

AMENDED IN ASSEMBLY APRIL 21, 2003

AMENDED IN ASSEMBLY APRIL 3, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 69

Introduced by Assembly Member Correa

December 11, 2002

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.

Existing law provides remedies for acts of unfair competition, as defined, ~~that~~ *which* may be ~~brought~~ *brought* 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 *and of the proposed terms of a judgment or modification in a representative cause of action, as specified. The bill would require the Attorney*

General to make these notifications publicly available via the Internet.
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: yes. State-mandated local program: 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 provision of law
10 that has provided great benefit to the people of California in
11 preventing, halting, and remedying consumer and public market
12 abuses.

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

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



1 (e) Law-abiding business owners of California have a right to
2 reasonable protection from unlawful, unethical, repetitive, and
3 disproportionate lawsuits or settlement demands when the public
4 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
10 PUBLIC
11

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

18 17301. A private plaintiff may plead a representative cause of
19 action on behalf of the interests of the general public under Section
20 17204 only if the requirements of this chapter are satisfied.

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

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

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



1 *Attorney General shall make the notice publicly available via the*
2 *Internet.*

3 (b) Filing of the complaint constitutes a representation to the
4 court that the notice described in subdivision (a) has been or will
5 be given as required by this section. Failure to provide notice as
6 required by this section is subject to the imposition of sanctions
7 pursuant to Section 128.7 of the Code of Civil Procedure.

8 17304. The private plaintiff shall provide notice of any
9 application for preliminary relief to the parties designated in
10 Section 17303 in the same manner as notice is given to the
11 defendant.

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

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

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

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



1 (c) This section does not preclude the court from granting
2 appropriate preliminary relief before making a determination
3 under subdivision (b).

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

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

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

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

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

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

27 (1) The Attorney General.

28 (2) The district attorney of the county where the action is
29 pending.

30 (3) The state or local body responsible for regulating the
31 defendant.

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

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

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

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



1 (c) *The Attorney General shall make the proposed terms of the*
2 *judgment or notification publicly available via the Internet.*

3 17309. Judgments, stipulations, and associated agreements in
4 a representative cause of action are public documents.

5 17310. Any notice provided to the Attorney General, a district
6 attorney, or a regulatory body pursuant to this chapter imposes no
7 duty on any of those offices, *other than those described in Sections*
8 *17303 and 17308.* The Attorney General, district attorney, or
9 regulatory body is not precluded from taking any action as a
10 consequence of not acting in response to a notice provided under
11 this chapter.

12 17311. The determination of a representative cause of action
13 in a judgment approved by the court is conclusive and bars any
14 further actions or causes of action brought by any private plaintiff
15 against the same defendant based on substantially similar facts and
16 theories of liability.

17 17312. A representative cause of action may not be dismissed,
18 settled, or compromised, and no payments or monetary
19 consideration may be collected or received by the plaintiff or its
20 counsel without the approval of the court and a determination that
21 the disposition of the representative cause of action satisfies the
22 requirements of this chapter.

23 17313. No private person acting for the interests of the general
24 public may solicit a settlement or resolution of an alleged act of
25 unfair competition without first filing a complaint complying with
26 the requirements of this chapter.

27 SEC. 3. No reimbursement is required by this act pursuant to
28 Section 6 of Article XIII B of the California Constitution because
29 the only costs that may be incurred by a local agency or school
30 district will be incurred because this act creates a new crime or
31 infraction, eliminates a crime or infraction, or changes the penalty
32 for a crime or infraction, within the meaning of Section 17556 of
33 the Government Code, or changes the definition of a crime within
34 the meaning of Section 6 of Article XIII B of the California
35 Constitution.

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