

AMENDED IN ASSEMBLY MAY 4, 2020

CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

ASSEMBLY BILL

No. 3317

Introduced by Assembly Member Wicks

February 21, 2020

An act to amend Section 1770 of the Civil Code, relating to unfair business practices.

LEGISLATIVE COUNSEL’S DIGEST

AB 3317, as amended, Wicks. Unfair and deceptive practices.

Existing law, the Consumer Legal Remedies Act, makes unlawful specified 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.

This bill would provide that, for purposes of specified unfair methods of competition and unfair or deceptive acts or practices that a person who provides data, information, and content to a business is a customer in a transaction. ~~The bill would include in the list of unfair methods of competition and unfair or deceptive acts or practices a company failing to act in accordance with its community guidelines that are presented to users of an online platform.~~

This bill would make it an unfair or deceptive practice for an online platform operator to fail to act in accordance with its community guidelines, terms and conditions, content management policies, content management features, or other promises that are presented to users of the online platform, as defined. The bill would also make it an unfair or deceptive practice for an online platform operator to use design, code, or artificial intelligence to modify or manipulate a user interface

with the purpose or substantial effect of, among other things, cultivating compulsive usage, as defined, or obscuring, subverting, or impairing user autonomy, decisionmaking, or choice to obtain user data. The bill would require an online platform to provide a public reporting tool to flag instance of banned designs. The bill would require that public reporting tool to contain publically viewable reports. The bill would authorize the Attorney General, at their discretion, to release guidance for compliance.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ 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 is amended to
2 read:
- 3 1770. (a) The unfair methods of competition and unfair or
4 deceptive acts or practices listed in this subdivision undertaken by
5 any person in a transaction intended to result or that results in the
6 sale or lease of goods or services to any consumer are unlawful.
7 For purposes of this subdivision, a person that provides data,
8 information, and content to a business is a customer in a
9 transaction.
- 10 (1) Passing off goods or services as those of another.
11 (2) Misrepresenting the source, sponsorship, approval, or
12 certification of goods or services.
13 (3) Misrepresenting the affiliation, connection, or association
14 with, or certification by, another.
15 (4) Using deceptive representations or designations of
16 geographic origin in connection with goods or services.
17 (5) Representing that goods or services have sponsorship,
18 approval, characteristics, ingredients, uses, benefits, or quantities
19 that they do not have or that a person has a sponsorship, approval,
20 status, affiliation, or connection that the person does not have.
21 (6) Representing that goods are original or new if they have
22 deteriorated unreasonably or are altered, reconditioned, reclaimed,
23 used, or secondhand.
24 (7) Representing that goods or services are of a particular
25 standard, quality, or grade, or that goods are of a particular style
26 or model, if they are of another.

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

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

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

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

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

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

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

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

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

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

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

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

31 (20) Advertising that a product is being offered at a specific
32 price plus a specific percentage of that price unless (A) the total
33 price is set forth in the advertisement, which may include, but is
34 not limited to, shelf tags, displays, and media advertising, in a size
35 larger than any other price in that advertisement, and (B) the
36 specific price plus a specific percentage of that price represents a
37 markup from the seller's costs or from the wholesale price of the
38 product. This subdivision shall not apply to in-store advertising
39 by businesses that are open only to members or cooperative
40 organizations organized pursuant to Division 3 (commencing with

1 Section 12000) of Title 1 of the Corporations Code if more than
2 50 percent of purchases are made at the specific price set forth in
3 the advertisement.

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

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

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

17 (23) (A) The home solicitation, as defined in subdivision (h)
18 of Section 1761, of a consumer who is a senior citizen where a
19 loan is made encumbering the primary residence of that consumer
20 for purposes of paying for home improvements and where the
21 transaction is part of a pattern or practice in violation of either
22 subsection (h) or (i) of Section 1639 of Title 15 of the United States
23 Code or paragraphs (1), (2), and (4) of subdivision (a) of Section
24 226.34 of Title 12 of the Code of Federal Regulations.

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

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

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

37 (i) "Public social services" means those activities and functions
38 of state and local government administered or supervised by the
39 State Department of Health Care Services, the State Department
40 of Public Health, or the State Department of Social Services, and

1 involved in providing aid or services, or both, including health
2 care services, and medical assistance, to those persons who,
3 because of their economic circumstances or social condition, are
4 in need of that aid or those services and may benefit from them.

5 (ii) “Public social services” also includes activities and functions
6 administered or supervised by the United States Department of
7 Veterans Affairs or the California Department of Veterans Affairs
8 involved in providing aid or services, or both, to veterans, including
9 pension benefits.

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

15 (I) The time and effort required.

16 (II) The novelty and difficulty of the services.

17 (III) The skill required to perform the services.

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

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

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

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

35 (i) “I am not authorized to file an initial application for Veterans’
36 Aid and Attendance benefits on your behalf, or to represent you
37 before the Board of Veterans’ Appeals within the United States
38 Department of Veterans Affairs in any proceeding on any matter,
39 including an application for that benefits. It would be illegal for
40 me to accept a fee for preparing that application on your behalf.”

1 The requirements of this clause do not apply to a person licensed
2 to act as an agent or attorney in proceedings before the Agency of
3 Original Jurisdiction and the Board of Veterans' Appeals within
4 the United States Department of Veterans Affairs when that person
5 is offering those services at the advertised event.

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

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

20
21 "This event is not sponsored by, or affiliated with, the United
22 States Department of Veterans Affairs, the California Department
23 of Veterans Affairs, or any other congressionally chartered or
24 recognized organization of honorably discharged members of the
25 Armed Forces of the United States, or any of their auxiliaries.
26 None of the insurance products promoted at this sales event are
27 endorsed by those organizations, all of which offer free advice to
28 veterans about how to qualify and apply for benefits."
29

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

34 (ii) The requirements of this subparagraph shall not apply in a
35 case where the United States Department of Veterans Affairs, the
36 California Department of Veterans Affairs, or other congressionally
37 chartered or recognized organization of honorably discharged
38 members of the Armed Forces of the United States, or any of their
39 auxiliaries have granted written permission to the advertiser or
40 promoter for the use of its name, symbol, or insignia to advertise

1 or promote the event, presentation, seminar, workshop, or other
2 public gathering.

3 (26) Advertising, offering for sale, or selling a financial product
4 that is illegal under state or federal law, including any cash payment
5 for the assignment to a third party of the consumer's right to receive
6 future pension or veteran's benefits.

7 (27) Representing that a product is made in California by using
8 a Made in California label created pursuant to Section 12098.10
9 of the Government Code, unless the product complies with Section
10 12098.10 of the Government Code.

11 ~~(28) A company failing to act in accordance with its community~~
12 ~~guidelines that are presented to users of an online platform.~~

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

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

39 (c) (1) *For purposes of this subdivision, the following terms*
40 *have the following meanings:*

1 (A) “Compulsive usage” means any response stimulated by
2 external factors that causes an individual to engage unintentionally
3 in repetitive behavior.

4 (B) “Consumer” includes a user of online platforms, regardless
5 of whether the user has a subscription, user profile, or log in
6 credentials, or has made a payment.

7 (2) It is an unfair or deceptive act or practice for an online
8 platform operator to do either of the following:

9 (A) Fail to act in accordance with its community guidelines,
10 terms and conditions, content management policies, content
11 management features, or other promises that are presented to
12 users of the online platform.

13 (B) Use design, code, or artificial intelligence to modify or
14 manipulate a user interface with the purpose or substantial effect
15 of any of the following:

16 (i) Obscuring, subverting, or impairing user autonomy,
17 decisionmaking, or choice to obtain user data or consent to obtain
18 user data.

19 (ii) Coercing a user to give up data or content, including, but
20 not limited to, photos, videos, text, audio, and images.

21 (iii) Cultivating compulsive usage.

22 (3) An online platform shall provide a public reporting tool to
23 flag instances of banned designs as described in subparagraph
24 (B) of paragraph (2). The public reporting tool shall contain
25 publically viewable reports.

26 (4) The Attorney General, at their discretion, may release
27 guidance for compliance with this subdivision.