

Date of Hearing: March 28, 2022

ASSEMBLY COMMITTEE ON BANKING AND FINANCE

Timothy Grayson, Chair

AB 1904 (Grayson) – As Introduced February 9, 2022

SUBJECT: Consumers Legal Remedies Act: covered person

SUMMARY: Establishes disclosure requirements for certain solicitations, as defined, from consumer financial service providers. Specifically, **this bill:**

- 1) Expands the list of unfair methods of competition and unfair or deceptive acts or practices under the Consumer Legal Remedies Act (CLRA) to include failing to include the following information in a solicitation 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 to the covered person, and relevant contact information, including a mailing address and telephone number.
 - b) A disclosure statement in at least 18-point font stating “THIS IS AN ADVERTISEMENT. YOU ARE NOT REQUIRED TO MAKE ANY PAYMENT OR TAKE ANY OTHER ACTION IN RESPONSE TO THIS OFFER.”
- 2) Defines “consumer financial product or service” and “covered person” as the same meaning as defined in the California Consumer Financial Protection Law (CCFPL).
- 3) Defines “solicitation” as 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.
- 4) Exempts from the definition of “solicitation” communication through a mass advertisement, as defined, or communication via telephone, mail, or electronic communication that was initiated by the consumer.

EXISTING LAW:

- 1) 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.)
- 2) Establishes the CLRA, which prohibits certain enumerated unfair methods of competition, and unfair or deceptive acts or practices, in connection with the sale or lease of goods or services. (Civil Code Sections 1750-1784.)

FISCAL EFFECT: Unknown. This bill is keyed Fiscal by Legislative Counsel.

COMMENTS:

- 1) **Purpose.**

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.

2) Marketing transparency standards in the financial services industry

Ensuring that marketing and advertising materials for financial services and products are accurate has been the focus of significant federal and state reforms over the years, and these reforms are still ongoing.

In 1968, the federal Truth in Lending Act (TILA) was signed into law to protect consumers from unfair and predatory lending practices. The bill's sponsor, Senator Paul Douglas, described TILA as removing "the disguises and camouflage which frequently hide or distort the true price of credit."¹ TILA promotes the informed use of consumer credit by requiring disclosures about its terms and cost, including information about the nature of the credit, information about the amount of the loan, the annual percentage rate (APR), finance charges, a payment schedule, and the total repayment amount over the lifetime of the loan.

In recent decades, advances in banking technology and a proliferation of innovative new financial products and services have led to concerns about the impact of sophisticated and predatory practices. In 2004, the FTC expanded the FTC Act to prohibit unfair or deceptive acts or practices (UDAP), which includes an act or practice that is a representation or omission that misleads or is likely to mislead the consumer and meet other specified standards. As the FTC noted at the time, UDAPs can cause significant financial injury to consumer and erode consumer confidence in the banking and financial system.² The FTC still enforces its UDAP authority as it relates to a range of advertising mediums, including online advertisement.³

The UDAP framework expanded following the Great Recession with the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) in 2010. The Dodd-Frank Act significantly overhauled financial regulatory agencies and established Consumer Financial Protection Bureau (CFPB), which has broad authority to enforce unfair, deceptive or abusive acts or practices (UDAAP) violations. CFPB can also enforce a number of existing federal laws and regulations related to marketing transparency and disclosures, including TILA and Regulation N, also called the Mortgage Acts and Practices Advertising Rule.

CFPB has taken a number of enforcement actions against financial services companies for misrepresenting the nature of their business or the product offered. For example, in 2015 CFPB fined RMK Financial Corporation for deceptive advertising practices, including the

¹ For a detailed history of the policy debate surrounding transparency standards for financial services prior to TILA, see <https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=3088&context=facpub>.

² <https://www.federalreserve.gov/boarddocs/supmanual/cch/ftca.pdf>.

³ For a detailed discussion on FTC's advertising rules and the required content and disclosures, see: <http://www.ftc.gov/system/files/documents/plain-language/bus41-dot-com-disclosures-information-about-online-advertising.pdf>.

use of ads that led consumers to believe that the company was affiliated with the US Government.⁴

3) **The CCFPL and its implications for predatory advertising and marketing practices.**

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. The CCFPL provides DFPI new tools to protect consumers from UDAAP and can now oversee industries previously unregulated by DFPI, such as debt-relief providers, credit repair companies, and earned wage access providers. The CCFPL's drafting also makes it a forward-looking statute that can be flexibly utilized to regulate new and emerging consumer financial service products or services.

In addition to this new authority, the CCFPL also grants DFPI the power to regulate other existing consumer financial state laws. For example, the CCFPL states that it is 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." Thus, DFPI's new authority is far-reaching and encompasses a variety of other consumer financial laws such as the Fair Debt Settlement Practices Act.

With regards to protecting consumers from predatory marketing schemes, the CCFPL authorizes DFPI 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.

4) **What does this bill do?**

The author's office argues that existing law lacks clear rules of the road for the direct marketing techniques employed by some financial services providers. 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.

In response, this bill proposes a straightforward set of transparency rules for consumer financial service providers (defined as a "covered person" under CCFPL) to follow that could help clarify to the consumer that the marketing materials they have received are, in fact, merely advertisements. This bill requires a solicitation – whether delivered by mail or over the internet – to include the name of the company and its contact information as well as a statement that the solicitation is an advertisement. Importantly, this requirement applies only when the recipient is individually identified or given the impression they are individually

⁴ <https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-mortgage-lender-for-deceptive-advertising/>.

identified, which the author's office argues can be a key characteristic of an advertisement that can prey on the financially vulnerable.

AB 1904 follows a well-trodden path of using clear disclosures and statements to try to curb deceptively designed advertisements. And, it is likely to help consumers most when a solicitation operates in a gray area, utilizing omission and innuendo create an overall impression that can mislead the recipient.

5) **The CLRA**

AB 1904's other notable feature is its placement in CLRA, rather than the CCFPL, despite the bill's language directly referencing definitions contained in the CCFPL. The CLRA provides consumers with protection against false advertising, fraud, and other unfair business practices generally, and the CLRA contains a list of prohibited acts or practices. The most practical impact of AB 1904 amending the CLRA is to provide a consumer who suffers any damage as a result of a violation to bring an action to recover the following: actual damages; an injunction to stop the unlawful the methods, acts, or practices; restitution of property; punitive damages; and any other relief that the court deems proper.

CLRA's scope has expanded over time to include a range of unfair methods of competition and unfair or deceptive acts or practices, and AB 1904's addition would be in line with previous changes. For example, CLRA prohibits advertising or promoting any event, presentation, seminar, workshop or gathering regarding veterans' benefits or entitlements that does not include a specified statement, similar to AB 1904's requirement that consumer financial services solicitation include a statement noting the solicitation is an advertisement. Additionally, the CLRA has been expanded to prohibit specific acts in the financial services space, including making it unlawful for a mortgage broker or lender to use a home improvement contractor to negotiate the terms of any loan that is secured by the residence of the borrower and that is used to finance a home improvement contract.

6) **Related legislation.**

AB 790 (Quirk-Silva), Chapter 589, Statutes of 2021, expanded CLRA provisions regulating home solicitations of seniors so it applies to Property Assessed Clean Energy (PACE) financing

REGISTERED SUPPORT / OPPOSITION:

Support

California Low-income Consumer Coalition

Opposition

None on file.

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