

Introduced by Senator Kopp

January 13, 1997

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

LEGISLATIVE COUNSEL'S DIGEST

SB 143, as amended, Kopp. Unfair competition litigation: representative actions.

Existing law prohibits unlawful, unfair, or fraudulent business acts or practices and unfair, deceptive, untrue, or misleading advertising. Existing law provides that relief for violations of these provisions may be obtained by the Attorney General, district attorneys, county counsels, city attorneys, and city prosecutors, as specified, or by certain other parties, including a person acting for the person's interests or on behalf of the general public. Available remedies under these laws are cumulative, and generally include injunctive relief, civil penalties, and restitution.

This bill would require unfair business practice actions brought by private parties on behalf of the *interests of the* general public ("representative actions") to comply with certain requirements. The bill would ~~require a private plaintiff to be an adequate representative of the interests of the general public and would~~ provide that the private plaintiff may not have a conflict of interest with the interests of the general public. The bill would also require the plaintiff's

attorney to be an adequate representative of the interests of the general public. These matters would be determined by the court, and the representative cause of action would be stricken from the complaint if these requirements are not satisfied, as specified.

The bill would also require the private plaintiff to provide notice of the representative action to the Attorney General and to the district attorney of the county where the action is pending. The defendant would be required to notify the plaintiff and the court of any other related actions pending in this state against the defendant.

The bill would also require the plaintiff to notify specified persons prior to entry of judgment or modification of judgment with respect to a final determination of the action, and would require a court hearing to determine if various requirements have been satisfied. ~~A judgment approved by the court under these provisions would bar any further actions on representative causes of actions brought by private plaintiffs against the defendant based on substantially similar facts and theories of liability.~~

The bill would also provide that if a prosecutor has commenced an enforcement action against the same defendant based on substantially similar facts and theories of liability, a court may stay the representative action, make an order for consolidation or coordination of the actions, or make any other order, in the interest of justice.

The bill would provide that its provisions apply to actions commenced after December 31, 1997.

The bill includes other related provisions.

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

4



1 CHAPTER 6. REPRESENTATIVE ACTIONS ON BEHALF OF
2 PUBLIC

3
4 17300. As used in this chapter:

5 (a) “Enforcement action” means an action by a
6 prosecutor under Chapter 5 (commencing with Section
7 17200) or Part 3 (commencing with Section 17500).

8 (b) “Prosecutor” means the Attorney General or
9 appropriate district attorney, county counsel, city
10 attorney, or city prosecutor.

11 (c) “Representative cause of action” means a cause of
12 action asserted by a private plaintiff on behalf of the
13 general public under Section 17204 or 17535.

14 17301. (a) A private plaintiff may plead a
15 representative cause of action on behalf of the *interests*
16 *of the* general public under Section 17204 or 17535 only
17 if the requirements of this chapter are satisfied.

18 (b) The private plaintiff shall separately state the
19 representative cause of action in the pleadings, and shall
20 designate it as being brought “on behalf of the *interests*
21 *of the* general public” under Section 17204 or 17535, as
22 applicable.

23 17302. (a) A private plaintiff in a representative
24 action ~~must be an adequate representative of the~~
25 ~~interests of the general public pled and~~ may not have a
26 conflict of interest that reasonably could compromise the
27 good faith representation of the interests of the general
28 public pled. ~~The private plaintiff is not required to have~~
29 ~~sustained any injury by the defendant.~~

30 (b) The attorney for a private plaintiff in a
31 representative action must be an adequate legal
32 representative of the interests of the general public pled.

33 (c) On noticed motion of a party or on the court’s own
34 motion, the court shall determine by order whether the
35 requirements of subdivisions (a) and (b) are satisfied.
36 The determination may be based on the pleadings. The
37 court may inquire into the matters in its discretion or may
38 permit discovery. In making its determination, the court
39 shall consider standards applied in class actions. If the
40 court determines that the requirements of subdivisions

1 (a) and (b) are not satisfied, the representative cause of
2 action shall be stricken from the complaint.

3 (d) An order under this subdivision may be
4 conditional, and may be modified before judgment in the
5 action.

6 (e) This section does not preclude the court from
7 granting appropriate preliminary relief before a
8 determination is made under subdivision (c).

9 17303. Within 10 days after commencement of a
10 representative action, the private plaintiff shall give
11 notice of the action and of any application for preliminary
12 relief, together with a copy of the complaint, to the
13 Attorney General and to the district attorney of the
14 county where the action is pending. Notice of any
15 application for preliminary relief shall be given in the
16 same manner as notice is given to the defendant.

17 17304. (a) Promptly after summons is served on the
18 defendant in an enforcement action or representative
19 action, the defendant shall notify the plaintiff and the
20 court of any other enforcement actions, representative
21 actions, or class actions pending in this state against the
22 defendant that are based on substantially similar facts and
23 theories of liability and that are known to the defendant.

24 (b) Promptly after summons is served on the
25 defendant in an enforcement action, representative
26 action, or class action in this state, the defendant shall give
27 notice of the filing to the plaintiff and the court in all
28 pending enforcement actions and representative actions
29 in this state against the defendant that are based on
30 substantially similar facts and theories of liability and that
31 are known to the defendant.

32 17305. (a) With respect to a representative cause of
33 action, at least 45 days before entry of a judgment, or any
34 modification of a judgment, which is a final
35 determination of the representative cause of action, the
36 private plaintiff shall give notice of the proposed terms of
37 the judgment or modification, including all stipulations
38 and associated agreements between the parties, together
39 with notice of the time and place set for a hearing on



1 entry of the judgment or modification, to all of the
2 following:

3 (1) The Attorney General.

4 (2) The district attorney of the county where the
5 action is pending.

6 (3) Other parties with cases pending against the
7 defendant based on substantially similar facts and
8 theories of liability known to the plaintiff.

9 (4) Each person who has filed with the court a request
10 for notice of the terms of judgment.

11 (5) Other persons as ordered by the court.

12 (b) A person given notice under subdivision (a) or any
13 other interested person may apply to the court for leave
14 to intervene in the hearing provided by Section 17306.
15 Nothing in this subdivision limits any other right a person
16 may have to intervene in the action.

17 (c) On motion of a party or on the court's own motion,
18 the court for good cause may shorten or lengthen the time
19 for giving notice under subdivision (a).

20 17306. (a) With respect to a representative cause of
21 action, before entry of a judgment, or any modification of
22 a judgment, which is a final determination of the
23 representative cause of action, a hearing shall be held to
24 determine whether the requirements of this chapter
25 have been satisfied.

26 (b) At the hearing the court shall consider the showing
27 made by the parties and any other persons permitted to
28 appear and shall order entry of judgment only if the court
29 finds that all of the following requirements have been
30 satisfied:

31 (1) The proposed judgment and any stipulations and
32 associated agreements are fair, reasonable, and adequate
33 to protect the interests of the general public.

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

37 (3) The private plaintiff satisfies the requirements of
38 subdivision (a) of Section 17302.

39 (4) The attorney for the private plaintiff satisfies the
40 requirements of subdivision (b) of Section 17302.



1 (5) All other requirements of this chapter have been
2 satisfied.

3 17307. A representative cause of action may not be
4 dismissed, settled, or compromised without the approval
5 of the court and a determination that the disposition of
6 the representative cause of action is fair, reasonable, and
7 adequate to protect the interests of the general public
8 pled. The court, in its discretion, may set the matter for
9 hearing on notice to persons who would receive notice
10 under Section 17306.

11 ~~17308. The determination of a representative cause of~~
12 ~~action brought by a private plaintiff in a judgment~~
13 ~~approved by the court pursuant to Section 17306 is~~
14 ~~conclusive and bars any further actions on representative~~
15 ~~causes of action brought by private plaintiffs against the~~
16 ~~same defendant based on substantially similar facts and~~
17 ~~theories of liability.~~

18 17309. (a) If a private plaintiff has commenced an
19 action that includes a representative cause of action and
20 a prosecutor has commenced an enforcement action
21 against the same defendant based on substantially similar
22 facts and theories of liability, the court in which either
23 action is pending, on motion of a party or on the court's
24 own motion, may stay the private plaintiff's
25 representative cause of action until completion of the
26 prosecutor's enforcement action, may make an order for
27 consolidation or coordination of the actions, or may make
28 any other order, in the interest of justice.

29 (b) The determination under subdivision (a) may be
30 made at any time during the proceedings and regardless
31 of the order in which the actions were commenced.

32 (c) Nothing in this section affects any right the
33 plaintiff may have to costs and attorney's fees pursuant to
34 Section 1021.5 of the Code of Civil Procedure or other
35 applicable law.

36 17310. Notice provided to the Attorney General or a
37 district attorney under Section 17303 or 17305 does not
38 impose any duty on the Attorney General or district
39 attorney. The Attorney General or district attorney is not
40 precluded from taking any future action as a consequence



1 of not taking action in response to notice or any
2 determination made under Section 17306.

3 ~~17311. (a) Except as provided in subdivision (b), this~~
4 ~~chapter does not apply to actions pending on its operative~~
5 ~~date.~~

6 ~~(b) If the parties to a representative action~~
7 ~~commenced before the operative date of this chapter~~
8 ~~substantially comply with the provisions of this chapter,~~
9 ~~the substantive rules provided in this chapter apply in the~~
10 ~~action unless the court determines that application of a~~
11 ~~particular provision of this chapter would substantially~~
12 ~~interfere with the effective conduct of the action or the~~
13 ~~rights of the parties or other interested persons. For the~~
14 ~~purpose of this subdivision, Sections 17301 and 17302 are~~
15 ~~not applicable and the duty to give notice under Section~~
16 ~~17303 is satisfied if the notice is given promptly after the~~
17 ~~operative date of this chapter. *This chapter applies to*~~
18 ~~*actions commenced after December 31, 1997.*~~

