

Introduced by Senator Hernandez

February 10, 2015

An act to amend Section 1770 of the Civil Code, relating to controlled substances.

LEGISLATIVE COUNSEL'S DIGEST

SB 202, as amended, Hernandez. ~~Controlled substances.~~ *substances: unfair or deceptive practices.*

Existing law makes it a misdemeanor to sell, dispense, distribute, furnish, administer, or give, or offer to sell, dispense, distribute, furnish, administer, or give, or possess for sale, any synthetic stimulant compound or any specified synthetic stimulant derivative. Existing law also makes it a misdemeanor to sell, dispense, distribute, furnish, administer, or give, or offer to sell, dispense, distribute, furnish, administer, or give, or possess for sale, any synthetic cannabinoid compound or any synthetic cannabinoid derivative. Existing law, beginning January 1, 2016, makes it an infraction to use or possess those drugs.

~~This bill would state the intent of the Legislature to enact legislation relating to the deceptive packaging and marketing of synthetic drugs.~~

Existing law, the Consumers Legal Remedies Act, 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. Existing law, among other remedies, authorizes consumer class action lawsuits and injunctive relief for alleged violations of the act and provides for senior citizens and disabled persons to receive an

award of punitive damages and attorney's fees, as specified, for successful actions brought under these provisions.

This bill would add to that list of unlawful acts the act of advertising or offering for sale products that contain synthetic cannabinoids or synthetic stimulants, as defined.

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

- 1 (10) Advertising goods or services with intent not to supply
2 reasonably expectable demand, unless the advertisement discloses
3 a limitation of quantity.
- 4 (11) Advertising furniture without clearly indicating that it is
5 unassembled if that is the case.
- 6 (12) Advertising the price of unassembled furniture without
7 clearly indicating the assembled price of that furniture if the same
8 furniture is available assembled from the seller.
- 9 (13) Making false or misleading statements of fact concerning
10 reasons for, existence of, or amounts of price reductions.
- 11 (14) Representing that a transaction confers or involves rights,
12 remedies, or obligations which it does not have or involve, or
13 which are prohibited by law.
- 14 (15) Representing that a part, replacement, or repair service is
15 needed when it is not.
- 16 (16) Representing that the subject of a transaction has been
17 supplied in accordance with a previous representation when it has
18 not.
- 19 (17) Representing that the consumer will receive a rebate,
20 discount, or other economic benefit, if the earning of the benefit
21 is contingent on an event to occur subsequent to the consummation
22 of the transaction.
- 23 (18) Misrepresenting the authority of a salesperson,
24 representative, or agent to negotiate the final terms of a transaction
25 with a consumer.
- 26 (19) Inserting an unconscionable provision in the contract.
- 27 (20) Advertising that a product is being offered at a specific
28 price plus a specific percentage of that price unless (A) the total
29 price is set forth in the advertisement, which may include, but is
30 not limited to, shelf tags, displays, and media advertising, in a size
31 larger than any other price in that advertisement, and (B) the
32 specific price plus a specific percentage of that price represents a
33 markup from the seller's costs or from the wholesale price of the
34 product. This subdivision shall not apply to in-store advertising
35 by businesses which are open only to members or cooperative
36 organizations organized pursuant to Division 3 (commencing with
37 Section 12000) of Title 1 of the Corporations Code where more
38 than 50 percent of purchases are made at the specific price set forth
39 in the advertisement.

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

3 (22) (A) Disseminating an unsolicited prerecorded message by
4 telephone without an unrecorded, natural voice first informing the
5 person answering the telephone of the name of the caller or the
6 organization being represented, and either the address or the
7 telephone number of the caller, and without obtaining the consent
8 of that person to listen to the prerecorded message.

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

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

22 A third party shall not be liable under this subdivision unless
23 (A) there was an agency relationship between the party who
24 engaged in home solicitation and the third party or (B) the third
25 party had actual knowledge of, or participated in, the unfair or
26 deceptive transaction. A third party who is a holder in due course
27 under a home solicitation transaction shall not be liable under this
28 subdivision.

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

32 (B) For purposes of this paragraph, the following definitions
33 shall apply:

34 (i) “Public social services” means those activities and functions
35 of state and local government administered or supervised by the
36 State Department of Health Care Services, the State Department
37 of Public Health, or the State Department of Social Services, and
38 involved in providing aid or services, or both, including health
39 care services, and medical assistance, to those persons who,

1 because of their economic circumstances or social condition, are
2 in need of that aid or those services and may benefit from them.

3 (ii) “Public social services” also includes activities and functions
4 administered or supervised by the United States Department of
5 Veterans Affairs or the California Department of Veterans Affairs
6 involved in providing aid or services, or both, to veterans, including
7 pension benefits.

8 (iii) “Unreasonable fee” means a fee that is exorbitant and
9 disproportionate to the services performed. Factors to be
10 considered, when appropriate, in determining the reasonableness
11 of a fee, are based on the circumstances existing at the time of the
12 service and shall include, but not be limited to, all of the following:

13 (I) The time and effort required.

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

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

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

17 (V) The experience, reputation, and ability of the person
18 providing the services.

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

28 (25) (A) Advertising or promoting any event, presentation,
29 seminar, workshop, or other public gathering regarding veterans’
30 benefits or entitlements that does not include the following
31 statement in the same type size and font as the term “veteran” or
32 any variation of that term:

33 (i) “I am not authorized to file an initial application for Veterans’
34 Aid and Attendance benefits on your behalf, or to represent you
35 before the Board of Veterans’ Appeals within the United States
36 Department of Veterans Affairs in any proceeding on any matter,
37 including an application for such benefits. It would be illegal for
38 me to accept a fee for preparing that application on your behalf.”
39 The requirements of this clause do not apply to a person licensed
40 to act as an agent or attorney in proceedings before the Agency of

1 Original Jurisdiction and the Board of Veterans' Appeals within
2 the United States Department of Veterans Affairs when that person
3 is offering those services at the advertised event.

4 (ii) The statement in clause (i) shall also be disseminated, both
5 orally and in writing, at the beginning of any event, presentation,
6 seminar, workshop, or public gathering regarding veterans' benefits
7 or entitlements.

8 (B) Advertising or promoting any event, presentation, seminar,
9 workshop, or other public gathering regarding veterans' benefits
10 or entitlements which is not sponsored by, or affiliated with, the
11 United States Department of Veterans Affairs, the California
12 Department of Veterans Affairs, or any other congressionally
13 chartered or recognized organization of honorably discharged
14 members of the Armed Forces of the United States, or any of their
15 auxiliaries that does not include the following statement, in the
16 same type size and font as the term "veteran" or the variation of
17 that term:
18

19 "This event is not sponsored by, or affiliated with, the United
20 States Department of Veterans Affairs, the California Department
21 of Veterans Affairs, or any other congressionally chartered or
22 recognized organization of honorably discharged members of the
23 Armed Forces of the United States, or any of their auxiliaries.
24 None of the insurance products promoted at this sales event are
25 endorsed by those organizations, all of which offer free advice to
26 veterans about how to qualify and apply for benefits."
27

28 (i) The statement in this subparagraph shall be disseminated,
29 both orally and in writing, at the beginning of any event,
30 presentation, seminar, workshop, or public gathering regarding
31 veterans' benefits or entitlements.

32 (ii) The requirements of this subparagraph shall not apply in a
33 case where the United States Department of Veterans Affairs, the
34 California Department of Veterans Affairs, or other congressionally
35 chartered or recognized organization of honorably discharged
36 members of the Armed Forces of the United States, or any of their
37 auxiliaries have granted written permission to the advertiser or
38 promoter for the use of its name, symbol, or insignia to advertise
39 or promote the event, presentation, seminar, workshop, or other
40 public gathering.

1 (26) Representing that a product is made in California by using
2 a Made in California label created pursuant to Section 12098.10
3 of the Government Code, unless the product complies with Section
4 12098.10 of the Government Code.

5 (27) *Advertising, distributing, or selling a product for use by a*
6 *consumer that contains synthetic cannabinoids, as defined in*
7 *Section 11357.5 of the Health and Safety Code, or synthetic*
8 *stimulants, as defined in Section 11375.5 of the Health and Safety*
9 *Code.*

10 (b) (1) It is an unfair or deceptive act or practice for a mortgage
11 broker or lender, directly or indirectly, to use a home improvement
12 contractor to negotiate the terms of any loan that is secured,
13 whether in whole or in part, by the residence of the borrower and
14 which is used to finance a home improvement contract or any
15 portion thereof. For purposes of this subdivision, “mortgage broker
16 or lender” includes a finance lender licensed pursuant to the
17 California Finance Lenders Law (Division 9 (commencing with
18 Section 22000) of the Financial Code), a residential mortgage
19 lender licensed pursuant to the California Residential Mortgage
20 Lending Act (Division 20 (commencing with Section 50000) of
21 the Financial Code), or a real estate broker licensed under the Real
22 Estate Law (Division 4 (commencing with Section 10000) of the
23 Business and Professions Code).

24 (2) This section shall not be construed to either authorize or
25 prohibit a home improvement contractor from referring a consumer
26 to a mortgage broker or lender by this subdivision. However, a
27 home improvement contractor may refer a consumer to a mortgage
28 lender or broker if that referral does not violate Section 7157 of
29 the Business and Professions Code or any other provision of law.
30 A mortgage lender or broker may purchase an executed home
31 improvement contract if that purchase does not violate Section
32 7157 of the Business and Professions Code or any other provision
33 of law. Nothing in this paragraph shall have any effect on the
34 application of Chapter 1 (commencing with Section 1801) of Title
35 2 to a home improvement transaction or the financing thereof.

36 ~~SECTION 1. It is the intent of the Legislature to enact~~
37 ~~legislation relating to the deceptive packaging and marketing of~~
38 ~~synthetic drugs.~~

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