

AMENDED IN ASSEMBLY APRIL 3, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

**ASSEMBLY BILL**

**No. 69**

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**Introduced by Assembly Member Correa**

December 11, 2002

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An act to add Chapter 6 (commencing with Section 17300) to Part 2 of Division 7 of the Business and Professions Code, relating to business.

LEGISLATIVE COUNSEL'S DIGEST

AB 69, as amended, Correa. Business: unfair competition.

~~Under existing law, a person who engages in unfair competition, as defined, is subject to a civil penalty and an injunction to prevent that conduct.~~

~~This bill would express the Legislature's findings concerning the unfair competition law.~~

*Existing law provides remedies for acts of unfair competition, as defined, that may be sought by the Attorney General or other designated public governmental law agencies or by a private person acting for the interest of itself, its members, or the general public.*

*This bill would impose specified requirements on an unfair competition action brought on or after January 1, 2004, by a private person acting for the interests of the general public, which the bill would designate as a representative cause of action. The bill would require that a representative cause of action be verified and accompanied by a statement under penalty of perjury attesting to specified information. The bill would impose additional requirements, including notification of specified agencies of the filing of a representative cause of action. The*

*bill would prohibit a private person acting for the interests of the general public from soliciting a settlement or resolution of an alleged act of unfair competition without first filing a complaint with the court.*

*By adding new perjury crimes, the bill would impose a state-mandated local program.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

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

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

1 SECTION 1. The Legislature finds and declares the  
2 following:

3 (a) The provisions of law in Chapter 5 (commencing with  
4 Section 17200) of *Part 2 of Division 7 of the Business and*  
5 *Professions Code* (hereafter the unfair competition law), are  
6 intended to protect consumers and the businesses that serve them  
7 from fraud, *misconduct*, and deception in the advertising and  
8 practice of commerce.

9 (b) The unfair competition law is an important ~~tool~~ *provision*  
10 *of law* that has provided great benefit to the people of California  
11 in ~~halting or preventing~~ *preventing, halting, and remedying*  
12 consumer and public market abuses.

13 (c) Representative actions by private attorneys ~~on behalf of~~  
14 *brought for the primary purpose of protecting* consumers are a  
15 valuable component of the unfair competition law and permit  
16 appropriate enforcement of the law when public entities lack the  
17 resources to do so.

18 (d) ~~Any~~ *The* improper or unethical use of the unfair  
19 competition law damages the legitimacy and undermines the  
20 original intent of that law. These abuses ~~also~~ hamper the ability of  
21 legitimate businesses to operate efficiently and provide the jobs,  
22 goods, *prices*, and services ~~needed~~ *desired* by the consumers of  
23 this state.



1 (e) Law-abiding business owners of California have a right to  
2 expect reasonable protection from unlawful, unethical, repetitive,  
3 or and disproportionate lawsuits or settlement demands when the  
4 public good has not been appreciably endangered.

5 SEC. 2. Chapter 6 (commencing with Section 17300) is added  
6 to Part 2 of Division 7 of the Business and Professions Code, to  
7 read:

8  
9 CHAPTER 6. REPRESENTATIVE ACTIONS ON BEHALF OF THE PUBLIC

10  
11 17300. This chapter applies to a representative cause of  
12 action filed on or after January 1, 2004. A representative cause of  
13 action is a cause of action asserted by a private plaintiff on behalf  
14 of the general public under Section 17204. A private plaintiff is a  
15 person other than the Attorney General, district attorney, county  
16 counsel, city attorney, or city prosecutor.

17 17301. A private plaintiff may plead a representative cause of  
18 action on behalf of the interests of the general public under Section  
19 17204 only if the requirements of this chapter are satisfied.

20 17302. (a) The private plaintiff shall separately plead the  
21 representative cause of action in the complaint and shall designate  
22 it as being brought “on behalf of the interests of the general  
23 public” under Section 17204. The complaint shall be verified  
24 pursuant to Section 446 of the Code of Civil Procedure.

25 (b) The complaint shall include a statement under penalty of  
26 perjury by the private plaintiff and by his or her attorney of record  
27 that they do not have a conflict of interest or other impediment to  
28 their faithful representation of the interests of the general public  
29 they represent. A representative cause of action is not valid if filed  
30 without this statement, and the court may in its discretion take  
31 appropriate action to dismiss the action and award costs and  
32 attorney’s fees to the defendant.

33 17303. (a) At the time of filing a representative cause of  
34 action, the private plaintiff shall notify and submit a copy of the  
35 complaint to the Attorney General, the district attorney for the  
36 county in which the complaint is filed, and the state or local body  
37 responsible for regulating the defendant named in the  
38 representative cause of action.

39 (b) Filing of the complaint constitutes a representation to the  
40 court that the notice described in subdivision (a) has been or will



1 *be given as required by this section. Failure to provide notice as*  
2 *required by this section is subject to the imposition of sanctions*  
3 *pursuant to Section 128.7 of the Code of Civil Procedure.*

4 17304. *The private plaintiff shall provide notice of any*  
5 *application for preliminary relief to the parties designated in*  
6 *Section 17303 in the same manner as notice is given to the*  
7 *defendant.*

8 17305. (a) *The State Bar of California shall prepare and*  
9 *make publicly available by June 1, 2004, a “Disclosure of*  
10 *Defendant’s Rights” that describes, in simple and easy to*  
11 *understand terms, the legal rights and privileges applicable to a*  
12 *defendant in a representative cause of action. The document shall*  
13 *also include a description of abusive settlement tactics and*  
14 *instructions for contacting the Attorney General and the State Bar*  
15 *to report unethical conduct or any suspected abusive lawsuits. The*  
16 *document shall be made publicly available in English and in other*  
17 *languages principally spoken in this state.*

18 (b) *The private plaintiff shall serve the defendants in a*  
19 *representative cause of action with the “Disclosure of Defendant’s*  
20 *Rights.” This document shall be served on the defendants with the*  
21 *complaint. Only the “Disclosure of Defendant’s Rights”*  
22 *developed by the State Bar shall be used for this purpose.*

23 17306. (a) *A private plaintiff may not have a conflict of*  
24 *interest that reasonably could compromise the good faith*  
25 *representation of the interests of the general public pled in the*  
26 *complaint. The attorney for a private plaintiff shall be an adequate*  
27 *legal representative of the interests of the general public pled in the*  
28 *complaint.*

29 (b) *On a noticed motion of a party or on the court’s own motion,*  
30 *the court shall determine whether the requirements of subdivision*  
31 *(a) are satisfied. The determination may be based on the pleadings,*  
32 *or the court in its discretion may permit discovery on the issues. In*  
33 *making its determination, the court shall consider standards*  
34 *applied in class actions. If the court determines that the*  
35 *requirements of subdivision (a) are not satisfied, the representative*  
36 *cause of action shall be stricken from the complaint.*

37 (c) *This section does not preclude the court from granting*  
38 *appropriate preliminary relief before making a determination*  
39 *under subdivision (b).*



1 17307. (a) Before entry of a judgment or any modification of  
2 a judgment that is a final determination of the representative cause  
3 of action and before any settlement shall become effective, the  
4 court shall determine if all of the following requirements have been  
5 satisfied:

6 (1) The proposed judgment and any stipulations and associated  
7 agreements are lawful, fair, reasonable, noncollusive, and  
8 adequate to protect the interests of the general public pled in the  
9 complaint.

10 (2) Any award of attorney's fees included in the judgment or in  
11 any stipulation or associated agreement complies with applicable  
12 law.

13 (3) All other requirements of this chapter have been satisfied.

14 (b) If the court finds that the requirements of this chapter have  
15 not been satisfied, the court may impose sanctions pursuant to  
16 existing provisions of law.

17 17308. (a) At least 45 days before the date of the hearing  
18 described in Section 17307, the private plaintiff shall give notice  
19 of the proposed terms of the judgment or modification, including  
20 all stipulations and associated agreements between the parties,  
21 together with notice of the time and place set for the hearing on the  
22 entry of the judgment or modification, to all of the following:

23 (1) The Attorney General.

24 (2) The district attorney of the county where the action is  
25 pending.

26 (3) The state or local body responsible for regulating the  
27 defendant.

28 (4) Other parties known to the plaintiff with cases pending  
29 against the defendant based on substantially similar facts and  
30 theories of liability.

31 (5) Each person who has filed with the court a request for notice  
32 of the terms of the judgment.

33 (6) Other persons as ordered by the court.

34 (b) On motion of a party or on the court's own motion, the court  
35 for good cause may shorten or lengthen the time for giving notice  
36 under subdivision (a).

37 17309. Judgments, stipulations, and associated agreements  
38 in a representative cause of action are public documents.

39 17310. Any notice provided to the Attorney General, a district  
40 attorney, or a regulatory body pursuant to this chapter imposes no



1 duty on any of those offices. The Attorney General, district  
2 attorney, or regulatory body is not precluded from taking any  
3 action as a consequence of not acting in response to a notice  
4 provided under this chapter.

5 17311. The determination of a representative cause of action  
6 in a judgment approved by the court is conclusive and bars any  
7 further actions or causes of action brought by any private plaintiff  
8 against the same defendant based on substantially similar facts  
9 and theories of liability.

10 17312. A representative cause of action may not be dismissed,  
11 settled, or compromised, and no payments or monetary  
12 consideration may be collected or received by the plaintiff or its  
13 counsel without the approval of the court and a determination that  
14 the disposition of the representative cause of action satisfies the  
15 requirements of this chapter.

16 17313. No private person acting for the interests of the  
17 general public may solicit a settlement or resolution of an alleged  
18 act of unfair competition without first filing a complaint complying  
19 with the requirements of this chapter.

20 SEC. 3. No reimbursement is required by this act pursuant to  
21 Section 6 of Article XIII B of the California Constitution because  
22 the only costs that may be incurred by a local agency or school  
23 district will be incurred because this act creates a new crime or  
24 infraction, eliminates a crime or infraction, or changes the penalty  
25 for a crime or infraction, within the meaning of Section 17556 of  
26 the Government Code, or changes the definition of a crime within  
27 the meaning of Section 6 of Article XIII B of the California  
28 Constitution.

