

**ASSEMBLY BILL**

**No. 2369**

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**Introduced by Assembly Member Correa  
(Principal coauthors: Assembly Members Dutra and Liu)**

February 19, 2004

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An act to add Section 479 to, and 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 2369, as introduced, Correa. Unfair competition actions.

Existing law provides remedies for acts of unfair competition, as defined, which may be 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. Under existing law, the violation of a provision regulating a profession or business may constitute an act of unfair competition.

This bill would impose specified requirements on an unfair competition action brought on or after January 1, 2005, 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.

The bill would also require a licensing board to indicate whether its action against a licensee is intended as the exclusive and final enforcement remedy for the violation it alleges and would, subject to specified exceptions, require a court to strike representative cause of action based on such a designated action. The bill would require a plaintiff who within a 6-month period filed one or more representative cause of actions against more than 20 defendants to notify each defendant and the court in which each action is pending and would require the court to schedule a class certification hearing and refer the matter to the Judicial Council for certification. The bill would authorize a court to impose sanctions in a representative cause of action against the private plaintiff and the plaintiff’s counsel.

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.



1 (c) Representative actions by private attorneys brought for the  
2 primary purpose of protecting consumers are a valuable  
3 component of the unfair competition law and permit appropriate  
4 enforcement of the law when public entities lack the resources to  
5 do so.

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

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

15 SEC. 2. Section 479 is added to the Business and Professions  
16 Code, to read:

17 479. The board shall indicate when filing an action against a  
18 licensee if the action is intended as the exclusive and final  
19 enforcement remedy for the violation alleged in the action.

20 SEC. 3. Chapter 6 (commencing with Section 17300) is added  
21 to Part 2 of Division 7 of the Business and Professions Code, to  
22 read:

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24 CHAPTER 6. REPRESENTATIVE ACTIONS ON BEHALF OF THE  
25 GENERAL PUBLIC

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27 17300. This chapter applies to a representative cause of action  
28 filed on or after January 1, 2005. A representative cause of action  
29 is a cause of action asserted by a private plaintiff on behalf of the  
30 general public under Section 17204. A private plaintiff is a person  
31 other than the Attorney General, district attorney, county counsel,  
32 city attorney, or city prosecutor.

33 17301. A private plaintiff may plead a representative cause of  
34 action on behalf of the interests of the general public under Section  
35 17204 only if the requirements of this chapter are satisfied.

36 17302. (a) The private plaintiff shall separately plead the  
37 representative cause of action in the complaint and shall designate  
38 it as being brought “on behalf of the interests of the general  
39 public” under Section 17204. The complaint shall be verified  
40 pursuant to Section 446 of the Code of Civil Procedure.



1 (b) The complaint shall include a statement under penalty of  
2 perjury by the private plaintiff and by his or her attorney of record  
3 that they do not have a conflict of interest or other impediment to  
4 their faithful representation of the interests of the general public  
5 they represent. A representative cause of action is not valid if filed  
6 without this statement, and the court may in its discretion take  
7 appropriate action to dismiss the action and award costs and  
8 attorney's fees to the defendant.

9 17303. (a) At the time of filing a representative cause of  
10 action, the private plaintiff shall notify and submit a copy of the  
11 complaint, including a copy in electronic form, to the Attorney  
12 General, the district attorney for the county in which the complaint  
13 is filed, and the state or local body responsible for regulating the  
14 defendant named in the representative cause of action. The  
15 Attorney General shall make the notice publicly available via the  
16 Internet.

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

22 17304. The private plaintiff shall provide notice of any  
23 application for preliminary relief to the parties designated in  
24 Section 17303 in the same manner as notice is given to the  
25 defendant.

26 17305. (a) The State Bar of California shall prepare and  
27 make publicly available by June 1, 2005, a "Disclosure of  
28 Defendant's Rights" that describes, in simple and easy to  
29 understand terms, the legal rights and privileges applicable to a  
30 defendant in a representative cause of action. The document shall  
31 also include a description of abusive settlement tactics and  
32 instructions for contacting the Attorney General and the State Bar  
33 to report unethical conduct or any suspected abusive lawsuits. The  
34 document shall be made publicly available in English and in other  
35 languages principally spoken in this state.

36 (b) The private plaintiff shall serve the defendants in a  
37 representative cause of action with the "Disclosure of Defendant's  
38 Rights." This document shall be served on the defendants with the  
39 complaint. Only the "Disclosure of Defendant's Rights"  
40 developed by the State Bar shall be used for this purpose.



1 17306. (a) A private plaintiff may not have a conflict of  
2 interest that reasonably could compromise the good faith  
3 representation of the interests of the general public pled in the  
4 complaint. The attorney for a private plaintiff shall be an adequate  
5 legal representative of the interests of the general public pled in the  
6 complaint.

7 (b) On a noticed motion of a party or on the court's own motion,  
8 the court shall determine whether the requirements of subdivision  
9 (a) are satisfied. The determination may be based on the pleadings,  
10 or the court in its discretion may permit discovery on the issues.  
11 In making its determination, the court shall consider standards  
12 applied in class actions. If the court determines that the  
13 requirements of subdivision (a) are not satisfied, the representative  
14 cause of action shall be stricken from the complaint.

15 (c) This section does not preclude the court from granting  
16 appropriate preliminary relief before making a determination  
17 under subdivision (b).

18 17307. The court shall strike a representative cause of action  
19 if it is based on an action that has been determined by the  
20 regulatory board pursuant to Section 479 to be the exclusive and  
21 final enforcement remedy for the violation. This requirement does  
22 not apply if the plaintiff demonstrates either of the following:

23 (a) The regulatory board action does not provide effective  
24 redress of the unfair competition.

25 (b) The interests of justice are not served by striking the  
26 representative cause of action.

27 17308. (a) A private plaintiff who within a six-month period  
28 brings one or more representative causes of action that name,  
29 either in a single or multiple complaints, more than 20 unrelated  
30 defendants and are based on similar alleged acts of unfair  
31 competition, shall give written notice of the existence of the other  
32 cases to each defendant in those cases and to the superior court  
33 where the action is filed. The notice shall contain the name and  
34 address of each defendant named in the actions.

35 (b) A superior court receiving a notice described in subdivision  
36 (a) shall refer the matter to the Judicial Council for proper  
37 consolidation, if consolidation is appropriate.

38 (c) A court receiving a notice described in subdivision (a) shall  
39 schedule a hearing at the earliest practicable opportunity, with  
40 notice to each defendant in all of the cases, to consider the



1 certification of a “defendant class” and the appointment of a class  
2 representative and to arrange for the selection of counsel. The class  
3 shall be certified if the facts and applicable law are substantially  
4 in common. A defendant shall have the opportunity to opt out of  
5 the class and shall be provided with notice of that right. If a class  
6 is certified, filing fees previously or subsequently due and other  
7 costs, shall accrue not by individual defendant class member, but  
8 to the class as a single party.

9 17309. (a) Before entry of a judgment or any modification of  
10 a judgment that is a final determination of the representative cause  
11 of action and before any settlement shall become effective, the  
12 court shall determine if all of the following requirements have  
13 been satisfied:

14 (1) The proposed judgment and any stipulations and associated  
15 agreements are lawful, fair, reasonable, noncollusive, and  
16 adequate to protect the interests of the general public pled in the  
17 complaint.

18 (2) Any award of attorney’s fees included in the judgment or in  
19 any stipulation or associated agreement complies with applicable  
20 law.

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

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

25 17310. (a) At least 45 days before the date of the hearing  
26 described in Section 17309, the private plaintiff shall give notice,  
27 including a copy in electronic form, of the proposed terms of the  
28 judgment or modification, including all stipulations and  
29 associated agreements between the parties, together with notice of  
30 the time and place set for the hearing on the entry of the judgment  
31 or modification, to all of the following:

32 (1) The Attorney General.

33 (2) The district attorney of the county where the action is  
34 pending.

35 (3) The state or local body responsible for regulating the  
36 defendant.

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



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

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

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

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

9 17311. Judgments, stipulations, and associated agreements in  
10 a representative cause of action are public documents.

11 17312. Any notice provided to the Attorney General, a district  
12 attorney, or a regulatory body pursuant to this chapter imposes no  
13 duty on any of those offices, other than those described in Sections  
14 17303 and 17310. The Attorney General, district attorney, or  
15 regulatory body is not precluded from taking any action as a  
16 consequence of not acting in response to a notice provided under  
17 this chapter.

18 17313. The determination of a representative cause of action  
19 in a judgment approved by the court is conclusive and bars any  
20 further actions or causes of action brought by any private plaintiff  
21 against the same defendant based on substantially similar facts and  
22 theories of liability.

23 17314. A representative cause of action may not be dismissed,  
24 settled, or compromised, and no payments or monetary  
25 consideration may be collected or received by the private plaintiff  
26 or its counsel without the approval of the court and a determination  
27 that the disposition of the representative cause of action satisfies  
28 the requirements of this chapter.

29 17315. No private person acting for the interests of the general  
30 public may solicit a settlement or resolution of an alleged act of  
31 unfair competition without first filing a complaint complying with  
32 the requirements of this chapter.

33 17316. A court may sanction a private plaintiff or its counsel  
34 if the court finds that the action is frivolous and the private plaintiff  
35 or its counsel knew or had reason to know of the lack of merit. An  
36 action is frivolous if it is completely without merit or is filed with  
37 the primary purpose of harassing a defendant or gaining an  
38 advantage unrelated to the claimed merits. In determining if an  
39 action is frivolous, the court may consider any conflict of interest  
40 on the part of the private plaintiff or its counsel with the interests



1 of the general public. Sanctions imposed by a court shall be applied  
2 as a matter of first priority to the payment of reasonable attorney’s  
3 fees incurred by the defendant in the defense of the action.

4 SEC. 4. No reimbursement is required by this act pursuant to  
5 Section 6 of Article XIII B of the California Constitution because  
6 the only costs that may be incurred by a local agency or school  
7 district will be incurred because this act creates a new crime or  
8 infraction, eliminates a crime or infraction, or changes the penalty  
9 for a crime or infraction, within the meaning of Section 17556 of  
10 the Government Code, or changes the definition of a crime within  
11 the meaning of Section 6 of Article XIII B of the California  
12 Constitution.

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