

Date of Hearing: April 19, 2022

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION

Jesse Gabriel, Chair

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

**SUBJECT:** Consumers Legal Remedies Act: covered person

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

- 1) Add to the list of unfair methods of competition and unfair or deceptive acts or practices under the Consumer Legal Remedies Act (CLRA) failing to include the following information in a solicitation to a consumer for a consumer financial product or service:
  - 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.
  - 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) Define “consumer financial product or service” and “covered person” to have the same meaning as defined in the California Consumer Financial Protection Law (CCFPL).
- 3) Define “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.
- 4) Exempt 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 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. (Civ. Code Secs. 1750-1784.)
- 2) 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.)
- 3) Defines “covered person” to mean, to the extent not preempted by federal law, any of the following:

- Any person that engages in offering or providing a consumer financial product or service to a resident of this state.
  - Any affiliate of a person described in this subdivision if the affiliate acts as a service provider to the person.
  - 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 Sec. 90005(f).)
- 4) Defines “consumer financial product or service” to mean:
- A financial product or service that is delivered, offered, or provided for use by consumers primarily for personal, family, or household purposes.
  - 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 Sec. 90005(e).)

**FISCAL EFFECT:** Unknown

**COMMENTS:**

- 1) **Purpose of this bill:** This bill seeks to enhance consumer protections by requiring financial service providers to clearly disclose that marketing materials are advertisements, along with the name and contact information of the company. This bill is author-sponsored.
- 2) **Author’s statement:** 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.

- 3) **Misleading marketing materials from some financial service providers:** The author’s office argues that existing law lacks clear rules for 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.

Accordingly, this bill would require two modest disclosures that consumer financial service providers (defined as a “covered person” under CCFPL) must include in solicitations to help ensure that a consumer is aware that the materials they have received are, in fact, merely advertisements. Specifically, 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, in size 18-point type. Importantly, this requirement applies only when the recipient is individually identified or given the impression they are individually identified, which the author’s office argues can be a key characteristic of an advertisement that can prey on the financially vulnerable.

In support, the California Low-Income Coalition writes:

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.

- 4) **Expands upon existing framework protecting Californians from unfair or deceptive acts or practices:** The CLRA provides consumers with protection against false advertising, fraud, and other unfair business practices generally, and additionally contains a list of prohibited acts or practices. Notably, the CLRA authorizes a consumer who suffers any damage as a result of a violation to bring an action to recover actual damages; an injunction to stop the unlawful 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 this bill'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 specified solicitations include a disclosure that the marketing contains 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.

- 5) **Making the disclosure required by this bill more apparent to consumers:** This bill requires solicitations made by covered persons to consumers contain the following disclosure in at least 18-point font:

“THIS IS AN ADVERTISEMENT. YOU ARE NOT REQUIRED TO MAKE ANY PAYMENT OR TAKE ANY OTHER ACTION IN RESPONSE TO THIS OFFER.”

This requirement is intended to ensure that disclosure is easy for the consumer to read, but there are additional ways a financial service provider could otherwise blend the disclosure into the surrounding text or make it difficult for the consumer to see or understand. This

problem is not unique to the solicitations this bill seeks to regulate, and there are numerous examples of how the Legislature has sought to ensure Californians are presented with clear, easy to understand disclosures. For example, in contracts for the collection of child support, Family Code Sec. 5611 requires that a specified disclosure be “in a contrasting style, and contrasting color or bold type, that is equally or more visible than the type used in the contract.”

Similarly, Civil Code Sec. 1716, requires that a statutory disclaimer akin to the one required by this bill “be displayed in conspicuous boldface capital letters of a color prominently contrasting with the background against which they appear, including all other print on the face of the solicitation and shall be at least as large, bold, and conspicuous as any other print on the face of the solicitation but no smaller than 30-point type.”

Other statutes require that certain disclosures are provided in the language in which a contract was negotiated or in the language(s) most commonly spoken in the county. Such requirements help ensure that bad actors may not circumvent important consumer protections by including statutorily required disclosures in a language that is different than the language used in the primary document that a non-native English speaker may not understand as well.

To bolster the consumer protections offered by AB 1904, the author offers two modest amendments to improve the efficacy of the disclosure required by the bill. First, the text of the disclosure must be bolded, and second, the disclosure must be in the same language as the solicitation itself. These amendments should help ensure that the text of the disclosure is prominent, and that the disclosure will arguably be understood by consumers who are being targeted in their primary language.

Author’s amendment:

On page 7, line 22 shall read: (ii) The following disclosure statement in at least 18-point ***bold type and in the language in which the solicitation is drafted:***

- 6) **Prior legislation:** AB 790 (Quirk-Silva, Ch. 589, Stats. 2021), expanded CLRA provisions regulating home solicitations of seniors so it applies to Property Assessed Clean Energy (PACE) financing.
- 7) **Double referral:** This bill was double-referred to the Assembly Committee on Banking and Finance where it was heard on March 28, 2022 and passed out 8-0.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

California Low Income Coalition

**Opposition**

None on file

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