Date of Hearing: April 8, 2021

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION
Ed Chau, Chair
AB 790 (Quirk-Silva) – As Amended March 22, 2021

SUBJECT: Consumer Legal Remedies Act

SUMMARY: This bill would extend the laws regulating unfair methods of competition and unfair or deceptive acts or practices with regard to the home solicitation of a senior citizens for certain "home improvements" funded by a loan that encumbers the person's primary residence to the Property Assessed Clean Energy (PACE) program.

EXISTING LAW:

1) Provides that the unfair methods of competition and unfair or deceptive acts or practices related to home solicitations to senior citizens which are 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 if they relate to:

   - Federal consumer protection laws related to specified mortgages, which state:

     - "A creditor shall not engage in a pattern or practice of extending credit to consumers under mortgages referred to in section 1602(aa) 1 of this title based on the consumers' collateral without regard to the consumers' repayment ability, including the consumers' current and expected income, current obligations, and employment."

     - "A creditor shall not make a payment to a contractor under a home improvement contract from amounts extended as credit under a mortgage referred to in section 1602(aa) 1 of this title, other than:

       - in the form of an instrument that is payable to the consumer or jointly to the consumer and the contractor; or,

       - at the election of the consumer, by a third party escrow agent in accordance with terms established in a written agreement signed by the consumer, the creditor, and the contractor before the date of payment."

   - Acts or practices for certain closed-end home mortgage loans which include:

     - Prohibiting a creditor from extending credit for a specified closed-end home mortgage for home improvement contracts, except as specified.

     - Prohibiting the sale or assignation of certain closed-end home mortgage without furnishing the following statement to the purchaser or assignee: "Notice: This is a mortgage subject to special rules under the federal Truth in Lending Act. Purchasers or assignees of this mortgage could be liable for all claims and defenses with respect to the mortgage that the borrower could assert against the creditor."

- Extending credit for certain closed-end home mortgage loans to a consumer based on the value of the consumer's collateral without regard to the consumer's repayment ability as of consummation, including the consumer's current and reasonably expected income, employment, assets other than the collateral, current obligations, and mortgage-related obligations. (Civ. Code Sec. 1770 (a)(23)(A).)

2) Provides that a third party shall be liable for an unlawful home solicitation if (1) there was an agency relationship between the party who engaged in home solicitation and the third party, or (2) 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. (Civ. Code Sec. 1770 (a)(23)(B).)

3) A person shall not engage in the business of a PACE solicitor unless that person is enrolled with a program administrator pursuant to the requirements of this section. A program administrator shall establish and maintain a process for enrolling PACE solicitors that is acceptable to the commissioner. That process shall include both of the following: a written agreement between the program administrator and the PACE solicitor that shall set forth the obligations of the PACE solicitor and its PACE solicitor agents; and, a review of readily and publicly available information regarding each PACE solicitor. (Fin. Code Sec. 22680 (a)-(b).)

4) Declares that a program administrator shall not execute an assessment contract, and no work shall commence under a home improvement contract that is financed by that assessment contract nor shall that home improvement contract be executed unless the program administrator makes a reasonable good faith determination that the property owner has a reasonable ability to pay the annual payment obligations for the PACE assessment. (Fin. Code Sec. 22686.)

5) States that a PACE program administrator shall establish and maintain a training program for PACE solicitor agents that is acceptable to the commissioner. This includes an introductory training that includes the following topics:

   - PACE programs and assessment contracts.
   - PACE disclosures.
   - Ethics.
   - Fraud prevention.
   - Consumer protection.
   - Nondiscrimination.
   - Senior financial abuse. (Fin. Code Sec. 22681 (a)-(c).)

FISCAL EFFECT: None. This bill has been keyed nonfiscal by the Legislative Counsel.

COMMENTS:

1) **Purpose of this bill**: This bill seeks to extend existing consumer protection laws prohibiting unfair or deceptive business practices which currently apply to certain types of mortgage loans to PACE loans. This bill is sponsored by the California Low-Income Consumer Coalition and the National Consumer Law Center.

2) **Author's statement**: According to the author:

> Seniors are frequently targeted by solicitors of the Property Assessed Clean Energy (PACE) program. These consumers are more likely have greater equity in their homes, which can be leveraged for PACE financing. Seniors with aging homes may also be more inclined to consider making upgrades and repairs, particularly as they anticipate selling their home or handing the home down to their children.
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> Under the current state of the law, it is not clear that PACE financing is governed by the Truth in Lending Act (TILA), which currently makes it an unfair or deceptive business practice to make a home solicitation to a senior citizen to sell financing for home improvements when that financing would encumber the residence.
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> AB 790 would make clear that PACE financing is included under TILA.

3) **The PACE program has been problematic for consumers**: The PACE program was established as a statewide program in 2008 when the Legislature authorized cities and counties to finance modernizing home improvements that are permanently fixed to a property. While the PACE program is authorized through the government, private companies fund and administer the program.

   The intent of the PACE program was to spur environmentally conscious energy and water efficient home projects like solar panels and low flush toilets. Despite the program's laudatory intent, the loans offered through PACE have been mired in controversy due to the lack of consumer protections in law and the predatory nature of the loans. Most significantly, the PACE loans are secured as a lien on a person's residence, and the payment is due through an annual tax assessment. If a consumer fails to make one or more payments on a PACE loan, the residence may be subject to foreclosure. This is particularly troubling for elderly homeowners on a fixed income who are targeted for these home improvements, and often cannot afford the tax assessment when it comes due.

   As early as 2010, federal authorities raised concerns that residential PACE financing could pose a risk for federal mortgage enterprises. Over the next decade, the Legislature enacted various laws to establish consumer notice requirements and tighten financing standards to better protect borrowers. In 2018, class-action lawsuits were filed against Los Angeles County and the county's private lenders, Renovate America and Renew Financial, alleging that individuals participating in the PACE program were at risk of losing their homes due to unscrupulous actors and the lack of consumer protections.[1]

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[1] Andrew Khouri, *Lawsuits Filed Against L.A. County, Lenders Over Green Energy Program*, April 12, 2018, Los Angeles Times, available at https://www.latimes.com/business/la-fi-pace-lawsuits-20180411-story.html

In May 2020, Los Angeles County ceased its PACE program.[2] L.A. County Treasurer and Tax Collector Keith Knox told the Los Angeles Times that despite recent legislative reforms meant to quell concerns about PACE, "the county could not be certain there were sufficient protections for consumers."[3]

Accordingly, this bill would extend the provisions in the Consumer Legal Remedies Act (CLRA) relating to home solicitations of a senior citizen where the loan encumbers the primary residence of the consumer to apply to PACE. Under the bill, if transactions are part of a pattern or practice in violation of specified provisions of PACE, they would be deemed unfair methods of competition and unfair or deceptive acts or practices.

The National Consumer Law Center (NCLC) and the California Low-Income Consumer Coalition (CLICC), co-sponsors, describe the need for this bill as follows:

> [PACE lawsuits] almost always involve a contractor selling upgrades to a client that do not make sense for our senior clients. In almost every case, our clients do not understand what they are being sold and what their obligations will be. Usually our clients have been told falsehoods, such as that the solar panels will not cost anything. And in almost every case they learn of their liability [only] when their property tax bill arrives."
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> The [] CLRA currently makes it an unfair or deceptive business practice to make a home solicitation to a senior citizen to sell financing for home improvements when that financing would encumber a residence, and where the transaction would violate the federal Truth in Lending Act (TILA) or other federal laws. Under the current state of the law, it is not clear that PACE financing falls within the ambit of the CLRA. It is clear, however, that door-to-door sales of home-secured financing like PACE are exactly what the home solicitation provision of the CLRA was written to protect against – a home solicitation to a senior for a loan that pays for home improvements and encumbers the home.
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> AB 790 will provide much-needed clarity and strengthen existing protections for senior citizens by preventing PACE lenders from using technical arguments to evade their obligations when a senior whose home has been put at risk because of a PACE loan seeks relief under the CLRA. [citations omitted]

4) **Bill would increase consumer protections for the elderly**: This bill would amend the CLRA to add PACE loans to the types of loans for which it is a deceptive business practice to make a home solicitation to a senior citizen for a loan that encumbers the property as a pattern and practice of unlawful business. Under existing law, the CLRA does not specifically apply to the PACE program. By expanding the CLRA to PACE loans, senior citizen consumers who are targeted for loans that they cannot afford will have additional remedies under the law. Specifically, the CLRA provides that a consumer who suffers any damage as a result of violations of the CLRA may bring an action against recover or obtain any of the following: actual damages; an injunction to stop the unlawful the methods, acts, or

[2] Andrew Khouri, *L.A. County Ends Controversial PACE Home Improvement Loan Program*, May 21, 2020, Los Angeles Times, available at: https://www.latimes.com/homeless-housing/story/2020-05-21/la-fi-pace-home-improvement-loans-la-county.
[3] Id.

practices; restitution of property; punitive damages; and any other relief that the court deems proper. (Civ. Code Sec 1780.)

The California Association of Realtors (CAR), in support, describes the need for this bill as follows:

> CAR has long supported efforts to reform the PACE program, a financing mechanism that homeowners can use to make a variety of efficiency and fire hardening improvements to their homes with little or no money down. The financing is then secured by a super priority lien on the property and repaid through a property tax assessment. Although PACE began as a public program, it quickly transitioned to mostly being run by for-profit industries sanctioned by localities. Unfortunately, the PACE program has been plagued with a myriad of troubles related to unscrupulous solicitors since its transition to the private market. Numerous localities, including LA County and the Western Riverside Council of Governments, have made the decision to cease PACE financing in their areas because of these predatory practices. Seniors in particular are vulnerable to this type of program since it is often marketed via a door-to-door solicitation model.

Public Counsel, the nation's largest public interest law firm specializing in delivering pro bono legal services to low-income communities, adds, "we have served over 300 clients with PACE legal issues ranging from misrepresentations regarding price, eligibility, and how PACE loans are assessed and secured to outright forgery and fraud. Approximately 30 percent of these were elderly people who would have benefited from protections like those AB 790 would provide."

By clarifying that the protections provided in the CLRA extend to home solicitations for PACE assessments made to senior citizens, this bill would increase consumer protections for this vulnerable class.

5) **Prior legislation**: SB 242 (Skinner, Ch.484, Stats. 2017) established requirements for contracts, efficiency improvements, disclosures, and reporting for PACE programs administered by a third-party program administrator.

   AB 1284 (Dababneh, Ch.475, Stats. 2017) established requirements for PACE program administrators that must be met before PACE assessment contracts may be funded and recorded by a public agency, required PACE program administrators to be licensed under the regulatory law, and established a regulatory scheme for the oversight of PACE solicitors and PACE solicitor agents.

   AB 2693 (Dababneh, Ch.618, Stats. 2016) created the PACE Preservation and Consumer Protections Act by adding consumer protections to the PACE program.

6) **Double-referral**: This bill has been double-referred to the Assembly Judiciary Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Low-Income Consumer Coalition (sponsor)
National Consumer Law Center (sponsor)

Bet Tzedek
California Association of Realtors
National Housing Law Project
Public Counsel

Opposition

None on file

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