

AMENDED IN ASSEMBLY SEPTEMBER 3, 2013

AMENDED IN ASSEMBLY JUNE 26, 2013

SENATE BILL

No. 12

Introduced by Senator Corbett

December 3, 2012

An act to amend Section 1770 of the Civil Code, and to add Article 6 (commencing with Section 12098.10) to Chapter 1.6 of Part 2 of Division 3 of Title 2 of the Government Code, relating to consumer affairs, *and making an appropriation therefor.*

LEGISLATIVE COUNSEL'S DIGEST

SB 12, as amended, Corbett. Consumer 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 that results, in the sale or lease of goods to any consumer.

This bill would ~~add to that list of acts an~~ *additionally make unlawful the act of* 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 Business and 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, that, upon an appropriation of those funds by the Legislature, would be available for that purpose.~~ *the requirements of the Made in California Program established by the Governor's Office of Business and Economic Development.* The bill would require the office to report to the Legislature on January 1, 2015, and annually thereafter, regarding expenditures and progress of the program. The

bill would additionally authorize the office to receive monetary donations and other donations from businesses, nonprofit organizations, or the public, for implementation of the program, as specified, and would authorize the office to charge ~~an application~~ a registration fee for participation in the program.

The bill would create the Made in California Fund within the State Treasury. This bill would authorize the continuous appropriation of donated funds, as specified, to the director, for the purposes of the program, and require any other funds deposited and maintained in the Made in California Fund to be available for the same purpose subject to appropriation by the Legislature.

Vote: majority. Appropriation: ~~no~~-yes. Fiscal committee: yes. 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, ~~as amended by~~
2 ~~Section 1 of Chapter 653 of the Statutes of 2012,~~ is amended to
3 read:
4 1770. (a) The following unfair methods of competition and
5 unfair or deceptive acts or practices undertaken by any person in
6 a transaction intended to result or which results in the sale or lease
7 of goods or services to any consumer are unlawful:
8 (1) Passing off goods or services as those of another.
9 (2) Misrepresenting the source, sponsorship, approval, or
10 certification of goods or services.
11 (3) Misrepresenting the affiliation, connection, or association
12 with, or certification by, another.
13 (4) Using deceptive representations or designations of
14 geographic origin in connection with goods or services.
15 (5) Representing that goods or services have sponsorship,
16 approval, characteristics, ingredients, uses, benefits, or quantities
17 which they do not have or that a person has a sponsorship,
18 approval, status, affiliation, or connection which he or she does
19 not have.
20 (6) Representing that goods are original or new if they have
21 deteriorated unreasonably or are altered, reconditioned, reclaimed,
22 used, or secondhand.

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

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

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

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

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

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

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

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

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

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

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

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

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

34 (20) Advertising that a product is being offered at a specific
35 price plus a specific percentage of that price unless (A) the total
36 price is set forth in the advertisement, which may include, but is
37 not limited to, shelf tags, displays, and media advertising, in a size
38 larger than any other price in that advertisement, and (B) the
39 specific price plus a specific percentage of that price represents a
40 markup from the seller's costs or from the wholesale price of the

1 product. This subdivision shall not apply to in-store advertising
2 by businesses which are open only to members or cooperative
3 organizations organized pursuant to Division 3 (commencing with
4 Section 12000) of Title 1 of the Corporations Code where more
5 than 50 percent of purchases are made at the specific price set forth
6 in the advertisement.

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

9 (22) (A) Disseminating an unsolicited prerecorded message by
10 telephone without an unrecorded, natural voice first informing the
11 person answering the telephone of the name of the caller or the
12 organization being represented, and either the address or the
13 telephone number of the caller, and without obtaining the consent
14 of that person to listen to the prerecorded message.

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

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

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

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

38 (B) For purposes of this paragraph, the following definitions
39 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 California Department of Veterans Affairs involved in providing aid or services, or both, to veterans, including pension benefits.

(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) (A) Advertising or promoting any event, presentation, seminar, workshop, or other public gathering regarding veterans’ benefits or entitlements that does not include the following statement in the same type size and font as the term “veteran” or any variation of that term:

(i) “I am not authorized to file an initial application for Veterans’ Aid and Attendance benefits on your behalf, or to represent you

1 before the Board of Veterans' Appeals within the United States
2 Department of Veterans Affairs in any proceeding on any matter,
3 including an application for such benefits. It would be illegal for
4 me to accept a fee for preparing that application on your behalf.”
5 The requirements of this clause do not apply to a person licensed
6 to act as an agent or attorney in proceedings before the Agency of
7 Original Jurisdiction and the Board of Veterans' Appeals within
8 the United States Department of Veterans Affairs when that person
9 is offering those services at the advertised event.

10 (ii) The statement in clause (i) shall also be disseminated, both
11 orally and in writing, at the beginning of any event, presentation,
12 seminar, workshop, or public gathering regarding veterans' benefits
13 or entitlements.

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

24
25 “This event is not sponsored by, or affiliated with, the United
26 States Department of Veterans Affairs, the California Department
27 of Veterans Affairs, or any other congressionally chartered or
28 recognized organization of honorably discharged members of the
29 Armed Forces of the United States, or any of their auxiliaries.
30 None of the insurance products promoted at this sales event are
31 endorsed by those organizations, all of which offer free advice to
32 veterans about how to qualify and apply for benefits.”

33
34 (i) The statement in this subparagraph shall be disseminated,
35 both orally and in writing, at the beginning of any event,
36 presentation, seminar, workshop, or public gathering regarding
37 veterans' benefits or entitlements.

38 (ii) The requirements of this subparagraph shall not apply in a
39 case where the United States Department of Veterans Affairs, the
40 California Department of Veterans Affairs, or other congressionally

1 chartered or recognized organization of honorably discharged
2 members of the Armed Forces of the United States, or any of their
3 auxiliaries have granted written permission to the advertiser or
4 promoter for the use of its name, symbol, or insignia to advertise
5 or promote the event, presentation, seminar, workshop, or other
6 public gathering.

7 (26) Representing that a product is made in California by using
8 a Made in California label created pursuant to ~~subdivision (d) of~~
9 Section 12098.10 of the Government Code, unless the product
10 complies with ~~standards adopted by the Governor's Office of~~
11 ~~Business and Economic Development. This paragraph shall be~~
12 ~~operative only if standards to that effect have been adopted~~
13 ~~pursuant to Section 12098.10 of the Government Code. Section~~
14 ~~12098.10 of the Government Code.~~

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

29 (2) This section shall not be construed to either authorize or
30 prohibit a home improvement contractor from referring a consumer
31 to a mortgage broker or lender by this subdivision. However, a
32 home improvement contractor may refer a consumer to a mortgage
33 lender or broker if that referral does not violate Section 7157 of
34 the Business and Professions Code or any other provision of law.
35 A mortgage lender or broker may purchase an executed home
36 improvement contract if that purchase does not violate Section
37 7157 of the Business and Professions Code or any other provision
38 of law. Nothing in this paragraph shall have any effect on the
39 application of Chapter 1 (commencing with Section 1801) of Title
40 2 to a home improvement transaction or the financing thereof.

SEC. 2. Article 6 (commencing with Section 12098.10) is added to Chapter 1.6 of Part 2 of Division 3 of Title 2 of the Government Code, to read:

Article 6. The Made in California Program

12098.10. (a) The Made in California Program, a public and private collaboration, is hereby created within the Governor's Office of Business and Economic Development. The purposes of the program are to encourage consumer product awareness and to foster purchases of high-quality products ~~manufactured~~ *made* in this state.

(b) (1) ~~The office may shall develop and adopt standards that permit a program that permits~~ a company to represent that a product is made in this state. ~~Those standards may include any of~~ *To be eligible under the program, a company shall establish all* of the following:

~~(A) The company has a California-based workforce.~~

~~(B) The product is entirely or substantially manufactured in the state.~~

~~(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.~~

~~(A) The product is substantially made by an individual located in the state.~~

~~(B) The finished product could lawfully use a "Made in U.S.A." label and not violate Section 17533.7 of the Business and Professions Code.~~

~~(2) For purposes of this section, "substantially made" means completing an act that adds at least 51 percent of a final product's wholesale value by manufacture, assembly, fabrication, or production to create a final, recognizable product. "Substantially made" does not include 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) 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) As part of the Made in California Program, the office shall require each company to ~~apply to register with~~ the office for use of the Made in California label.

(2) *The company filing the registration shall submit a qualified third-party certification at least once every three years that the product is made in accordance with this section.*

(3) *For purposes of this section, “qualified third-party” means an individual, group, or association that possesses a professional license, certification, or other equivalent documentation indicating sufficient training, education, or expertise to perform a regulatory compliance audit.*

~~(2)~~

(4) ~~The office may require a fee to accompany the application.~~ *registration.* The fee shall be determined by the office, and shall not exceed the reasonable costs to the office in providing the services for which it is ~~charged.~~ *charged, including, but not limited to, the costs to implement the marketing program.* Proceeds from the fee shall be ~~used to cover the costs of implementing the Made in California Program~~ *deposited in the Made in California Fund established in subdivision (h).*

~~(3) The office may begin accepting applications prior to fully developing and implementing the Made in California Program.~~

(f) The office may accept monetary donations or other donations from businesses, nonprofit organizations, or individuals for the purpose of implementing the Made in California Program. *These donations shall be deposited in the Made in California Fund established in subdivision (h).*

(g) (1) Notwithstanding Section 10231.5, the office shall report to the Legislature on January 1, 2015, 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.

(h) The Made in California Fund is hereby created as a special fund in *within* 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. *Treasury. Notwithstanding Section 13340, funds deposited and maintained in the Made in California Fund that were donated pursuant to subdivision (f) are continuously appropriated, without regard to fiscal years, to the director, for the purposes of implementing the Made in California Program. Any other funds deposited and maintained in the Made in California Fund are available, subject to appropriation by the Legislature, for purposes of implementing the program.*

12098.11. The provisions of this article shall be enforced pursuant to the Consumers Legal Remedies Act, pursuant to Title 1.5 (commencing with Section 1750) of Part 4 of Division 3 of the Civil Code, and do not impose any requirement upon the office to enforce, audit, or investigate a company that participates in the Made in California Program.