AMENDED IN ASSEMBLY AUGUST 15, 2011

AMENDED IN SENATE MAY 31, 2011

AMENDED IN SENATE MAY 4, 2011

AMENDED IN SENATE APRIL 14, 2011

SENATE BILL No. 823

Introduced by Senator Corbett

February 18, 2011

An act to amend Section 1770 of the Civil Code, and to add Section 13985 to the Government Code, relating to ~~California products~~ *consumer affairs*.

LEGISLATIVE COUNSEL'S DIGEST

SB 823, as amended, Corbett. Consumer ~~protections: Made in California Program.~~ *affairs.*

Existing law 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.

This bill would ~~include in~~ *add to* that list of acts *an act* representing a product as made in California, by using a specified Made in California label, unless the product complies with standards adopted by the Governor's Office of Economic Development, to the extent those standards are adopted. The bill would establish the Made in California Program within the office, as provided, and would create the Made in California Fund as a special fund in the State Treasury, which upon an appropriation of those funds by the Legislature, would be available for that purpose. The bill would require the office to report to the Legislature on January 1, 2013, and annually thereafter, regarding expenditures and progress of the program.

This bill would make technical changes to conform to existing law.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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

SECTION 1. Section 1770 of the Civil Code is amended to read:

1770. (a) The following 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 are unlawful:

(1) Passing off goods or services as those of another.

(2) Misrepresenting the source, sponsorship, approval, or certification of goods or services.

(3) Misrepresenting the affiliation, connection, or association with, or certification by, another.

(4) Using deceptive representations or designations of geographic origin in connection with goods or services.

(5) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he or she does not have.

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

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

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

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

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

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

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

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

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

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

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

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

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

(19) Inserting an unconscionable provision in the contract.

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

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

(22) (A) Disseminating an unsolicited prerecorded message by telephone without an unrecorded, natural voice first informing the

person answering the telephone of the name of the caller or the organization being represented, and either the address or the telephone number of the caller, and without obtaining the consent of that person to listen to the prerecorded message.

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

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

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

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

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

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

(ii) "Public social services" also includes activities and functions administered or supervised by the United States Department of Veterans Affairs or the Department of Veterans

Affairs involved in providing aid or services, or both, to veterans, including pension benefits.

~~(ii)~~

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

(I) The time and effort required.

(II) The novelty and difficulty of the services.

(III) The skill required to perform the services.

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

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

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

(25) Representing that a product is made in California by using a Made in California label created pursuant to subdivision (d) of Section 13985 of the Government Code, unless the product complies with standards adopted by the Governor’s Office of Economic Development. This paragraph shall only be operative if standards to that effect have been adopted pursuant to Section 13985 of the Government Code.

(b) (1) It is an unfair or deceptive act or practice for a mortgage broker or lender, directly or indirectly, to use a home improvement contractor to negotiate the terms of any loan that is secured, whether in whole or in part, by the residence of the borrower and which is used to finance a home improvement contract or any portion thereof. For purposes of this subdivision, “mortgage broker or lender” includes a finance lender licensed pursuant to the California Finance Lenders Law (Division 9 (commencing with Section 22000) of the Financial Code), a residential mortgage lender licensed pursuant to the California Residential Mortgage

Lending Act (Division 20 (commencing with Section 50000) of the Financial Code), or a real estate broker licensed under the Real Estate Law (Division 4 (commencing with Section 10000) of the Business and Professions Code).

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

SEC. 2. Section 13985 is added to the Government Code, to read:

13985. (a) There is within the Governor's Office of Economic Development a public and private collaboration known as the Made in California Program. The purposes of the program are to encourage consumer product awareness and to foster purchases of high-quality products manufactured in this state.

(b) (1) The office may develop and adopt standards that permit a company to represent that a product is made in this state. Those standards may include any of the following:

(A) The company primarily designs and manufactures a physical product, rather than a digital product or service.

(B) The company manufactures one or more products in this state.

(C) The company has a California-based workforce and has the desire to grow that workforce over time.

(2) For purposes of this section, "manufacture" means the process of taking raw materials or components and adding value to those materials and components in order to create a final, recognizable product. "Manufacture" does not include the process of completing a final assembly from subassemblies made elsewhere, or the act of packaging a product.

(c) The program and the standards shall not apply to those agricultural products subject to the Buy California Program described in Section 58750 of the Food and Agricultural Code.

~~(d) Pursuant to Section 58789 of the Food and Agricultural Code, and in~~

(d) In accordance with the provisions of Chapter 1 (commencing with Section 58601) of Part 2 of Division 21 of the Food and Agricultural Code, the office may issue and make effective a marketing agreement, including, but not limited to, issuance of a Made in California label, and be advised by those California businesses willing to participate in the program on a voluntary basis via funding or in-kind contributions in a manner defined under the agreement.

(e) (1) Notwithstanding Section 10231.5, the office shall report to the Legislature on January 1, 2013, and each successive January 1, regarding its expenditures, progress, and ongoing priorities with this program.

(2) The plan submitted to the Legislature pursuant to paragraph (1) shall be submitted pursuant to Section 9795.

(f) The Made in California Fund is hereby created as a special fund in the State Treasury consisting of the revenues contributed pursuant to this section, and, upon an appropriation of those funds by the Legislature, shall be available for purposes of this section.

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