

AMENDED IN ASSEMBLY MAY 6, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 95

**Introduced by ~~Committee on Judiciary (Corbett (Chair), Hancock, Jackson, Laird, Longville, Montanez, Steinberg, and Vargas)~~
Assembly Member Corbett**

January 8, 2003

An act to ~~amend Section 17201 of~~ *add Sections 17204.7 and 17204.8* to the Business and Professions Code, relating to unfair competition.

LEGISLATIVE COUNSEL'S DIGEST

AB 95, as amended, ~~Committee on Judiciary~~ *Corbett*. ~~Unfair competition~~ *Private actions*.

Under existing law, unfair competition is defined to include an unlawful, unfair, or fraudulent business act or practice, unfair, deceptive, untrue, or misleading advertising, and any false representations to the public. Existing law authorizes an action for relief from unlawful competition to be brought by the Attorney General, a district attorney, a county counsel, or a city attorney, or by any person acting for the interests of itself, its members, or the general public, and provides various remedies, including injunctive relief, restitution, and civil penalties. ~~Existing law defines "person" for purposes of these provisions to mean and include natural persons, corporations, firms, partnerships, joint stock companies, associations, and other organizations of persons.~~

~~This bill would revise the definition of "person" for these purposes to also include limited liability companies~~ *require a person bringing a private action under these provisions on behalf of the general public to*

serve a specified notice on each defendant in the action. The bill would also specify disgorgement as an available remedy for acts of unfair competition and would set forth principles for joining these actions. The bill would make its provisions contingent upon SB 122 being enacted and becoming effective on or before January 1, 2004.

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. Section 17201 of the Business and Professions~~
2 *SECTION 1. Section 17204.7 is added to the Business and*
3 *Professions Code, to read:*

4 *17204.7. (a) A person bringing a private action for relief on*
5 *behalf of the general public pursuant to Section 17204 shall serve*
6 *on each defendant at the time of service of a demand letter or a*
7 *complaint, a notice containing the following statement in boldface*
8 *type:*

9 *“IMPORTANT CONSUMER INFORMATION: You are*
10 *receiving this notice because at least one of the claims against you*
11 *alleges an unlawful, unfair, or fraudulent business act or practice*
12 *under the California Business and Professions Code. YOU HAVE*
13 *IMPORTANT LEGAL RIGHTS, and you may wish to consult a*
14 *lawyer promptly to get helpful legal advice in responding to this*
15 *notice.*

16 *In addition, you may wish to contact either your local District*
17 *Attorney’s Office, the Attorney General’s Office, or the local bar*
18 *association in your county, or all of these offices, for legal*
19 *information about this type of lawsuit.*

20 *It also is important that you know that you are not required to*
21 *pay any money at this time. Moreover, RECEIPT OF THIS*
22 *NOTICE DOES NOT NECESSARILY MEAN YOU WILL BE*
23 *FOUND LIABLE FOR ANYTHING. Your best protection is to seek*
24 *out legal advice before agreeing to anything.*

25 *Once you have an attorney representing you, the attorney for the*
26 *plaintiff in this case is prohibited from contacting you unless your*
27 *attorney is present or your attorney has given the plaintiff’s*
28 *attorney permission to contact you. If the plaintiff’s attorney does*
29 *try to contact you personally, you should immediately report the*
30 *contact to your attorney. Attorneys are not allowed to threaten to*



1 *report you to a law enforcement or regulatory agency if you refuse*
2 *to settle a claim. If the plaintiff's attorney does so, you should*
3 *notify your attorney or the State Bar of California immediately.*

4 *If you choose not to hire an attorney, you may obtain additional*
5 *information about how to represent yourself on the California*
6 *Courts Web site, www.courtinfo.ca.gov.*

7 *If you agree to pay any attorney's fees to the plaintiff in this case,*
8 *a court must review these fees, pursuant to subdivision (a) of*
9 *Section 17204.6 of the California Business and Professions*
10 *Code."*

11 *(b) The notice in subdivision (a) shall be in at least 14-point*
12 *boldface type and shall not contain any other statements except for*
13 *those required in subdivision (a).*

14 *(c) An attorney who fails to comply with this section may be*
15 *subject to disciplinary action by the State Bar of California.*

16 *SEC. 2. Section 17204.8 is added to the Business and*
17 *Professions Code, to read:*

18 *17204.8. (a) Disgorgement relief is an available remedy*
19 *under Section 17203. A court shall assure that any disgorgement*
20 *relief in excess of any restitution paid by a defendant shall be*
21 *distributed as a fluid recovery or cy pres award, to the extent*
22 *possible, in a manner designed either to further the purposes of the*
23 *underlying causes of action or to promote justice for all*
24 *Californians.*

25 *(b) (1) All persons may be joined in one action as defendants*
26 *if there is asserted against them:*

27 *(A) Any right to relief jointly, severally, or in the alternative, in*
28 *respect of or arising out of the same transaction, occurrence, or*
29 *series of transactions or occurrences and if any question of law or*
30 *fact common to all these persons will arise in the action; or*

31 *(B) A claim, right, or interest adverse to them in the property*
32 *or controversy which is the subject of the action.*

33 *(2) It is not necessary that each defendant be interested as to*
34 *every cause of action or as to all relief prayed for. Judgment may*
35 *be given against one or more defendants according to their*
36 *respective liabilities.*

37 *(3) Where the plaintiff is in doubt as to the person from whom*
38 *he or she is entitled to redress, he or she may join two or more*
39 *defendants, with the intent that the question as to which, if any, of*



1 *the defendants is liable, and to what extent, may be determined*
2 *between the parties.*

3 *(4) The fact that individual defendants are engaged in the same*
4 *or similar businesses and are alleged to have violated the same or*
5 *similar laws or regulations shall not, in itself, constitute a basis for*
6 *joinder under this chapter.*

7 *SEC. 3. The provisions of paragraph (4) of subdivision (b) of*
8 *Section 17204.8 of the Business and Professions Code are*
9 *declaratory of existing law.*

10 *SEC. 4. This act shall become effective only if Senate Bill No.*
11 *122 of the 2003–04 Regular Session is enacted and becomes*
12 *effective on or before January 1, 2004.*

13 ~~Code is amended to read:~~

14 ~~17201. —As used in this chapter, the term person shall mean and~~
15 ~~include natural persons, corporations, limited liability companies,~~
16 ~~firms, partnerships, joint stock companies, associations and other~~
17 ~~organizations of persons.~~

