 Introduced by Assembly Member Low
(Principal coauthors: Assembly Members Cervantes, Eggman, and Gloria)
(Principal coauthors: Senators Atkins, Galgiani, Lara, and Wiener)
(Coauthor: Senator Beall)

February 16, 2018

An act to amend Sections 1761 and 1770 of the Civil Code, relating to unlawful business practices.

LEGISLATIVE COUNSEL’S DIGEST

AB 2943, as amended, Low. Unlawful business practices: sexual orientation change efforts.

Existing law, the Consumer Legal Remedies Act, makes unlawful certain 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. Existing law authorizes any consumer who suffers damages as a result of these unlawful practices to bring an action against that person to recover damages, among other things.

Existing law prohibits mental health providers, as defined, from performing sexual orientation change efforts, as specified, with a patient under 18 years of age. Existing law requires a violation of this provision to be considered unprofessional conduct and subjects the provider to discipline by the provider’s licensing entity.
This bill would include, as an unlawful practice prohibited under the Consumer Legal Remedies Act, advertising, offering to engage in, or engaging in for sale, or selling services constituting sexual orientation change efforts with efforts, as defined, to an individual. The bill would also declare the intent of the Legislature in this regard.


The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares the following:

(a) Contemporary science recognizes that being lesbian, gay, bisexual, or transgender is part of the natural spectrum of human identity and is not a disease, disorder, or illness.

(b) The American Psychological Association convened the Task Force on Appropriate Therapeutic Responses to Sexual Orientation. The task force conducted a systematic review of peer-reviewed journal literature on sexual orientation change efforts and issued a report in 2009. The task force concluded that sexual orientation change efforts can pose critical health risks to lesbian, gay, and bisexual people, including confusion, depression, guilt, helplessness, hopelessness, shame, social withdrawal, suicidality, substance abuse, stress, disappointment, self-blame, decreased self-esteem and authenticity to others, increased self-hatred, hostility and blame toward parents, feelings of anger and betrayal, loss of friends and potential romantic partners, problems in sexual and emotional intimacy, sexual dysfunction, high-risk sexual behaviors, a feeling of being dehumanized and untrue to self, a loss of faith, and a sense of having wasted time and resources.

(c) The American Psychological Association issued a resolution on Appropriate Affirmative Responses to Sexual Orientation Distress and Change Efforts in 2009, stating: “The [American Psychological Association] advises parents, guardians, young people, and their families to avoid sexual orientation change efforts that portray homosexuality as a mental illness or developmental disorder and to seek psychotherapy, social support, and educational services that provide accurate information on sexual orientation and sexuality, increase family and school support, and reduce rejection of sexual minority youth.”
(d) The American Psychiatric Association published a position statement in March of 2000, stating:

“Psychotherapeutic modalities to convert or ‘repair’ homosexuality are based on developmental theories whose scientific validity is questionable. Furthermore, anecdotal reports of ‘cures’ are counterbalanced by anecdotal claims of psychological harm. In the last four decades, ‘reparative’ therapists have not produced any rigorous scientific research to substantiate their claims of cure. Until there is such research available, [the American Psychiatric Association] recommends that ethical practitioners refrain from attempts to change individuals’ sexual orientation, keeping in mind the medical dictum to first, do no harm.

The potential risks of reparative therapy are great, including depression, anxiety and self-destructive behavior, since therapist alignment with societal prejudices against homosexuality may reinforce self-hatred already experienced by the patient. Many patients who have undergone reparative therapy relate that they were inaccurately told that homosexuals are lonely, unhappy individuals who never achieve acceptance or satisfaction. The possibility that the person might achieve happiness and satisfying interpersonal relationships as a gay man or lesbian is not presented, nor are alternative approaches to dealing with the effects of societal stigmatization discussed.

Therefore, the American Psychiatric Association opposes any psychiatric treatment such as reparative or conversion therapy which is based upon the assumption that homosexuality per se is a mental disorder or based upon the a priori assumption that a patient should change his/her sexual homosexual orientation.”

(e) The American Academy of Pediatrics published an article in 1993 in its journal, Pediatrics, stating: “Therapy directed at specifically changing sexual orientation is contraindicated, since it can provoke guilt and anxiety while having little or no potential for achieving changes in orientation.”

(f) The American Medical Association Council on Scientific Affairs prepared a report in 1994, stating: “Aversion therapy (a behavioral or medical intervention which pairs unwanted behavior, in this case, homosexual behavior, with unpleasant sensations or aversive consequences) is no longer recommended for gay men and lesbians. Through psychotherapy, gay men and lesbians can
become comfortable with their sexual orientation and understand
the societal response to it.”

(g) The National Association of Social Workers prepared a 1997
policy statement, stating: “Social stigmatization of lesbian, gay
and bisexual people is widespread and is a primary motivating
factor in leading some people to seek sexual orientation changes.
Sexual orientation conversion therapies assume that homosexual
orientation is both pathological and freely chosen. No data
demonstrates that reparative or conversion therapies are effective,
and, in fact, they may be harmful.”

(h) The American Counseling Association Governing Council
issued a position statement in April of 1999, stating: “We oppose
‘the promotion of “reparative therapy” as a “cure” for individuals
who are homosexual.’”

(i) The American School Counselor Association issued a
position statement in 2014, stating: “It is not the role of the
professional school counselor to attempt to change a student’s
sexual orientation or gender identity. Professional school
counselors do not support efforts by licensed mental health
professionals to change a student’s sexual orientation or gender
as these practices have been proven ineffective and harmful.”

(j) The American Psychoanalytic Association issued a position
statement in June 2012 on attempts to change sexual orientation,
gender, identity, or gender expression, stating: “As with any
societal prejudice, bias against individuals based on actual or
perceived sexual orientation, gender identity or gender expression
negatively affects mental health, contributing to an enduring sense
of stigma and pervasive self-criticism through the internalization
of such prejudice.

Psychoanalytic technique does not encompass purposeful
attempts to ‘convert,’ ‘repair,’ change or shift an individual’s
sexual orientation, gender identity or gender expression. Such
directed efforts are against fundamental principles of
psychoanalytic treatment and often result in substantial
psychological pain by reinforcing damaging internalized attitudes.”

(k) The American Academy of Child and Adolescent Psychiatry
published an article in 2012 in its journal, Journal of the American
Academy of Child and Adolescent Psychiatry, stating: “Clinicians
should be aware that there is no evidence that sexual orientation
can be altered through therapy, and that attempts to do so may be
harmful. There is no empirical evidence adult homosexuality can be prevented if gender nonconforming children are influenced to be more gender conforming. Indeed, there is no medically valid basis for attempting to prevent homosexuality, which is not an illness. On the contrary, such efforts may encourage family rejection and undermine self-esteem, connectedness and caring, important protective factors against suicidal ideation and attempts. Given that there is no evidence that efforts to alter sexual orientation are effective, beneficial or necessary, and the possibility that they carry the risk of significant harm, such interventions are contraindicated.”

(l) The Pan American Health Organization, a regional office of the World Health Organization, issued a statement in May of 2012, stating: “These supposed conversion therapies constitute a violation of the ethical principles of health care and violate human rights that are protected by international and regional agreements.” The organization also noted that reparative therapies “lack medical justification and represent a serious threat to the health and well-being of affected people.”

(m) The American Association of Sexuality Educators, Counselors and Therapists (AASECT) issued a statement in 2014, stating: “[S]ame sex orientation is not a mental disorder and we oppose any ‘reparative’ or conversion therapy that seeks to ‘change’ or ‘fix’ a person’s sexual orientation. AASECT does not believe that sexual orientation is something that needs to be ‘fixed’ or ‘changed.’ The rationale behind this position is the following: Reparative therapy, for minors, in particular, is often forced or nonconsensual. Reparative therapy has been proven harmful to minors. There is no scientific evidence supporting the success of these interventions. Reparative therapy is grounded in the idea that nonheterosexual orientation is ‘disordered.’ Reparative therapy has been shown to be a negative predictor of psychotherapeutic benefit.”

(n) The American College of Physicians wrote a position paper in 2015, stating: “The College opposes the use of ‘conversion,’ ‘reorientation,’ or ‘reparative’ therapy for the treatment of LGBT persons. . . . Available research does not support the use of reparative therapy as an effective method in the treatment of LGBT persons. Evidence shows that the practice may actually cause
emotional or physical harm to LGBT individuals, particularly adolescents or young persons.”

(o) In October 2015, the Substance Abuse and Mental Health Services Administration of the United States Department of Health and Human Services issued a report titled “Ending Conversion Therapy: Supporting and Affirming LGBTQ Youth.” The report found that “[i]nterventions aimed at a fixed outcome, such as gender conformity or heterosexual orientation, including those aimed at changing gender identity, gender expression, and sexual orientation are coercive, can be harmful, and should not be part of behavioral health treatment.”

(p) Courts, including in California, have recognized the practice of sexual orientation change efforts as a commercial service. Therefore, claims that sexual orientation change efforts are effective in changing an individual’s sexual orientation, may constitute unlawful, unfair, or fraudulent business practices under state consumer protection laws. This bill intends to make clear that sexual orientation change efforts are an unlawful practice under California’s Consumer Legal Remedies Act.

(q) California has a compelling interest in protecting the physical and psychological well-being of lesbian, gay, bisexual, and transgender individuals.

(r) California has a compelling interest in protecting consumers from false and deceptive practices that claim to change sexual orientation and in protecting consumers against exposure to serious harm caused by sexual orientation change efforts.

SEC. 2. Section 1761 of the Civil Code is amended to read:

1761. As used in this title:

(a) “Goods” means tangible chattels bought or leased for use primarily for personal, family, or household purposes, including certificates or coupons exchangeable for these goods, and including goods that, at the time of the sale or subsequently, are to be so affixed to real property as to become a part of real property, whether or not they are severable from the real property.

(b) “Services” means work, labor, and services for other than a commercial or business use, including services furnished in connection with the sale or repair of goods.

(c) “Person” means an individual, partnership, corporation, limited liability company, association, or other group, however organized.
(d) “Consumer” means an individual who seeks or acquires, by purchase or lease, any goods or services for personal, family, or household purposes.

(e) “Transaction” means an agreement between a consumer and another person, whether or not the agreement is a contract enforceable by action, and includes the making of, and the performance pursuant to, that agreement.

(f) “Senior citizen” means a person who is 65 years of age or older.

(g) “Disabled person” means a person who has a physical or mental impairment that substantially limits one or more major life activities.

(1) As used in this subdivision, “physical or mental impairment” means any of the following:

(A) A physiological disorder or condition, cosmetic disfigurement, or anatomical loss substantially affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; or endocrine.

(B) A mental or psychological disorder, including intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities. “Physical or mental impairment” includes, but is not limited to, diseases and conditions that include orthopedic, visual, speech, and hearing impairment, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, intellectual disability, and emotional illness.

(2) “Major life activities” means functions that include caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(h) “Home solicitation” means a transaction made at the consumer’s primary residence, except those transactions initiated by the consumer. A consumer response to an advertisement is not a home solicitation.

(i) (1) “Sexual orientation change efforts” means any practices that seek to change an individual’s sexual orientation. This includes efforts to change behaviors or gender expressions, or to eliminate or reduce sexual or romantic attractions or feelings toward individuals of the same sex.
(2) “Sexual orientation change efforts” does not include psychotherapies that: (A) provide acceptance, support, and understanding of clients or the facilitation of clients’ coping, social support, and identity exploration and development, including sexual orientation-neutral interventions to prevent or address unlawful conduct or unsafe sexual practices; practices or to otherwise promote healthy sexual and romantic relationships; and (B) do not seek to change sexual orientation.

SEC. 3. Section 1770 of the Civil Code is amended to read:

1770. (a) The following 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 or services to any consumer are unlawful:

(1) Passing off goods or services as those of another.

(2) Misrepresenting the source, sponsorship, approval, or certification of goods or services.

(3) Misrepresenting the affiliation, connection, or association with, or certification by, another.

(4) Using deceptive representations or designations of geographic origin in connection with goods or services.

(5) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that he or she does not have.

(6) Representing that goods are original or new if they have deteriorated unreasonably or are altered, reconditioned, reclaimed, used, or secondhand.

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

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

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

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

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

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

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

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

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

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

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

(19) Inserting an unconscionable provision in the contract.

(20) Advertising that a product is being offered at a specific price plus a specific percentage of that price unless (A) the total price is set forth in the advertisement, which may include, but is not limited to, shelf tags, displays, and media advertising, in a size larger than any other price in that advertisement, and (B) the specific price plus a specific percentage of that price represents a markup from the seller’s costs or from the wholesale price of the product. This subdivision shall not apply to in-store advertising by businesses that are open only to members or cooperative organizations organized pursuant to Division 3 (commencing with Section 12000) of Title 1 of the Corporations Code where more than 50 percent of purchases are made at the specific price set forth in the advertisement.

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

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

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

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

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

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

(B) For purposes of this paragraph, the following definitions
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, if 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 before the Board of Veterans’ Appeals within the United States Department of Veterans Affairs in any proceeding on any matter, including an application for such benefits. It would be illegal for me to accept a fee for preparing that application on your behalf.”

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

(ii) The statement in clause (i) shall also be disseminated, both orally and in writing, at the beginning of any event, presentation, seminar, workshop, or public gathering regarding veterans’ benefits or entitlements.
(B) Advertising or promoting any event, presentation, seminar, workshop, or other public gathering regarding veterans’ benefits or entitlements that is not sponsored by, or affiliated with, the United States Department of Veterans Affairs, the California Department of Veterans Affairs, or any other congressionally chartered or recognized organization of honorably discharged members of the Armed Forces of the United States, or any of their auxiliaries that does not include the following statement, in the same type size and font as the term “veteran” or the variation of that term:

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

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

(ii) The requirements of this subparagraph shall not apply in a case where the United States Department of Veterans Affairs, the California Department of Veterans Affairs, or other congressionally chartered or recognized organization of honorably discharged members of the Armed Forces of the United States, or any of their auxiliaries have granted written permission to the advertiser or promoter for the use of its name, symbol, or insignia to advertise or promote the event, presentation, seminar, workshop, or other public gathering.

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

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

(28) Advertising, offering to engage in, or engaging in for sale, or selling services constituting sexual orientation change efforts with to an individual.

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

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