

Introduced by Senator Allen

February 24, 2015

An act to amend Section 1770 of the Civil Code, *and to add Chapter 3.6 (commencing with Section 870) to Division 4 of the Military and Veterans Code*, relating to ~~consumer affairs~~; *unlawful business practices*.

LEGISLATIVE COUNSEL'S DIGEST

SB 386, as amended, Allen. ~~Consumer affairs~~. *Unlawful business practices*.

(1) 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, *advertising or offering* 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.

(2) Existing federal law prohibits payments of benefits due or to become due under any law administered by the United States Secretary of Veterans Affairs from being assignable. Under existing federal law, in any case where a beneficiary entitled to pension compensation enters into an agreement with another person under which agreement the other person acquires for consideration the right to receive the benefit by payment of a pension compensation, the agreement is deemed to be an assignment and is prohibited.

Existing state law establishes a cause of action against any person who engages in an act of unfair competition, which includes any unlawful, unfair, or fraudulent business act or practice and unfair, deceptive, untrue, or misleading advertising and any prohibited advertising act or practice.

This bill would state that a violation of the aforementioned federal law constitutes an unlawful business practice.

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.

- 1 (6) Representing that goods are original or new if they have
2 deteriorated unreasonably or are altered, reconditioned, reclaimed,
3 used, or secondhand.
- 4 (7) Representing that goods or services are of a particular
5 standard, quality, or grade, or that goods are of a particular style
6 or model, if they are of another.
- 7 (8) Disparaging the goods, services, or business of another by
8 false or misleading representation of fact.
- 9 (9) Advertising goods or services with intent not to sell them
10 as advertised.
- 11 (10) Advertising goods or services with intent not to supply
12 reasonably expectable demand, unless the advertisement discloses
13 a limitation of quantity.
- 14 (11) Advertising furniture without clearly indicating that it is
15 unassembled if that is the case.
- 16 (12) Advertising the price of unassembled furniture without
17 clearly indicating the assembled price of that furniture if the same
18 furniture is available assembled from the seller.
- 19 (13) Making false or misleading statements of fact concerning
20 reasons for, existence of, or amounts of price reductions.
- 21 (14) Representing that a transaction confers or involves rights,
22 remedies, or obligations which it does not have or involve, or
23 which are prohibited by law.
- 24 (15) Representing that a part, replacement, or repair service is
25 needed when it is not.
- 26 (16) Representing that the subject of a transaction has been
27 supplied in accordance with a previous representation when it has
28 not.
- 29 (17) Representing that the consumer will receive a rebate,
30 discount, or other economic benefit, if the earning of the benefit
31 is contingent on an event to occur subsequent to the consummation
32 of the transaction.
- 33 (18) Misrepresenting the authority of a salesperson,
34 representative, or agent to negotiate the final terms of a transaction
35 with a consumer.
- 36 (19) Inserting an unconscionable provision in the contract.
- 37 (20) Advertising that a product is being offered at a specific
38 price plus a specific percentage of that price unless (A) the total
39 price is set forth in the advertisement, which may include, but is
40 not limited to, shelf tags, displays, and media advertising, in a size

1 larger than any other price in that advertisement, and (B) the
2 specific price plus a specific percentage of that price represents a
3 markup from the seller's costs or from the wholesale price of the
4 product. This subdivision shall not apply to in-store advertising
5 by businesses which are open only to members or cooperative
6 organizations organized pursuant to Division 3 (commencing with
7 Section 12000) of Title 1 of the Corporations Code where more
8 than 50 percent of purchases are made at the specific price set forth
9 in the advertisement.

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

12 (22) (A) Disseminating an unsolicited prerecorded message by
13 telephone without an unrecorded, natural voice first informing the
14 person answering the telephone of the name of the caller or the
15 organization being represented, and either the address or the
16 telephone number of the caller, and without obtaining the consent
17 of that person to listen to the prerecorded message.

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

23 (23) (A) The home solicitation, as defined in subdivision (h)
24 of Section 1761, of a consumer who is a senior citizen where a
25 loan is made encumbering the primary residence of that consumer
26 for the purposes of paying for home improvements and where the
27 transaction is part of a pattern or practice in violation of either
28 subsection (h) or (i) of Section 1639 of Title 15 of the United States
29 Code or paragraphs (1), (2), and ~~(4)~~; (4) of subdivision (a) of
30 Section 226.34 of Title 12 of the Code of Federal Regulations.

31 (B) A third party shall not be liable under this subdivision unless
32 ~~(A)~~ (1) there was an agency relationship between the party who
33 engaged in home solicitation and the third party or ~~(B)~~ (2) the third
34 party had actual knowledge of, or participated in, the unfair or
35 deceptive transaction. A third party who is a holder in due course
36 under a home solicitation transaction shall not be liable under this
37 subdivision.

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

1 (B) For purposes of this paragraph, the following definitions
2 shall apply:

3 (i) “Public social services” means those activities and functions
4 of state and local government administered or supervised by the
5 State Department of Health Care Services, the State Department
6 of Public Health, or the State Department of Social Services, and
7 involved in providing aid or services, or both, including health
8 care services, and medical assistance, to those persons who,
9 because of their economic circumstances or social condition, are
10 in need of that aid or those services and may benefit from them.

11 (ii) “Public social services” also includes activities and functions
12 administered or supervised by the United States Department of
13 Veterans Affairs or the California Department of Veterans Affairs
14 involved in providing aid or services, or both, to veterans, including
15 pension benefits.

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

- 21 (I) The time and effort required.
- 22 (II) The novelty and difficulty of the services.
- 23 (III) The skill required to perform the services.
- 24 (IV) The nature and length of the professional relationship.
- 25 (V) The experience, reputation, and ability of the person
26 providing the services.

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

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

1 (i) “I am not authorized to file an initial application for Veterans’
2 Aid and Attendance benefits on your behalf, or to represent you
3 before the Board of Veterans’ Appeals within the United States
4 Department of Veterans Affairs in any proceeding on any matter,
5 including an application for such benefits. It would be illegal for
6 me to accept a fee for preparing that application on your behalf.”
7 The requirements of this clause do not apply to a person licensed
8 to act as an agent or attorney in proceedings before the Agency of
9 Original Jurisdiction and the Board of Veterans’ Appeals within
10 the United States Department of Veterans Affairs when that person
11 is offering those services at the advertised event.

12 (ii) The statement in clause (i) shall also be disseminated, both
13 orally and in writing, at the beginning of any event, presentation,
14 seminar, workshop, or public gathering regarding veterans’ benefits
15 or entitlements.

16 (B) Advertising or promoting any event, presentation, seminar,
17 workshop, or other public gathering regarding veterans’ benefits
18 or entitlements which is not sponsored by, or affiliated with, the
19 United States Department of Veterans Affairs, the California
20 Department of Veterans Affairs, or any other congressionally
21 chartered or recognized organization of honorably discharged
22 members of the Armed Forces of the United States, or any of their
23 auxiliaries that does not include the following statement, in the
24 same type size and font as the term “veteran” or the variation of
25 that term:

26
27 “This event is not sponsored by, or affiliated with, the United
28 States Department of Veterans Affairs, the California Department
29 of Veterans Affairs, or any other congressionally chartered or
30 recognized organization of honorably discharged members of the
31 Armed Forces of the United States, or any of their auxiliaries.
32 None of the insurance products promoted at this sales event are
33 endorsed by those organizations, all of which offer free advice to
34 veterans about how to qualify and apply for benefits.”

35
36 (i) The statement in this subparagraph shall be disseminated,
37 both orally and in writing, at the beginning of any event,
38 presentation, seminar, workshop, or public gathering regarding
39 veterans’ benefits or entitlements.

1 (ii) The requirements of this subparagraph shall not apply in a
2 case where the United States Department of Veterans Affairs, the
3 California Department of Veterans Affairs, or other congressionally
4 chartered or recognized organization of honorably discharged
5 members of the Armed Forces of the United States, or any of their
6 auxiliaries have granted written permission to the advertiser or
7 promoter for the use of its name, symbol, or insignia to advertise
8 or promote the event, presentation, seminar, workshop, or other
9 public gathering.

10 (26) Advertising or offering for sale a financial product that is
11 illegal under state or federal law, including any cash payment for
12 the assignment to a third party of the consumer's right to receive
13 future pension or veteran's benefits.

14 (27) Representing that a product is made in California by using
15 a Made in California label created pursuant to Section 12098.10
16 of the Government Code, unless the product complies with Section
17 12098.10 of the Government Code.

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

32 (2) This section shall not be construed to either authorize or
33 prohibit a home improvement contractor from referring a consumer
34 to a mortgage broker or lender by this subdivision. However, a
35 home improvement contractor may refer a consumer to a mortgage
36 lender or broker if that referral does not violate Section 7157 of
37 the Business and Professions Code or any other law. A mortgage
38 lender or broker may purchase an executed home improvement
39 contract if that purchase does not violate Section 7157 of the
40 Business and Professions Code or any other law. Nothing in this

1 paragraph shall have any effect on the application of Chapter 1
2 (commencing with Section 1801) of Title 2 to a home improvement
3 transaction or the financing of a home improvement transaction.

4 *SEC. 2. Chapter 3.6 (commencing with Section 870) is added*
5 *to Division 4 of the Military and Veterans Code, to read:*

6

7 *CHAPTER 3.6. NONASSIGNABILITY OF VETERANS' BENEFITS*

8

9 *870. A violation of Section 5301 of Title 38 of the United States*
10 *Code, prohibiting a beneficiary entitled to pension compensation*
11 *under any law administered by the United States Secretary of*
12 *Veterans Affairs from entering into an assignment agreement with*
13 *another person where the other person acquires for consideration*
14 *the right to receive the benefit by payment of a pension, shall*
15 *constitute an unlawful business practice within the meaning of*
16 *Section 17200 of the Business and Professions Code.*

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