

ASSEMBLY BILL

No. 469

Introduced by Assembly Member Wagner

February 19, 2013

An act to amend Section 17511.1 of the Business and Professions Code, relating to advertising.

LEGISLATIVE COUNSEL'S DIGEST

AB 469, as introduced, Wagner. Telephonic sellers: loan modifications.

Existing law provides for the regulation of telephonic sellers, and requires that a telephonic seller register with the Department of Justice, as specified. Existing law defines "telephonic seller" to include, among others, a person who represents or implies in a telephonic solicitation, whether or not initiated by the telephonic seller, that he or she is offering to make a loan, or to arrange or assist in arranging a loan or to assist in providing information which may lead to the obtaining of a loan, with a specified exception. Existing law makes it a misdemeanor to solicit prospects on behalf of a telephonic seller who is not registered with the department.

This bill would include in the definition of telephonic sellers a person who represents or implies in a telephonic solicitation, whether initiated by the telephonic seller or made in response to inquiries generated by advertisements on behalf of the telephonic seller, that he or she is offering to arrange or assist in arranging the modification of an existing loan, or to assist in providing information which may lead to the obtaining of a loan modification, as specified. Because this bill would expand the scope of a crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

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

1 SECTION 1. Section 17511.1 of the Business and Professions
2 Code is amended to read:

3 17511.1. As used in this article, “telephonic seller” or “seller”
4 means a person who, on his or her own behalf or through
5 salespersons or through the use of an automatic dialing-announcing
6 device, as defined in Section 2871 of the Public Utilities Code,
7 causes a telephone solicitation or attempted telephone solicitation
8 to occur which meets the criteria specified in subdivision (a), (b),
9 (c), or (d) and who is not exempted by subdivision (e), as follows:

10 (a) A telephone solicitation or attempted telephone solicitation
11 wherein the telephonic seller initiates telephonic contact with a
12 prospective purchaser and represents or implies one or more of
13 the following:

14 (1) That a prospective purchaser who buys one or more items
15 will also receive additional or other items, whether or not of the
16 same type as purchased, without further cost. For purposes of this
17 subdivision, “further cost” does not include actual postage or
18 common carrier delivery charges, if any.

19 (2) That a prospective purchaser will receive a prize or gift, if
20 the person also encourages the prospective purchaser to do either
21 of the following:

22 (A) Purchase or rent any goods or services.

23 (B) Pay any money, including, but not limited to, a delivery or
24 handling charge.

25 (3) That a prospective purchaser is able to obtain any item or
26 service at a price which the seller states or implies is below the
27 regular price of the item or service offered. This paragraph shall
28 not apply to retailers who, within the previous 12 months, have
29 sold a majority of their goods or services through in-person sales
30 at retail stores.

1 (4) That a prospective purchaser who buys office equipment or
2 supplies will, because of some unusual event or imminent price
3 increase, be able to buy these items at prices which are below those
4 that are usually charged or will be charged for the items.

5 (5) That the seller is a person other than the person he or she is.

6 (6) That the items for sale are manufactured or supplied by a
7 person other than the actual manufacturer or supplier.

8 (7) That the seller is offering to sell the prospective purchaser
9 any gold, silver, or other metals, including coins, diamonds, rubies,
10 sapphires, or other stones, coal or other minerals, or any interest
11 in oil, gas, or mineral fields, wells, or exploration sites, or any
12 other investment opportunity of any type whatsoever.

13 (8) That the seller is offering to make a loan, or to arrange or
14 assist in arranging a loan *or modification of an existing loan*, or
15 to assist in providing information which may lead to the obtaining
16 of a loan *or modification of an existing loan*, unless no payment
17 of any kind is made until the loan proceeds are disbursed to the
18 borrower.

19 (9) That a prospective purchaser will receive a credit card, as
20 defined in subdivision (a) of Section 1747.02 of the Civil Code,
21 if the purchaser pays an up front or preapplication fee for the credit
22 card to the telephonic seller.

23 (b) A solicitation or attempted solicitation which is made by
24 telephone in response to inquiries generated by unrequested
25 notifications sent by the seller to persons who have not previously
26 purchased goods or services from the seller or who have not
27 previously requested credit from the seller, to a prospective
28 purchaser wherein the seller represents or implies to the recipient
29 of the notification that any of the following applies to the recipient:

30 (1) That the recipient has in any manner been specially selected
31 to receive the notification or the offer contained in the notification.

32 (2) That the recipient will receive a prize or gift if the recipient
33 calls the seller.

34 (3) That if the recipient buys one or more items from the seller,
35 the recipient will also receive additional or other items, whether
36 or not of the same type as purchased, without further cost or at a
37 cost which the seller states or implies is less than the regular price
38 of such items.

39 However, this subdivision does not apply to the solicitation of
40 sales by a catalog seller who periodically issues and delivers

1 catalogs to potential purchasers by mail or by other means. This
2 exception only applies if the catalog includes a written description
3 or illustration and the sales price of each item of merchandise
4 offered for sale, includes at least 24 full pages of written material
5 or illustrations, is distributed in more than one state, and has an
6 annual circulation of not less than 250,000 customers.

7 (c) A solicitation or attempted solicitation which is made by
8 telephone in response to inquiries generated by advertisements on
9 behalf of the telephonic seller wherein it is represented or implied
10 that the seller is offering to sell to the prospective purchaser any
11 gold, silver, or other metals, including coins, diamonds, rubies,
12 sapphires, or other stones, coal or other minerals, or any interest
13 in oil, gas, or mineral fields, wells, or exploration sites, or any
14 other investment opportunity of any type whatsoever.

15 (d) A solicitation or attempted solicitation which is made by
16 telephone in response to inquiries generated by advertisements on
17 behalf of the telephonic seller wherein it is represented or implied
18 that the seller is offering to make a loan or to arrange or assist in
19 arranging a loan *or modification of an existing loan*, or to assist
20 in providing information which may lead to the obtaining of a loan
21 *or modification of an existing loan*, unless no payment of any kind
22 is made until the loan proceeds are disbursed to the borrower.

23 (e) For purposes of this article, “telephonic seller” or “seller”
24 does not include any of the following:

25 (1) A person offering or selling a security qualified under
26 Section 25110, 25120, or 25130 of the Corporations Code or
27 exempt from qualification under Chapter 1 (commencing with
28 Section 25100) of Part 2 of Division 1 of Title 4 of the
29 Corporations Code. The fact that a notice claiming an exemption
30 under the Corporate Securities Law of 1968 is filed with the
31 Department of Corporations does not create an exemption under
32 this paragraph.

33 (2) A person licensed pursuant to Part 1 (commencing with
34 Section 10000) of Division 4, when the solicited transaction is
35 governed by that law.

36 (3) A person licensed pursuant to Chapter 9 (commencing with
37 Section 7000) of Division 3, when the solicited transaction is
38 governed by that law.

39 (4) A person licensed or certificated pursuant to Part 2
40 (commencing with Section 680) of Division 1 of the Insurance

1 Code, including a person licensed pursuant to Chapter 5
2 (commencing with Section 1621) thereof, when the solicited
3 transaction is governed by that law.

4 (5) A person offering or selling a franchise registered pursuant
5 to Section 31110 of the Corporations Code or exempt from
6 registration under Chapter 1 (commencing with Section 31100)
7 of Part 2 of Division 5 of Title 4 of the Corporations Code. The
8 fact that a notice claiming an exemption under the Franchise
9 Investment Law is filed with the Department of Corporations does
10 not create an exemption under this paragraph.

11 (6) A person soliciting the sale of a seller assisted marketing
12 plan, as defined in Title 2.7 (commencing with Section 1812.200)
13 of Part 4 of Division 3 of the Civil Code, who has filed with the
14 Attorney General the documents required by Section 1812.203 of
15 the Civil Code.

16 (7) A person primarily soliciting the sale of a newspaper of
17 general circulation, as defined in Article 1 (commencing with
18 Section 6000) of Chapter 1 of Division 7 of Title 1 of the
19 Government Code, a magazine, or membership in a book or record
20 club whose program operates in conformity with the requirements
21 of Section 1584.5 of the Civil Code.

22 (8) A person soliciting business from prospective purchasers
23 who have previously purchased from the business enterprise for
24 which the person is calling.

25 (9) A person soliciting without the intent to complete and who
26 does not complete the sales presentation during the telephone
27 solicitation but completes the sales presentation at a later
28 face-to-face meeting between the solicitor and the prospective
29 purchaser. However, if a seller, directly following a telephone
30 solicitation, causes an individual whose primary purpose it is to
31 go to the prospective purchaser to collect the payment or deliver
32 any item purchased, this exemption does not apply.

33 (10) Any supervised financial institution or parent, subsidiary,
34 or subsidiary of parent thereof. As used in this paragraph,
35 “supervised financial institution” means any commercial bank,
36 trust company, savings and loan association, credit union, industrial
37 loan company, personal property broker, consumer finance lender,
38 commercial finance lender, or insurer, provided that the institution
39 is subject to supervision by an official or agency of this state or of
40 the United States.

1 (11) A person soliciting the sale of a preneed funeral
2 arrangement regulated by Article 9 (commencing with Section
3 7735) of Chapter 12 of Division 3.

4 (12) A person licensed pursuant to Chapter 19 (commencing
5 with Section 9600) of Division 3 when acting pursuant to that
6 licensure.

7 (13) A person soliciting the sale of services provided by a cable
8 television system licensed or franchised pursuant to Section 53066
9 of the Government Code or any other authority.

10 (14) A person or an affiliate of a person whose business is
11 regulated by the Public Utilities Commission.

12 (15) A person soliciting the sale of a commodity pursuant to
13 Part 2 (commencing with Section 58601) of Division 21 of the
14 Food and Agricultural Code, if the solicitation neither intends to,
15 nor actually results in, a sale which costs the purchaser in excess
16 of one hundred dollars (\$100).

17 (16) An issuer or subsidiary of an issuer that has a security listed
18 on a national securities exchange or designated as a national market
19 system security on an interdealer quotation system by the National
20 Association of Securities Dealers, Inc., if the exchange or
21 interdealer quotation system has been certified by rule or order of
22 the Commissioner of Corporations under subdivision (o) of Section
23 25100 of the Corporations Code. A subsidiary of an issuer that
24 qualifies for exemption under this paragraph is not itself exempt
25 unless not less than 60 percent of the voting power of its shares is
26 owned by the qualifying issuer or issuers.

27 (17) A person soliciting exclusively the sale of telephone
28 answering services to be provided by that person or that person's
29 employer.

30 (18) A person soliciting a transaction regulated by the
31 Commodity Futures Trading Commission if the person is registered
32 or temporarily licensed for this activity with the Commodity
33 Futures Trading Commission under the Commodity Exchange Act
34 (7 U.S.C. Sec. 1 et seq.), and the registration or license has not
35 expired or been suspended or revoked.

36 (19) A person who sells coins or bullion at a price which is not
37 more than 25 percent more than the price at which the seller is
38 concurrently buying the same coins or bullion, if: (A) the seller
39 has had a retail location in California from which he or she has
40 been selling coins or bullion to the public in person for at least

1 three years; (B) the telephonic solicitations are not the person's
2 primary business and sales made telephonically make up less than
3 20 percent of the person's total retail sales; and (C) the person
4 claiming an exemption pursuant to this subdivision complies with
5 Section 17511.3, as applicable, and subdivision (p) of Section
6 17511.4.

7 (20) A person licensed pursuant to Chapter 14 (commencing
8 with Section 1800) of Division 1 of the Financial Code to receive
9 money for transmittal to foreign countries if the license has not
10 expired or been suspended or revoked.

11 (21) A person licensed as a residential mortgage lender or
12 servicer pursuant to Division 20 (commencing with Section 50000)
13 of the Financial Code, when acting under the authority of that
14 license.

15 (22) A corporation that meets all of the following conditions:

16 (A) It has been exempt from taxation under Section 23701e of
17 the Revenue and Taxation Code for a minimum of 10 years.

18 (B) It has maintained its principal purpose for a minimum of
19 10 years.

20 (C) It has been incorporated in the state for a minimum of 25
21 years.

22 (f) In any civil proceeding alleging a violation of this article,
23 the burden of proving an exemption or an exception from a
24 definition is upon the person claiming it, and in any criminal
25 proceeding alleging a violation of this article, the burden of
26 producing evidence to support a defense based upon an exemption
27 or an exception from a definition is upon the person claiming it.

28 (g) Compliance with this article does not satisfy nor substitute
29 for any requirements for license, registration, or regulation
30 mandated by other laws.

31 SEC. 2. No reimbursement is required by this act pursuant to
32 Section 6 of Article XIII B of the California Constitution because
33 the only costs that may be incurred by a local agency or school
34 district will be incurred because this act creates a new crime or
35 infraction, eliminates a crime or infraction, or changes the penalty
36 for a crime or infraction, within the meaning of Section 17556 of
37 the Government Code, or changes the definition of a crime within

- 1 the meaning of Section 6 of Article XIII B of the California
- 2 Constitution.

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