

## Analysis of California Senate Bill No. 1096

### Overview

Senate Bill No. 1096 (SB 1096) amends Section 1770 of the California Civil Code under the Consumers Legal Remedies Act. This legislation aims to increase transparency in mailed solicitations for consumer financial products or services by mandating the inclusion of specific disclosure statements. These requirements apply to solicitations sent by or on behalf of “covered persons” or “acting entities”.

- **Covered Person:** Defined under Section 90005 of the Financial Code, a “covered person” is any entity engaged in offering or providing a consumer financial product or service. Examples include banks, credit unions, and other financial service providers, excluding those explicitly exempt under Division 24 of the Financial Code.
- **Acting Entity:** Any third party acting on behalf of a covered person, such as marketing firms or service providers involved in the solicitation process.

### Key Requirements

#### 1. Disclosure Statement on Envelopes

- Any envelope containing a solicitation for consumer financial products or services must display the following disclosure statement: “THIS IS AN ADVERTISEMENT. YOU ARE NOT REQUIRED TO MAKE ANY PAYMENT OR TAKE ANY OTHER ACTION IN RESPONSE TO THIS OFFER.”
- This statement must appear in at least 16-point bold type on the front of the envelope.

#### 2. Content Inside the Solicitation

- The solicitation must include the name and contact information (mailing address and phone number) of the covered person and any acting entity.
- The same disclosure statement must also appear inside the solicitation in at least 18-point bold type and in the language used in the solicitation.

#### 3. Scope and Exemptions

- “Covered persons” include entities offering consumer financial products or services unless exempt under Division 24 of the Financial Code.
- Mass advertisements, consumer-initiated communications, and solicitations subject to federal disclosure requirements are excluded.
- These requirements apply to all solicitations directed at California residents, regardless of where the correspondence is produced. Businesses located outside California must comply if their solicitations target California consumers.

### 4. Compliance Timeline

- o Businesses must ensure compliance with these requirements by January 1, 2025. This includes updating all current and future solicitation practices to meet the new standards.

### 5. Penalties for Non-Compliance

- o Non-compliance with Senate Bill No. 1096 (SB 1096), which amends the Consumers Legal Remedies Act (CLRA), can lead to significant legal consequences under California law. The CLRA, codified in California Civil Code §§ 1750 et seq., prohibits various unfair or deceptive acts in consumer transactions. Violations of the CLRA, including those specified in SB 1096, may result in the following penalties:
  - Actual Damages: Compensation for the consumer's monetary loss resulting from the unlawful practice.
  - Injunctive Relief: Court orders to cease the unlawful methods, acts, or practices.
  - Restitution: Return of property or funds to the consumer.
  - Punitive Damages: Additional sums awarded to punish particularly egregious conduct.
  - Attorney's Fees and Court Costs: Reimbursement of legal expenses incurred by the consumer.
  - Additional Remedies: Any other relief the court deems appropriate.

For senior citizens or disabled individuals who suffer substantial damage due to a violation, the court may award an additional civil penalty of up to \$5,000. It's important to note that the CLRA allows consumers to file individual lawsuits or class actions. Therefore, non-compliance can lead to both individual claims and larger class-action lawsuits, increasing potential liability. To mitigate these risks, businesses should ensure adherence to SB 1096's requirements, including the mandated disclosure statements in mailed solicitations for consumer financial products or services. Implementing compliance measures not only helps avoid legal penalties but also fosters consumer trust and aligns with fair business practices.

### Implications for Businesses

Businesses that market consumer financial products and services via mail must:

- Review and update solicitation materials to ensure compliance with font size and placement requirements for the disclosure statement.
- Include accurate identification and contact details in solicitations.
- Train marketing teams and partners to adhere to these new standards.

Non-compliance with these requirements could result in violations of the Consumers Legal Remedies Act, which prohibits unfair or deceptive practices, and may expose businesses to legal and financial liabilities.

## **How to Ensure Compliance with SB 1096**

### **Step 1: Audit Current Solicitation Practices**

- **Identify Solicitation Methods:** Review all mailed solicitation campaigns targeting consumers for financial products or services.
- **Evaluate Materials:** Ensure existing solicitation envelopes and content meet the required disclosure standards.

### **Step 2: Redesign Envelopes and Content**

- **Envelope Requirements:**
  - Place the disclosure statement prominently on the front of the envelope.
  - Use at least 16-point bold type for the statement.
- **Internal Solicitation Requirements:**
  - Include the disclosure statement in at least 18-point bold type.
  - Provide clear and accurate contact details of the sender.

### **Step 3: Implement Internal Controls**

- **Policy Updates:**
  - Update marketing policies to incorporate SB 1096 requirements.
  - Develop templates that comply with disclosure mandates.
- **Staff Training:**
  - Train marketing and legal teams on the new requirements.
  - Educate third-party vendors or contractors involved in solicitation campaigns.

### **Step 4: Monitor and Verify Compliance**

- **Compliance Checklists:**
  - Use a checklist to review all solicitations before distribution.
- **Audits:**
  - Conduct periodic audits of solicitation practices.

### **Step 5: Engage Legal Counsel**

- Seek guidance from legal professionals to interpret any ambiguities in the law and address exemptions or specific business scenarios.

### **Additional Best Practices**

- **Leverage Technology:**
  - Use tools to automate font sizing and placement checks in marketing materials.
- **Maintain Transparency:**
  - Ensure all marketing communications are clear and non-deceptive to build consumer trust and avoid potential violations.

By following these steps, businesses can achieve compliance with SB 1096 and avoid penalties associated with unfair or deceptive practices. Adhering to these requirements not only fulfills legal obligations but also enhances consumer confidence in the integrity of marketing communications.

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