because
34 of their economic circumstances or social condition, are in need
35 of that aid or those services and may benefit from them.

36 (ii) “Unreasonable fee” means a fee that is exorbitant and
37 disproportionate to the services performed. Factors to be
38 considered, when appropriate, in determining the reasonableness
39 of a fee, are based on the circumstances existing at the time of the
40 service and shall include, but not be limited to, all of the following:

1 (I) The time and effort required.

2 (II) The novelty and difficulty of the services.

3 (III) The skill required to perform the services.

4 (IV) The nature and length of the professional relationship.

5 (V) The experience, reputation, and ability of the person
6 providing the services.

7 (C) This paragraph shall not apply to attorneys licensed to
8 practice law in California, who are subject to the California Rules
9 of Professional Conduct and to the mandatory fee arbitration
10 provisions of Article 13 (commencing with Section 6200) of
11 Chapter 4 of Division 3 of the Business and Professions Code,
12 when the fees charged or received are for providing representation
13 in administrative agency appeal proceedings or court proceedings
14 for purposes of procuring, maintaining, or securing public social
15 services on behalf of a person or group of persons.

16 (25) Representing that a product is made in California by using
17 a Made in California label created pursuant to subdivision (d) of
18 Section 13985 of the Government Code, unless the product
19 complies with standards adopted by the Governor’s Office of
20 Economic Development. This paragraph shall only be operative
21 if standards to that effect have been adopted pursuant to Section
22 13985 of the Government Code.

23 (b) (1) It is an unfair or deceptive act or practice for a mortgage
24 broker or lender, directly or indirectly, to use a home improvement
25 contractor to negotiate the terms of any loan that is secured,
26 whether in whole or in part, by the residence of the borrower and
27 which is used to finance a home improvement contract or any
28 portion thereof. For purposes of this subdivision, “mortgage broker
29 or lender” includes a finance lender licensed pursuant to the
30 California Finance Lenders Law (Division 9 (commencing with
31 Section 22000) of the Financial Code), a residential mortgage
32 lender licensed pursuant to the California Residential Mortgage
33 Lending Act (Division 20 (commencing with Section 50000) of
34 the Financial Code), or a real estate broker licensed under the Real
35 Estate Law (Division 4 (commencing with Section 10000) of the
36 Business and Professions Code).

37 (2) This section shall not be construed to either authorize or
38 prohibit a home improvement contractor from referring a consumer
39 to a mortgage broker or lender by this subdivision. However, a
40 home improvement contractor may refer a consumer to a mortgage

1 lender or broker if that referral does not violate Section 7157 of
2 the Business and Professions Code or any other provision of law.
3 A mortgage lender or broker may purchase an executed home
4 improvement contract if that purchase does not violate Section
5 7157 of the Business and Professions Code or any other provision
6 of law. Nothing in this paragraph shall have any effect on the
7 application of Chapter 1 (commencing with Section 1801) of Title
8 2 to a home improvement transaction or the financing thereof.

9 SEC. 2. Section 13985 is added to the Government Code, to
10 read:

11 13985. (a) There is within the Governor's Office of Economic
12 Development a public and private collaboration known as the Made
13 in California Program. The purposes of the program are to
14 encourage consumer product awareness and to foster purchases
15 of high-quality products manufactured in this state.

16 (b) (1) The office may develop and adopt standards that permit
17 a company to represent that a product is made in this state. Those
18 standards may include any of the following:

19 (A) The company primarily designs and manufactures a physical
20 product, rather than a digital product or service.

21 (B) The company manufactures one or more products in this
22 state.

23 (C) The company has a California-based workforce and has the
24 desire to grow that workforce over time.

25 (2) For purposes of this section, "manufacture" means the
26 process of taking raw materials or components and adding value
27 to those materials and components in order to create a final,
28 recognizable product. "Manufacture" does not include the process
29 of completing a final assembly from subassemblies made
30 elsewhere, or the act of packaging a product.

31 (c) The program and the standards shall not apply to those
32 agricultural products subject to the Buy California Program
33 described in Section 58750 of the Food and Agricultural Code.

34 (d) Pursuant to Section 58789 of the Food and Agricultural
35 Code, and in accordance with the provisions of Chapter 1
36 (commencing with Section 58601) of Part 2 of Division 21 of the
37 Food and Agricultural Code, the office may issue and make
38 effective a marketing agreement, including, but not limited to,
39 issuance of a Made in California label, and be advised by those
40 California businesses willing to participate in the program on a

1 voluntary basis via funding or in-kind contributions in a manner
2 defined under the agreement.

3 (e) (1) Notwithstanding Section 10231.5, the office shall report
4 to the Legislature on January 1, 2013, and each successive January
5 1, regarding its expenditures, progress, and ongoing priorities with
6 this program.

7 (2) The plan submitted to the Legislature pursuant to paragraph
8 (1) shall be submitted pursuant to Section 9795.

9 (f) The Made in California Fund is hereby created as a special
10 fund in the State Treasury consisting of the revenues contributed
11 pursuant to this section, and, ~~notwithstanding Section 13340, is~~
12 ~~continuously appropriated~~ *upon an appropriation of those funds*
13 *by the Legislature, shall be available* for purposes of this section.