

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

SB 1096 (Seyarto)
Version: February 13, 2024
Hearing Date: April 2, 2024
Fiscal: No
Urgency: No
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SUBJECT

Mailed solicitations: disclosure statement

DIGEST

This bill requires a specified disclosure statement to appear in 16-point bold type on the front of an envelope of a mailed solicitation to a consumer for a consumer financial product or services, as provided.

EXECUTIVE SUMMARY

Generally speaking, the Consumer Legal Remedies Act (CLRA) is intended “to protect consumers against unfair and deceptive business practices and to provide efficient and economical procedures to secure such protection.” The CLRA enables a consumer who suffers damage as a result of a violation to bring an action for various remedies, including damages and injunctive relief.

The CLRA makes it a deceptive practice to fail to include specified contact information in a solicitation by certain covered persons to consumers for financial products or services. The solicitation language must also include a specified disclosure statement making clear it is an advertisement in 18-point bold type.

In order to bring further transparency to such solicitations, this bill amends the CLRA to further require the above disclosure statement to appear in at least 16-point type on the front of the envelope containing such a solicitation.

This bill is author-sponsored. No support or opposition has been received.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the 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) Designates specified practices as unfair methods of competition and unfair or deceptive acts or practices, including failing to include 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.
 - b) The following disclosure statement in at least 18-point bold type and in the language in which the solicitation described by this paragraph is drafted: **“THIS IS AN ADVERTISEMENT. YOU ARE NOT REQUIRED TO MAKE ANY PAYMENT OR TAKE ANY OTHER ACTION IN RESPONSE TO THIS OFFER.”** (Civ. Code § 1770.)
- 3) 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 \$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).)
- 4) Defines a “covered person” to include the following, to the extent not preempted by federal law:
 - 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.

- c) Any service provider to the extent that the person engages in the offering or provision of its own consumer financial product or service. (Civ. Code § 1770; Fin. Code § 90005.)

This bill makes it an unfair practice to fail to include the above disclosure statement on the front of mailed envelopes containing such solicitations.

COMMENTS

1. California's consumer protection laws

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. These consumer-protection laws authorize consumers to enforce their own rights and seek remedies to make them whole.

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.) The 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," (Civ. Code § 1770(a)), and prohibits conduct "likely to mislead a reasonable consumer," (*Colgan v. Leatherman Tool Grp., Inc.* (2006) 135 Cal. App. 4th 663, 680; internal quotation marks omitted.)

Among other things, the CLRA 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 § 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 § 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 §§ 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. Requiring more transparency in solicitations of financial products and services

According to the author:

More than 3.5 million senior adults are victims of financial exploitation each year, and seniors targeted by fraudsters suffer an average loss of \$34,200. SB-1096 will clarify that physical mail soliciting consumer financial information must be labeled as such on the outside of the envelope; empowering all Californians to make informed choices after they receive this type of mail.

Recently, AB 1904 (Grayson, Ch. 324, Stats. 2022) amended the CLRA to make it an unlawful practice to fail to include certain information 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. First, the solicitation must include 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. The solicitation must also include a disclosure statement in at least 18-point bold type and in the language in which the solicitation is drafted that reads: "THIS IS AN ADVERTISEMENT. YOU ARE NOT REQUIRED TO MAKE ANY PAYMENT OR TAKE ANY OTHER ACTION IN RESPONSE TO THIS OFFER."

AB 1904 sought to address concerns regarding solicitations made by or on behalf of financial services companies using 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 bolsters this protection by additionally requiring the disclosure statement to appear on the outside of a mailed envelope containing such a solicitation in 16-point bold type.

SUPPORT

None received

OPPOSITION

None received

RELATED LEGISLATION

Pending Legislation: AB 1900 (Weber, 2024) makes it an unlawful practice under the CLRA to require a consumer to sign a nondisclosure agreement or otherwise prohibit a consumer from publishing or making negative statements about the business as a condition of receiving a refund. AB 1900 is currently pending in the Assembly Judiciary Committee.

Prior Legislation: AB 1904 (Grayson, Ch. 324, Stats. 2022) *See* Comment 2.
