

ASSEMBLY BILL

No. 2943

Introduced by Assembly Member Low
(Principal coauthors: Assembly Members Cervantes, Eggman, and
Gloria)

(Principal coauthors: Senators Atkins, Galgiani, Lara, and Wiener)

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 introduced, 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 sexual orientation change efforts with an individual. The bill would also declare the intent of the Legislature in this regard.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

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

1 SECTION 1. The Legislature finds and declares the following:
2 (a) Contemporary science recognizes that being lesbian, gay,
3 bisexual, or transgender is part of the natural spectrum of human
4 identity and is not a disease, disorder, or illness.
5 (b) The American Psychological Association convened the Task
6 Force on Appropriate Therapeutic Responses to Sexual Orientation.
7 The task force conducted a systematic review of peer-reviewed
8 journal literature on sexual orientation change efforts and issued
9 a report in 2009. The task force concluded that sexual orientation
10 change efforts can pose critical health risks to lesbian, gay, and
11 bisexual people, including confusion, depression, guilt,
12 helplessness, hopelessness, shame, social withdrawal, suicidality,
13 substance abuse, stress, disappointment, self-blame, decreased
14 self-esteem and authenticity to others, increased self-hatred,
15 hostility and blame toward parents, feelings of anger and betrayal,
16 loss of friends and potential romantic partners, problems in sexual
17 and emotional intimacy, sexual dysfunction, high-risk sexual
18 behaviors, a feeling of being dehumanized and untrue to self, a
19 loss of faith, and a sense of having wasted time and resources.
20 (c) The American Psychological Association issued a resolution
21 on Appropriate Affirmative Responses to Sexual Orientation
22 Distress and Change Efforts in 2009, stating: “[T]he [American
23 Psychological Association] advises parents, guardians, young
24 people, and their families to avoid sexual orientation change efforts
25 that portray homosexuality as a mental illness or developmental
26 disorder and to seek psychotherapy, social support, and educational
27 services that provide accurate information on sexual orientation
28 and sexuality, increase family and school support, and reduce
29 rejection of sexual minority youth.”
30 (d) The American Psychiatric Association published a position
31 statement in March of 2000, stating:
32 “Psychotherapeutic modalities to convert or ‘repair’
33 homosexuality are based on developmental theories whose
34 scientific validity is questionable. Furthermore, anecdotal reports
35 of ‘cures’ are counterbalanced by anecdotal claims of psychological

1 harm. In the last four decades, ‘reparative’ therapists have not
2 produced any rigorous scientific research to substantiate their
3 claims of cure. Until there is such research available, [the American
4 Psychiatric Association] recommends that ethical practitioners
5 refrain from attempts to change individuals’ sexual orientation,
6 keeping in mind the medical dictum to first, do no harm.

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

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

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

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

36 (g) The National Association of Social Workers prepared a 1997
37 policy statement, stating: “Social stigmatization of lesbian, gay
38 and bisexual people is widespread and is a primary motivating
39 factor in leading some people to seek sexual orientation changes.
40 Sexual orientation conversion therapies assume that homosexual

1 orientation is both pathological and freely chosen. No data
2 demonstrates that reparative or conversion therapies are effective,
3 and, in fact, they may be harmful.”

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

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

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

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

29 (k) The American Academy of Child and Adolescent Psychiatry
30 published an article in 2012 in its journal, *Journal of the American*
31 *Academy of Child and Adolescent Psychiatry*, stating: “Clinicians
32 should be aware that there is no evidence that sexual orientation
33 can be altered through therapy, and that attempts to do so may be
34 harmful. There is no empirical evidence adult homosexuality can
35 be prevented if gender nonconforming children are influenced to
36 be more gender conforming. Indeed, there is no medically valid
37 basis for attempting to prevent homosexuality, which is not an
38 illness. On the contrary, such efforts may encourage family
39 rejection and undermine self-esteem, connectedness and caring,
40 important protective factors against suicidal ideation and attempts.

1 Given that there is no evidence that efforts to alter sexual
2 orientation are effective, beneficial or necessary, and the possibility
3 that they carry the risk of significant harm, such interventions are
4 contraindicated.”

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

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

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

35 (o) In October 2015, the Substance Abuse and Mental Health
36 Services Administration of the United States Department of Health
37 and Human Services issued a report titled “Ending Conversion
38 Therapy: Supporting and Affirming LGBTQ Youth.” The report
39 found that “[i]nterventions aimed at a fixed outcome, such as
40 gender conformity or heterosexual orientation, including those

1 aimed at changing gender identity, gender expression, and sexual
2 orientation are coercive, can be harmful, and should not be part of
3 behavioral health treatment.”

4 (p) Courts have recognized the practice of sexual orientation
5 change efforts as a commercial service, and claims that sexual
6 orientation change efforts are effective in changing an individual’s
7 sexual orientation, may constitute unlawful, unfair, or fraudulent
8 business practices under state consumer protection laws.

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

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

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

17 1761. As used in this title:

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

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

27 (c) “Person” means an individual, partnership, corporation,
28 limited liability company, association, or other group, however
29 organized.

30 (d) “Consumer” means an individual who seeks or acquires, by
31 purchase or lease, any goods or services for personal, family, or
32 household purposes.

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

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

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

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

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

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

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

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

26 (i) (1) *“Sexual orientation change efforts” means any practices*
27 *that seek to change an individual’s sexual orientation. This includes*
28 *efforts to change behaviors or gender expressions, or to eliminate*
29 *or reduce sexual or romantic attractions or feelings toward*
30 *individuals of the same sex.*

31 (2) *“Sexual orientation change efforts” does not include*
32 *psychotherapies that: (A) provide acceptance, support, and*
33 *understanding of clients or the facilitation of clients’ coping, social*
34 *support, and identity exploration and development, including*
35 *sexual orientation-neutral interventions to prevent or address*
36 *unlawful conduct or unsafe sexual practices; and (B) do not seek*
37 *to change sexual orientation.*

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

39 1770. (a) The following unfair methods of competition and
40 unfair or deceptive acts or practices undertaken by any person in

- 1 a transaction intended to result or that results in the sale or lease
2 of goods or services to any consumer are unlawful:
- 3 (1) Passing off goods or services as those of another.
 - 4 (2) Misrepresenting the source, sponsorship, approval, or
5 certification of goods or services.
 - 6 (3) Misrepresenting the affiliation, connection, or association
7 with, or certification by, another.
 - 8 (4) Using deceptive representations or designations of
9 geographic origin in connection with goods or services.
 - 10 (5) Representing that goods or services have sponsorship,
11 approval, characteristics, ingredients, uses, benefits, or quantities
12 that they do not have or that a person has a sponsorship, approval,
13 status, affiliation, or connection that he or she does not have.
 - 14 (6) Representing that goods are original or new if they have
15 deteriorated unreasonably or are altered, reconditioned, reclaimed,
16 used, or secondhand.
 - 17 (7) Representing that goods or services are of a particular
18 standard, quality, or grade, or that goods are of a particular style
19 or model, if they are of another.
 - 20 (8) Disparaging the goods, services, or business of another by
21 false or misleading representation of fact.
 - 22 (9) Advertising goods or services with intent not to sell them
23 as advertised.
 - 24 (10) Advertising goods or services with intent not to supply
25 reasonably expectable demand, unless the advertisement discloses
26 a limitation of quantity.
 - 27 (11) Advertising furniture without clearly indicating that it is
28 unassembled if that is the case.
 - 29 (12) Advertising the price of unassembled furniture without
30 clearly indicating the assembled price of that furniture if the same
31 furniture is available assembled from the seller.
 - 32 (13) Making false or misleading statements of fact concerning
33 reasons for, existence of, or amounts of, price reductions.
 - 34 (14) Representing that a transaction confers or involves rights,
35 remedies, or obligations that it does not have or involve, or that
36 are prohibited by law.
 - 37 (15) Representing that a part, replacement, or repair service is
38 needed when it is not.

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

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

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

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

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

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

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

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

38 (23) (A) The home solicitation, as defined in subdivision (h)
39 of Section 1761, of a consumer who is a senior citizen where a
40 loan is made encumbering the primary residence of that consumer

1 for purposes of paying for home improvements and where the
2 transaction is part of a pattern or practice in violation of either
3 subsection (h) or (i) of Section 1639 of Title 15 of the United States
4 Code or paragraphs (1), (2), and (4) of subdivision (a) of Section
5 226.34 of Title 12 of the Code of Federal Regulations.

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

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

16 (B) For purposes of this paragraph, the following definitions
17 shall apply:

18 (i) “Public social services” means those activities and functions
19 of state and local government administered or supervised by the
20 State Department of Health Care Services, the State Department
21 of Public Health, or the State Department of Social Services, and
22 involved in providing aid or services, or both, including health
23 care services, and medical assistance, to those persons who,
24 because of their economic circumstances or social condition, are
25 in need of that aid or those services and may benefit from them.

26 (ii) “Public social services” also includes activities and functions
27 administered or supervised by the United States Department of
28 Veterans Affairs or the California Department of Veterans Affairs
29 involved in providing aid or services, or both, to veterans, including
30 pension benefits.

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

36 (I) The time and effort required.

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

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

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

1 (V) The experience, reputation, and ability of the person
2 providing the services.

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

12 (25) (A) Advertising or promoting any event, presentation,
13 seminar, workshop, or other public gathering regarding veterans'
14 benefits or entitlements that does not include the following
15 statement in the same type size and font as the term "veteran" or
16 any variation of that term:

17 (i) "I am not authorized to file an initial application for Veterans'
18 Aid and Attendance benefits on your behalf, or to represent you
19 before the Board of Veterans' Appeals within the United States
20 Department of Veterans Affairs in any proceeding on any matter,
21 including an application for such benefits. It would be illegal for
22 me to accept a fee for preparing that application on your behalf."
23 The requirements of this clause do not apply to a person licensed
24 to act as an agent or attorney in proceedings before the Agency of
25 Original Jurisdiction and the Board of Veterans' Appeals within
26 the United States Department of Veterans Affairs when that person
27 is offering those services at the advertised event.

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

32 (B) Advertising or promoting any event, presentation, seminar,
33 workshop, or other public gathering regarding veterans' benefits
34 or entitlements that is not sponsored by, or affiliated with, the
35 United States Department of Veterans Affairs, the California
36 Department of Veterans Affairs, or any 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 that does not include the following statement, in the

1 same type size and font as the term “veteran” or the variation of
2 that term:

3
4 “This event is not sponsored by, or affiliated with, the United
5 States Department of Veterans Affairs, the California Department
6 of Veterans Affairs, or any other congressionally chartered or
7 recognized organization of honorably discharged members of the
8 Armed Forces of the United States, or any of their auxiliaries.
9 None of the insurance products promoted at this sales event are
10 endorsed by those organizations, all of which offer free advice to
11 veterans about how to qualify and apply for benefits.”
12

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

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

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

30 (27) Representing that a product is made in California by using
31 a Made in California label created pursuant to Section 12098.10
32 of the Government Code, unless the product complies with Section
33 12098.10 of the Government Code.

34 (28) *Advertising, offering to engage in, or engaging in sexual
35 orientation change efforts with an individual.*

36 (b) (1) It is an unfair or deceptive act or practice for a mortgage
37 broker or lender, directly or indirectly, to use a home improvement
38 contractor to negotiate the terms of any loan that is secured,
39 whether in whole or in part, by the residence of the borrower and
40 that is used to finance a home improvement contract or any portion

1 of a home improvement contract. For purposes of this subdivision,
2 “mortgage broker or lender” includes a finance lender licensed
3 pursuant to the California Finance Lenders Law (Division 9
4 (commencing with Section 22000) of the Financial Code), a
5 residential mortgage lender licensed pursuant to the California
6 Residential Mortgage Lending Act (Division 20 (commencing
7 with Section 50000) of the Financial Code), or a real estate broker
8 licensed under the Real Estate Law (Division 4 (commencing with
9 Section 10000) of the Business and Professions Code).

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

O