

AMENDED IN ASSEMBLY JULY 1, 2015

AMENDED IN ASSEMBLY JUNE 23, 2015

SENATE BILL

No. 386

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 unlawful business practices.

LEGISLATIVE COUNSEL'S DIGEST

SB 386, as amended, Allen. 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~~ *advertising*, offering for ~~sale~~ *sale, or selling* 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.~~ *state an additional prohibition against advertising, offering, or entering into an agreement with a pension beneficiary that would involve an assignment of pension 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,

1 approval, status, affiliation, or connection which he or she does
2 not have.

3 (6) Representing that goods are original or new if they have
4 deteriorated unreasonably or are altered, reconditioned, reclaimed,
5 used, or secondhand.

6 (7) Representing that goods or services are of a particular
7 standard, quality, or grade, or that goods are of a particular style
8 or model, if they are of another.

9 (8) Disparaging the goods, services, or business of another by
10 false or misleading representation of fact.

11 (9) Advertising goods or services with intent not to sell them
12 as advertised.

13 (10) Advertising goods or services with intent not to supply
14 reasonably expectable demand, unless the advertisement discloses
15 a limitation of quantity.

16 (11) Advertising furniture without clearly indicating that it is
17 unassembled if that is the case.

18 (12) Advertising the price of unassembled furniture without
19 clearly indicating the assembled price of that furniture if the same
20 furniture is available assembled from the seller.

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

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

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

28 (16) Representing that the subject of a transaction has been
29 supplied in accordance with a previous representation when it has
30 not.

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

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

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

39 (20) Advertising that a product is being offered at a specific
40 price plus a specific percentage of that price unless (A) the total

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

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

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

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

25 (23) (A) The home solicitation, as defined in subdivision (h)
26 of Section 1761, of a consumer who is a senior citizen where a
27 loan is made encumbering the primary residence of that consumer
28 for the purposes of paying for home improvements and where the
29 transaction is part of a pattern or practice in violation of either
30 subsection (h) or (i) of Section 1639 of Title 15 of the United States
31 Code or paragraphs (1), (2), and (4) of subdivision (a) of Section
32 226.34 of Title 12 of the Code of Federal Regulations.

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

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

4 (B) For purposes of this paragraph, the following definitions
5 shall apply:

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

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

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

24 (I) The time and effort required.

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

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

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

28 (V) The experience, reputation, and ability of the person
29 providing the services.

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

39 (25) (A) Advertising or promoting any event, presentation,
40 seminar, workshop, or other public gathering regarding veterans’

1 benefits or entitlements that does not include the following
2 statement in the same type size and font as the term “veteran” or
3 any variation of that term:

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

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

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

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

38
39 (i) The statement in this subparagraph shall be disseminated,
40 both orally and in writing, at the beginning of any event,

1 presentation, seminar, workshop, or public gathering regarding
2 veterans' benefits or entitlements.

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

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

16 (27) Representing that a product is made in California by using
17 a Made in California label created pursuant to Section 12098.10
18 of the Government Code, unless the product complies with Section
19 12098.10 of the Government Code.

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

34 (2) This section shall not be construed to either authorize or
35 prohibit a home improvement contractor from referring a consumer
36 to a mortgage broker or lender by this subdivision. However, a
37 home improvement contractor may refer a consumer to a mortgage
38 lender or broker if that referral does not violate Section 7157 of
39 the Business and Professions Code or any other law. A mortgage
40 lender or broker may purchase an executed home improvement

1 contract if that purchase does not violate Section 7157 of the
2 Business and Professions Code or any other law. Nothing in this
3 paragraph shall have any effect on the application of Chapter 1
4 (commencing with Section 1801) of Title 2 to a home improvement
5 transaction or the financing of a home improvement transaction.

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

8

9

CHAPTER 3.6. NONASSIGNABILITY OF VETERANS' BENEFITS

10

11

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

12

13

14

15

16

17

18

19

*870 A person shall not advertise, offer, or enter into an
agreement with a pension beneficiary that would involve an
assignment of pension benefits that is prohibited by state or federal
law.*

20

21

22