

Introduced by Senator AllenFebruary 24, 2015

An act to amend Section 1770 of the Civil Code, relating to consumer affairs.

LEGISLATIVE COUNSEL'S DIGEST

SB 386, as introduced, Allen. Consumer affairs.

Existing law, the Consumer Legal Remedies Act, makes unlawful certain 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 or services to any consumer, including, among other things, advertising or promoting any event, presentation, seminar, workshop, or other public gathering regarding veterans' benefits or entitlements that does not include a specified statement. Existing law authorizes any consumer who suffers damages as a result of the use or employment by any person of a method, act, or practice declared to be unlawful, as described above, to bring an action against that person to recover or obtain damages, restitution, an order enjoining the methods, acts, or practice, or any other relief the court deems proper.

This bill would include as an unlawful practice prohibited under the act for sale of a financial product or service that is illegal under state or federal law, including a cash payment for the assignment to a third party of the consumer's right to receive future pension or veteran's benefits.

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.

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.

34 (12) Advertising the price of unassembled furniture without
35 clearly indicating the assembled price of that furniture if the same
36 furniture is available assembled from the seller.

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

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

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

6 (16) Representing that the subject of a transaction has been
7 supplied in accordance with a previous representation when it has
8 not.

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

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

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

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

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

32 (22) (A) Disseminating an unsolicited prerecorded message by
33 telephone without an unrecorded, natural voice first informing the
34 person answering the telephone of the name of the caller or the
35 organization being represented, and either the address or the
36 telephone number of the caller, and without obtaining the consent
37 of that person to listen to the prerecorded message.

38 (B) This subdivision does not apply to a message disseminated
39 to a business associate, customer, or other person having an
40 established relationship with the person or organization making

1 the call, to a call for the purpose of collecting an existing
2 obligation, or to any call generated at the request of the recipient.

3 (23) The home solicitation, as defined in subdivision (h) of
4 Section 1761, of a consumer who is a senior citizen where a loan
5 is made encumbering the primary residence of that consumer for
6 the purposes of paying for home improvements and where the
7 transaction is part of a pattern or practice in violation of either
8 subsection (h) or (i) of Section 1639 of Title 15 of the United States
9 Code or ~~paragraph (e) of Section 226.32~~ *paragraphs (1), (2), and*
10 *(4), of subdivision (a) of Section 226.34* of Title 12 of the Code of
11 Federal Regulations.

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

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

22 (B) For purposes of this paragraph, the following definitions
23 shall apply:

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

32 (ii) “Public social services” also includes activities and functions
33 administered or supervised by the United States Department of
34 Veterans Affairs or the California Department of Veterans Affairs
35 involved in providing aid or services, or both, to veterans, including
36 pension benefits.

37 (iii) “Unreasonable fee” means a fee that is exorbitant and
38 disproportionate to the services performed. Factors to be
39 considered, when appropriate, in determining the reasonableness

1 of a fee, are based on the circumstances existing at the time of the
2 service and shall include, but not be limited to, all of the following:

- 3 (I) The time and effort required.
- 4 (II) The novelty and difficulty of the services.
- 5 (III) The skill required to perform the services.
- 6 (IV) The nature and length of the professional relationship.
- 7 (V) The experience, reputation, and ability of the person
8 providing the services.

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

18 (25) (A) Advertising or promoting any event, presentation,
19 seminar, workshop, or other public gathering regarding veterans'
20 benefits or entitlements that does not include the following
21 statement in the same type size and font as the term "veteran" or
22 any variation of that term:

23 (i) "I am not authorized to file an initial application for Veterans'
24 Aid and Attendance benefits on your behalf, or to represent you
25 before the Board of Veterans' Appeals within the United States
26 Department of Veterans Affairs in any proceeding on any matter,
27 including an application for such benefits. It would be illegal for
28 me to accept a fee for preparing that application on your behalf."
29 The requirements of this clause do not apply to a person licensed
30 to act as an agent or attorney in proceedings before the Agency of
31 Original Jurisdiction and the Board of Veterans' Appeals within
32 the United States Department of Veterans Affairs when that person
33 is offering those services at the advertised event.

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

38 (B) Advertising or promoting any event, presentation, seminar,
39 workshop, or other public gathering regarding veterans' benefits
40 or entitlements which is not sponsored by, or affiliated with, the

1 United States Department of Veterans Affairs, the California
2 Department of Veterans Affairs, or any other congressionally
3 chartered or recognized organization of honorably discharged
4 members of the Armed Forces of the United States, or any of their
5 auxiliaries that does not include the following statement, in the
6 same type size and font as the term “veteran” or the variation of
7 that term:

8

9 “This event is not sponsored by, or affiliated with, the United
10 States Department of Veterans Affairs, the California Department
11 of Veterans Affairs, or any other congressionally chartered or
12 recognized organization of honorably discharged members of the
13 Armed Forces of the United States, or any of their auxiliaries.
14 None of the insurance products promoted at this sales event are
15 endorsed by those organizations, all of which offer free advice to
16 veterans about how to qualify and apply for benefits.”

17

18 (i) The statement in this subparagraph shall be disseminated,
19 both orally and in writing, at the beginning of any event,
20 presentation, seminar, workshop, or public gathering regarding
21 veterans’ benefits or entitlements.

22 (ii) The requirements of this subparagraph shall not apply in a
23 case where the United States Department of Veterans Affairs, the
24 California Department of Veterans Affairs, or other congressionally
25 chartered or recognized organization of honorably discharged
26 members of the Armed Forces of the United States, or any of their
27 auxiliaries have granted written permission to the advertiser or
28 promoter for the use of its name, symbol, or insignia to advertise
29 or promote the event, presentation, seminar, workshop, or other
30 public gathering.

31 *(26) Advertising or offering for sale a financial product that is*
32 *illegal under state or federal law, including any cash payment for*
33 *the assignment to a third party of the consumer’s right to receive*
34 *future pension or veteran’s benefits.*

35 ~~(26)~~

36 (27) Representing that a product is made in California by using
37 a Made in California label created pursuant to Section 12098.10
38 of the Government Code, unless the product complies with Section
39 12098.10 of the Government Code.

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

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

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