

personal, which may have been acquired by means of any practice in this chapter declared to be unlawful. Actions for injunction under this section may be prosecuted by the Attorney General or any district attorney, county counsel, city attorney, or city prosecutor in this state in the name of the people of the State of California upon their own complaint or upon the complaint of any board, officer, person, corporation or association or by any person acting for the interests of him-, her- or itself, its members or the general public. Any money that is recovered that is not returned or returnable to persons who have been harmed, or used to remedy any harms caused by the act or practice or otherwise disposed of in accordance with section 17203, shall be deposited into an account or accounts of the state or the local agency and may be used for any purpose including law enforcement to prevent and redress unfair business practices.

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

Section 17300 **Definitions.**

For purposes of Article 7 of Chapter 4 of Part 2 of Division 7 of this Code (commencing with section 17150):

- (a) “Business” means any person or entity regulated or otherwise subject to the provisions of Division 7 of the Business and Professions Code (commencing with Section 16000) which has a place of business in or does business with any resident or business in California. “Business” shall not include any political campaign, party, candidate or committee, or any other entity engaged solely in political, candidate, ballot measure or issue campaigns.
- (b) For purposes of section 17160, “any information. . .collected by a business during the course of soliciting or fulfilling the terms of a commercial transaction, or any

information the business derives therefrom about the consumer” includes all information about the consumer that is linked to any personal identifying information and which is or was: provided by the consumer; obtained from any other person in the course of the transaction; created or amended in the course of the transaction; or, obtained from any other source about the consumer.

- (c) For purposes of section 17170, “statutory damages up to the amount of penalties imposed upon a violator of the Do Not Call Registry” means a statutory award of damages in an amount not greater than the civil penalty imposed upon a violator of the Do Not Call Registry administered by the United States Federal Trade Commission under 15 C.F.R. section 310.4(b)(iii); “reasonable fees” includes reasonable fees and expenses of investigators, experts or attorneys incurred on behalf of or paid by the plaintiff in investigating or bringing the action.
- (d) For purposes of sections 17160 and 17300(f), “personal identifying information” has the same meaning as that in section 1798.92(c) of the Civil Code, that is about the consumer and (1) is provided by a consumer to a business, (2) is created or amended in the course of any transaction by or for the consumer, or (3) obtained by the business from any other source. Personal identifying information shall include any list, description, or other grouping of consumers, and publicly available information pertaining to them, that is derived using any personal identifying information.
- (e) “Consumer” means an individual resident of this state, or that individual's legal representative, or any individual who is offered or solicited for or who obtains or has obtained, any product, service or consideration from a business in California. For purposes of this division, an individual resident of this state is someone

whose mailing address, other than an Armed Forces Post Office or Fleet Post Office address, is located in this December 17, 2003state. “Consumer” means an actual, prospective or solicited consumer, customer or client.

- (f) For purposes of section 17160 “necessary to effect, administer, or enforce” means that the disclosure is required to: carry out the transaction or the product or service of which the transaction is a part; record or maintain the consumer's account in the ordinary course of providing the service or product; administer benefits or claims relating to the transaction or the product or service; publish a listing of the consumer’s name, address or telephone number in a regularly published directory of names, addresses or telephone numbers if the consumer is afforded a means to refuse such listing; share personal identifying information between a nonprofit organization recognized under section 501(c) of the Internal Revenue Code and an entity that issues or administers an affinity credit card for the nonprofit organization.
- (g) For purposes of section 17160, “business” shall not include any charity or other tax-exempt organization recognized as such under Internal Revenue Code section 501(c), except subsection (6) thereof.
- (h) For purposes of section 17160, “permission” may be obtained from a consumer only by strict and complete compliance with all of the following:
 - (1) the permission is requested in a conspicuous notice, separate and distinct from any other notice, request, application or form;
 - (2) the permission clearly and simply informs the consumer of the precise permission requested, including:
 - (a) the information that will be disclosed;

- (b) the name(s) of all persons to whom the information will be disclosed;
 - (c) every commercial use that the person(s) to whom the information will be disclosed will make of the information and for what period of time;
 - (d) the period of time the permission will be in effect.
- (3) the consumer has a right not to give such permission and to modify or revoke it at any time;
 - (4) the permission given is fair, reasonable and informed, in light of the information provided in the request and the use of the information;
 - (5) no consideration of any kind is offered in exchange for the permission;
 - (6) the permission is expressed by a form that, at minimum, includes the following in not less than 12 point type, with bracketed type indicating variable content:

IMPORTANT PRIVACY INFORMATION FOR CALIFORNIANS

California consumers have privacy rights that are stronger than those under Federal law to control the sharing of some personal information by businesses. Unless you voluntarily agree to waive your privacy rights, we cannot share your personal or financial information with any non-affiliated company. The only exceptions are to complete a transaction that you request, to administer your account or policy, to comply with state or federal law, or to enforce legal rights. We cannot discriminate against you based on your decision not to waive your privacy rights.

IF YOU DO NOT WANT US TO SHARE YOUR PERSONAL OR FINANCIAL INFORMATION WITH OUTSIDE COMPANIES, DO NOT FILL OUT THIS FORM

(_____) I authorize you to share my personal or financial information with nonaffiliated companies: [name(s)]. I understand that this may result in my receiving unsolicited offers for products or services. This permission is in effect until rescinded by me or [date].

Name: _____

Account or Policy Number(s): _____

Signature: _____

Date: _____

To voluntarily waive your privacy rights, fill out, sign and send back this form to us. You may want to make a copy for your records.

You may rescind this authorization at any time by writing to us at any time, or by calling this toll free number (xxx) xxx-xxxx [or by contacting us electronically through the following internet option: xxxxxx@xxx.xxx].

- (i) For purposes of section 17203, “a court-approved fund appropriate to the circumstances of the particular action” shall mean funds controlled by nonprofit organizations or foundations to support projects that will benefit the persons or interests harmed by the act or practice or similarly situated persons or interests, or to promote the law consistent with the objectives and purposes of the underlying cause of action, to child advocacy programs, or to nonprofit organizations providing civil legal services to the indigent.
- (j) Nothing in this Act shall impose a requirement upon a business for which federal law imposes or prohibits a requirement in a manner that preempts state authority under the Constitution of the United States.
- (k) Definitions herein that incorporate definitions found in other provisions of law incorporate said provisions as of the date this Act is adopted unless the specific definition permits incorporation of later or superseding provisions.

17301 **Conflict**

To the extent that this division conflicts with any provision of any other state or local law, statute, or regulation, this division is the express will of the People and the terms of this Act shall prevail.

Section 7: **Severability**

If any part of any provision of this Act or its application to any person or circumstance is held invalid, the invalidity of that part or as to that person or circumstance does not affect other provisions or applications of this Act that can be given effect without the invalid provision or

application, and to this end the provisions of this Act are severable.

Section 8: Amendment

This Act may be amended by a vote of the people or by a law that furthers this Act's purposes in protecting California consumers or preventing and redressing unfair competition if passed by majority of each house of the Legislature and signed by the Governor. Any amendment to this Act passed by the Legislature and approved by the Governor that in any manner, directly or indirectly, reduces the rights contained herein or the remedies available to any person, shall not take effect unless approved by the voters at the next general election. Such amendment shall be immediately subject to a declaratory relief action to determine whether it meets both standards in this section and if so, whether a vote of the People is required. Venue for such an action shall be in the County of Sacramento.

Section 9: Effective Date

This Act shall take effect on January 1, 2005.

Section 10: Conflicting Measures

In the event that any other law be passed before this Act takes effect, or any other initiative or referendum measure shall appear on the same statewide election ballot, relating to the provisions of this Act, the provisions of this Act shall be deemed to express the will of the People and the provisions of such other laws shall be deemed to be in conflict with this Act. In the event that this Act shall receive a greater number of affirmative votes than any other ballot measure the terms of which conflict with any term in this Act, the provisions of this Act shall go into effect in their entirety and the provisions of any other ballot measure shall be null and void.