

## California Litigation

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### California Legislators Introduce a Plethora of Proposed Amendments to the Unfair Competition Law (*B&P §§ 17200, et seq.*)

Since the last K&L California Litigation Alert concerning proposed amendments to California Business & Professions Code §§ 17200, *et seq.* (California's Unfair Competition Law),<sup>1</sup> several California legislators have introduced proposed amendments seeking to alter the Unfair Competition Law ("UCL") in significant ways.

#### **BACKGROUND: BUSINESS & PROFESSIONS CODE §§ 17200, ET SEQ.**

California's UCL, also known as "Section 17200," prohibits business practices that are "unlawful," "unfair," and "fraudulent," as well as false and misleading advertising. Section 17204 of the Business and Professions Code allows "any person" – even someone who suffers no injury – to act as a "private attorney general" to sue on behalf of the general public to enforce its provisions. A "private attorney general" may obtain an injunction barring a business practice and may force a business to pay restitution to people affected by the prohibited business practice. A "private attorney general" may also recover attorneys' fees for bringing suit, which has created a "bounty hunter" mentality.

California business leaders have long asserted that plaintiffs' lawyers abuse the "private attorney general" features of Section 17200. Recently, public attention has focused on a law firm in Beverly Hills, the Trevor Law Group, which has been accused of using the "private attorney general" provisions to extort settlements. The Trevor Law Group filed suit against thousands of small businesses alleging minor regulatory violations, and followed up with demands for a few thousand dollars to settle each case. The law firm's conduct drew a state bar investigation. California's Attorney General also sued the Trevor Law Group for its activities – ironically, under Section 17200. The Trevor Law Group's

activities also likely inspired either the substance or timing of the following proposed reform legislation.

#### **THE PROPOSED AMENDMENTS**

The recently proposed amendments focus on what some view as the most significant problems with the UCL's "private attorney general" features. One problem the amendments seek to correct is the UCL's almost nonexistent standing requirement: nearly anyone may bring suit under the UCL, regardless of whether he or she has suffered an injury. Thus, some of the proposed amendments require the "private attorney general" actually to have been harmed by the conduct before bringing suit.<sup>2</sup>

Businesses have further criticized Section 17200 because there is no way to resolve a claim brought by a "private attorney general" so as to prevent further suits by other "private attorneys general" challenging the same conduct. Several of the proposed amendments therefore seek to keep businesses being sued multiple times for the same conduct.<sup>3</sup>

Still others have criticized the fact that a "private attorney general" may represent absent plaintiffs without satisfying the requirements for a class action under California law. Some assert that allowing "private attorneys general" to bypass class action requirements is unfair to defendants, as well as those represented by the "private attorneys general." Certain of the proposed amendments would thus require "private attorneys general" to satisfy some or all of California's class certification requirements.<sup>4</sup>

Other proposed amendments include:

- Requiring court approval of settlements, which, in the class actions context, helps to avoid collusive settlements that benefit no-one but the attorneys and the defendant;<sup>5</sup>

- Providing an additional procedure which defendants could use to defeat a Section 17200 action in its early stages;<sup>6</sup>
- Requiring private plaintiffs to serve verified complaints on law enforcement officials – before seeking settlement – in order to alert those officials to the existence of the action, and give those officials an opportunity to prosecute it themselves;<sup>7</sup>
- Requiring private plaintiffs to serve a document entitled “Disclosure of Defendant’s Rights” – to be prepared by the State Bar – which would describe abusive settlement tactics and contain instructions for contacting the Attorney General and State Bar to report unethical conduct, or any suspected abusive lawsuits;<sup>8</sup>
- Preventing “private attorneys general” from piggybacking on the work of law enforcement officials, by barring actions based on violations of regulations and statutes already identified by federal, state, and local agencies;<sup>9</sup>
- Preventing “copycat” actions by barring “private attorneys general” from filing substantially identical suits to those already brought by law enforcement officials;<sup>10</sup>
- Protecting small businesses by requiring “private attorneys general” to have suffered actual harm before suing businesses with 50 employees or less;<sup>11</sup> and
- Changing the definition of business “practice” to exclude one-time acts, which are now actionable under Section 17200.<sup>12</sup>

## CONCLUSION

The desire for reform, stirred up by perceived abuses of the statute by firms like the Trevor Law Group, is as strong as it has been in years. The potential for amendment of the Unfair Competition Law provides those doing business in California with an excellent chance to shape the future of this important statute in ways to benefit the business climate in the state. Because a significant amendment of the Unfair Competition Law has the potential to affect significantly so many of our clients, we have issued, and will continue to issue periodic Alerts as new developments occur.

Should you wish to discuss these proposed amendments in more detail, or wish to review the entire text of each proposed bill, please feel free to contact us.

<sup>1</sup> See *California Legislature to Amend the Unfair Competition Law (B&P §§ 17200, et seq.) in Wake of Publicized Abuses*, January 2003.

<sup>2</sup> See AB 69: (Lou Correa, D-69th Dist.); AB 599 (Robert D. Dutton, R-63rd Dist.); and SB 899 (Ross Johnson, R-35th Dist.).

<sup>3</sup> See AB 69; AB 599.

<sup>4</sup> See *id.*

<sup>5</sup> See *id.*

<sup>6</sup> See *id.*

<sup>7</sup> See AB 69.

<sup>8</sup> See *id.*

<sup>9</sup> See SB 912 (Dick Ackerman, R-33rd Dist.).

<sup>10</sup> See *id.*

<sup>11</sup> See SB 889.

<sup>12</sup> See AB 754 (Russ Bough, R-65th Dist.).

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