

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

AB 1904 (Grayson)
Version: May 19, 2022
Hearing Date: June 21, 2022
Fiscal: Yes
Urgency: No
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SUBJECT

Consumers Legal Remedies Act: covered person

DIGEST

This bill requires financial service and product providers to clearly disclose in solicitations that the material is an advertisement and to include their name and contact information.

EXECUTIVE SUMMARY

The Consumer Legal Remedies Act (CLRA) prohibits 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.

Concerns have arisen with regard to solicitations made by or on behalf of financial services companies. The concern regards various direct marketing techniques that target specific individuals and arguably include deceptive language that could reasonably lead a consumer to believe that certain action is required or that certain debts have been incurred in the consumer's name and are outstanding.

This bill addresses such practices by requiring solicitations for consumer financial products or services by persons that engage in offering or providing a consumer financial product or service to include certain information about the entity soliciting the product or service and a notice that lets the consumer know the solicitation is an advertisement and that no further action is required. Failure to do so is a violation of the CLRA.

This bill is author sponsored. It is supported by the California Low-Income Consumer Coalition. There is no known opposition.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the Consumer Legal Remedies Act (CLRA), which prohibits 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. (Civ. Code § 1750 et seq.)
- 2) Provides that any consumer who suffers any damage as a result of the use or employment by any person of a method, act, or practice declared to be unlawful by Section 1770 of the Civil Code may bring an action against that person to recover or obtain any of the following:
 - a) actual damages, but in no case shall the total award of damages in a class action be less than one thousand dollars (\$1,000);
 - b) an order enjoining the methods, acts, or practices;
 - c) restitution of property;
 - d) punitive damages;
 - e) court costs and attorney's fees to a prevailing plaintiff. However, reasonable attorney's fees may be awarded to a prevailing defendant upon a finding by the court that the plaintiff's prosecution of the action was not in good faith; and
 - f) any other relief that the court deems proper. (Civ. Code § 1780(a), (e).)
- 3) Authorizes consumers who are senior citizens or disabled persons, as defined, to additionally seek and be awarded, in addition to the remedies specified above, up to \$5,000 where the trier of fact does all of the following:
 - a) finds that the consumer has suffered substantial physical, emotional, or economic damage resulting from the defendant's conduct;
 - b) makes an affirmative finding in regard to one or more of the following factors:
 - i. the defendant knew or should have known that their conduct was directed to one or more senior citizens or disabled persons;
 - ii. the defendant's conduct caused one or more senior citizens or disabled persons to suffer: loss or encumbrance of a primary residence, principal employment, or source of income; substantial loss of property set aside for retirement, or for personal or family care and maintenance; or substantial loss of payments received under a pension or retirement plan or a government benefits program, or assets essential to the health or welfare of the senior citizen or disabled person; or
 - iii. one or more senior citizens or disabled persons are substantially more vulnerable than other members of the public to the defendant's conduct because of age, poor health or infirmity,

impaired understanding, restricted mobility, or disability, and actually suffered substantial physical, emotional, or economic damage resulting from the defendant's conduct; and

- c) finds that an additional award is appropriate. (Civ. Code § 1780(b)(1).)
- 4) Provides that judgment in a class action by senior citizens or disabled persons under Section 1781 of the CLRA may award each class member the additional award if the trier of fact has made the foregoing findings. (Civ. Code § 1780(b)(2).)
- 5) Defines "senior citizen" under the CLRA as a person who is 65 years of age or older. (Civ. Code § 1761(f).)
- 6) Defines "home solicitation" under the CLRA as a transaction made at the consumer's primary residence. Exempts from this definition transactions that a consumer initiates, including responding to advertisements. (Civ. Code § 1761(h).)
- 7) Makes unlawful, pursuant to the CLRA, the home solicitation of a senior citizen consumer where a loan secured by the senior citizen's primary residence is made to pay for home improvements, and the transaction is part of a pattern or practice in violation of federal law, specifically the Truth in Lending Act (TILA) and the Home Ownership Equity Protection Act (HOEPA). (Civ. Code § 1770(a)(23)(A).)
- 8) Exempts third parties from the above CLRA liability unless an agency relationship existed between the third party and the party who engaged in the home solicitation; or the third party had actual knowledge of, or participated in, the unfair or deceptive transaction. Third parties who are holders in due course under a home solicitation transaction are exempt. (Civ. Code § 1770 (a)(23)(B).)
- 9) Establishes the California Consumer Financial Protection Law (CCFPL) (Fin. Code Sec. 90000 et seq.), which prohibits a covered person from engaging in unlawful, unfair, deceptive, or abusive practices. As part of its enforcement authority, the Department of Financial Protection and Innovation (DFPI) may prescribe rules to ensure that the features of any consumer financial product or service are accurately disclosed. (Fin. Code Sec. 90009.)
- 10) Defines "covered person" to mean, to the extent not preempted by federal law, any of the following:
 - a) any person that engages in offering or providing a consumer financial product or service to a resident of this state;
 - b) any affiliate of a person described in this subdivision if the affiliate acts as a service provider to the person; or

- c) any service provider to the extent that the person engages in the offering or provision of its own consumer financial product or service. (Fin. Code § 90005(f).)
- 11) Defines “consumer financial product or service” to mean:
- a) a financial product or service that is delivered, offered, or provided for use by consumers primarily for personal, family, or household purposes; or
 - b) a financial product or service that directly or indirectly brokers the offer or sale of a franchise in this state on behalf of another. (Fin. Code § 90005(e).)

This bill:

- 1) Makes it unlawful, pursuant to the CLRA, to fail to include either of the following in a solicitation by a covered person, or an entity acting on behalf of a covered person, to a consumer for a consumer financial product or service:
 - a) the name of the covered person, and if applicable, the entity acting on behalf of the covered person, and relevant contact information, including a mailing address and telephone number; or
 - b) the following disclosure statement in at least 18-point bold type and in the language in which the solicitation is drafted: “THIS IS AN ADVERTISEMENT. YOU ARE NOT REQUIRED TO MAKE ANY PAYMENT OR TAKE ANY OTHER ACTION IN RESPONSE TO THIS OFFER.”
- 2) Provides that “consumer financial product or service” and “covered person” have the same meanings as defined in the CCFPL. “Covered person” does not include those entities exempted from the CCFPL.
- 3) Defines “solicitation” to mean an advertisement or marketing communication through writing or graphics that is directed to, or likely to give the impression of being directed to, an individually identified person, residence, or business location. “Solicitation” does not include either of the following:
 - a) communication through a mass advertisement, including in a catalog, on a radio or television broadcast, or on a publically accessible internet website, if that communication is not directed to, or is not likely to give the impression of being directed to, an individually identified person, residence, or business location; or
 - b) communication via a telephone, mail, or electronic communication that was initiated by a consumer. unfair or deceptive acts or practices.

COMMENTS

1. The protections of the CLRA

The Legislature has long considered consumer protection to be a matter of high importance. State law is replete with statutes aimed at protecting California consumers from unfair, dishonest, or harmful market practices. The CLRA was enacted “to protect the statute’s beneficiaries from deceptive and unfair business practices,” and to provide aggrieved consumers with “strong remedial provisions for violations of the statute.” (*Am. Online, Inc. v. Superior Court* (2001) 90 Cal.App.4th 1, 11.)

Generally speaking, the CLRA is intended “to protect consumers against unfair and deceptive business practices and to provide efficient and economical procedures to secure such protection.” (Civ. Code Sec. 1760.) Among other things, it prohibits merchants from “representing that a transaction confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law,” or representing that goods “are of a particular standard, quality, or grade” when they are of another. (Civ. Code Sec. 1770.) Consumers who are harmed by unlawful practices specified in the Act have a right of action under the CLRA to recover damages and other remedies, including actual damages; an order to enjoin the unlawful act; restitution; punitive damages; or any other relief that the court deems proper. (Civ. Code Sec. 1780.) Additionally, the statute authorizes courts to award attorney’s fees to prevailing plaintiffs and contains mechanisms for securing remedies on a class wide basis. (Civ. Code Secs. 1780, 1781.) Consumers who are over the age of 65 are eligible to additionally seek and be awarded, in addition to the above remedies, up to \$5,000 where the trier of fact finds certain circumstances are met.

2. The protections of the CCFPL

In 2020, the Legislature and the Governor renamed the Department of Business Oversight to the Department of Financial Protection and Innovation (DFPI) and enacted the CCFPL to better protect consumers and provide oversight over a range of unlicensed financial service providers. DFPI is empowered to protect consumers by overseeing industries previously unregulated, such as debt-relief providers, credit repair companies, and earned wage access providers. DFPI is authorized to regulate other existing consumer financial state laws. For instance, the CCFPL makes it unlawful for a “covered entity” to “offer or provide to a consumer any financial product or service not in conformity with any consumer financial law or otherwise commit any act or omission in violation of a consumer financial law.” DFPI is authorized to prescribe rules to ensure that the features of any consumer financial product or service are fully, accurately, and effectively disclosed to consumers in a manner that allows the consumer to understand the costs, benefits, and risks associated with the product.

The CCFPL defines “covered entity” as any person that engages in offering or providing a consumer financial product or service to a resident of this state; any affiliate if the affiliate acts as a service provider; and any service provider to the extent that the person engages in the offering or provision of its own consumer financial product or service.

“Consumer financial product or service” is defined to mean a financial product or service that is delivered, offered, or provided for use by consumers primarily for personal, family, or household purposes; or a financial product or service that directly or indirectly brokers the offer or sale of a franchise in this state on behalf of another.

3. Unfair and deceptive practices: financial products and services

According to the author: “AB 1904 would empower Californians to make informed choices after they receive direct written solicitations from financial service providers such as debt settlement companies, student loan debt relief providers, and credit repair companies.”

The author argues that existing law insufficiently regulates direct marketing techniques employed by some financial services providers that could reasonably deceive consumers. Specifically, the author points to a recent case where a debt settlement provider mailed letters to consumers that identified the consumer by name and possible creditors and listed debts they did not actually owe, which in sum could give the impression to a recipient that the letter was from a creditor. Moreover, this mailed advertisement did not include basic information about the company, including its name and the nature of the service.

This bill directly addresses such deceptive marketing by making it unlawful pursuant to the CLRA for a “covered person,” as the term is defined in the CCFPL, to fail to include certain information and disclosures in solicitations to a consumer for a “consumer financial product or service,” as defined in the CCFPL. First, the solicitations must include the name and contact information of the covered person, and, if applicable, the entity acting on behalf of the covered person.

Second, the solicitations must include a disclosure stating, in at least 18-point bold type and in the language in which the solicitation is drafted: “THIS IS AN ADVERTISEMENT. YOU ARE NOT REQUIRED TO MAKE ANY PAYMENT OR TAKE ANY OTHER ACTION IN RESPONSE TO THIS OFFER.”

The California Low-Income Consumer Coalition writes in support:

California lacks clear rules on what information must be included in marketing materials for consumer financial services. This ambiguity empowers bad actors to directly target consumers with misleading or

confusing advertisements that give the impression the advertisement is an official document requiring a response. In one such case, a debt settlement provider mailed letters that identified the consumer by name and listed possible debts owed, the names of creditors, and a phone number to call. This letter also contained no relevant identifying information of the company, such as the company's name or the nature of the service. This type of predatory marketing technique that masks an advertisement as a piece of mail from a creditor or another financial institution can take advantage of financially stressed and vulnerable households.

AB 1904 would require consumer financial services companies to include basic information, such as the company's name and contact information, in a direct solicitation that individually identifies the consumer, along with a notice instructing the consumer that the solicitation is an advertisement. These simple rules will make it clear that this piece of mail, e-mail, or other written communication is an advertisement and that there is no obligation for the consumer to respond.

CLICC believes that there is no room for duplicity or deceit in the advertising of consumer financial services. The low-income clients served by our members face sufficient challenges without having to try to figure out whether the letter they just received is a court order, a bill, or an advertisement. They certainly do not need the added stress of opening what looks like an official document but is actually just an ad hoping to capitalize on their fear.

SUPPORT

California Low-Income Consumer Coalition

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

AB 790 (Quirk-Silva, Ch. 589, Stats. 2021) made clear that the Consumer Legal Remedies Act's prohibition on certain home solicitations of senior citizens applies to Property Assessed Clean Energy (PACE) assessments that are part of a pattern or practice in violation of PACE regulations.

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AB 1284 (Dababneh, Ch. 475, Stats. 2017) renamed the California Finance Lenders Law as the California Financing Law (CFL), as well as created new requirements for the licensure of program administrators, as defined, under CFL.

PRIOR VOTES:

Assembly Floor (Ayes 63, Noes 0)

Assembly Appropriations Committee (Ayes 12, Noes 0)

Assembly Privacy and Consumer Protection Committee (Ayes 8, Noes 0)

Assembly Banking and Finance Committee (Ayes 8, Noes 0)
