

SA2003RF0077,
AMDT. # 1-S

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30 December 2003

The Honorable Bill Lockyer
Attorney General of California
California Department of Justice

By Facsimile (Sacramento)

Attn: Trisha Knight, Initiative Coordinator

Re: Initiatives

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DEC 30 2003

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

Dear Mr. Lockyer and Ms. Knight:

As delivered to your office today via overnight FedEx, please find an amended version of the initiative I previously submitted – No. SA2003RF0077 (indicated as 11.5 on the text of the initiative itself) – bearing the suggested title “California Privacy Protection Act.” For ease of reference, the following changes were made:

Removal of underline formatting in 17300. (Text remains.)
Surplus definition in Section 17300 removed; definitions renumbered accordingly.
Changed text of “Amendment” section in Section 8.

Thank you for your assistance during this process. I may be contacted at the address above.

Cordially,

James Wheaton

Enclosure

SA2003KF0077,
AmAT. # 1-5

Affidavit

I, James Wheaton, acknowledge that it is a misdemeanor under state law (Section 18650 of the Elections Code) to knowingly or willfully allow the signatures on an initiative petition to be used for any purpose other than qualification of the proposed measure for the ballot. I certify that I will not knowingly or willfully allow the signatures for this initiative to be used for any purpose other than qualification of the measure for the ballot.

(Signature of Proponent)

Dated this 30th day of December, 2003

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INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

SA2003RF0077,
AmDt. #1-5

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

THE CALIFORNIA PRIVACY PROTECTION ACT

Section 1: **Findings** The People of California declare that the right to privacy is a personal, fundamental and inalienable right protected by Article 1, Section 1 of the Constitution of the State of California.

The People find that:

1. Big businesses invade our privacy when they sell and share our personal information without our permission.
2. Widespread commercial trafficking in private personal information and poor business practices in protecting such information threaten our Constitutional right of privacy.
3. The use of electronic information technology increases the likelihood that individual privacy rights are being violated on a massive scale, resulting in identity theft, financial fraud, and uncontrolled exposure of private personal information.
4. Current laws are too weak and do not give Californians enough control or remedies to prevent the selling or sharing of our personal information or other invasions of privacy by big businesses.
5. The purpose of the California Privacy Protection Act is to combat the misuse, and theft, of Californians' personal private information, especially personal financial information, by prohibiting the commercial sharing of our information without our permission, and by providing individuals with remedies to defend this fundamental right.
6. Businesses should have the ability to share the minimum amount of confidential personal information, with our permission when necessary to process transactions requested by consumers and for such other appropriate purposes as preventing fraud and for regulatory or law enforcement purposes, subject to the protections of this Act.

Section 2: **California Privacy Protection Act**

This Act shall be known and may be cited as the California Privacy Protection Act.

Section 3: **California Constitutional Right**

This Act defines and provides specific remedies to implement the existing right of privacy as guaranteed by Article 1, section 1 of the California Constitution. This Act is not the exclusive statement of those rights, definitions or remedies.

Section 4: Article 7 of Chapter 4 of Part 2 of Division 7 of the Business and Professions Code (commencing with section 17150) is added to read:

17150 Privacy Protection Act

This article shall be known and may be cited as the California Privacy Protection Act.

17160 Private Information Protection; “Ask Me First”

- (a) This section shall be known and may be cited as the “Ask Me First Act.”
- (b) Any information, including personal identifying 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, is deemed confidential information. Confidential information includes but is not limited to financial information and data.
- (c) A consumer’s confidential information may be disclosed to third parties only:
 - (1) By permission from the consumer; or
 - (2) To the extent necessary to effect, administer, or enforce a transaction requested or authorized by the consumer; or
 - (3) To the extent required by state or federal law; or
 - (4) To the extent permitted by a federal law which either (1) does not permit a state law providing greater protections for such information, or (2) permits a state

law providing greater protection for such information and which disclosure the state of California has not prohibited; or

(5) To the extent necessary to enforce the rights of a party entering into a transaction with the consumer.

(d) Third party businesses who obtain confidential information are bound by the provisions of this section.

(e) No business shall in any manner condition or deny any service, product or transaction, or discriminate against any consumer in whole or in part, because the consumer has not provided permission pursuant to subsection (c)(1).

17170 Remedies

In addition to the remedies afforded by section 17203 or any other provision of law, any person who successfully brings a private cause of action under any section of this division on behalf of him or herself, its members, or the general public, shall receive the greater of actual damages or statutory damages up to the amount of penalties imposed upon a violator of the Do Not Call Registry, plus any costs and reasonable fees.

Section 5: Chapter 5 of Part 2 of Division 7 is amended to read:

Section 17200 is amended to read:

17200 Unfair Competition; prohibited activities

As used in this chapter, unfair competition shall mean and include, but is not limited to any unlawful, unfair or fraudulent business act or practice, any business act or practice that violates the Constitutional Right of Privacy in Article 1, Section 1 of the California Constitution, including but not limited to the privacy rights in Article 7 (commencing with section 17150) of Chapter 4 of Part 2 of Division 7 of the Business and Professions Code, and unfair, deceptive, untrue or misleading advertising and any act prohibited by

Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code.

Section 17203 is amended to read:

17203. Injunction; orders or judgments

Any person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to:

- (a) prevent the continuing, future or renewed use or employment by any person of any practice which constitutes unfair competition, as defined in this chapter, or
- (b) to restore to any person in interest any money or property, real or personal, which may have been acquired, or to remedy any harms caused by means of such unfair competition, or
- (c) require any such person to surrender any and all financial gains obtained, or costs avoided, by any unlawful, unfair, or fraudulent business act or practice in violation of this chapter, to be used to remedy the harms or types of harms caused by the act or practice, or to a court-approved fund appropriate to the circumstances of the particular action, or to the State of California which may use the funds for state and local law enforcement to prevent and redress unfair business practices.

Section 17204 is amended to read:

17204. Actions for relief; prosecutors

Actions for any relief pursuant to this chapter shall be prosecuted exclusively in a court of competent jurisdiction by the Attorney General or any district attorney or by any county counsel authorized by agreement with the district attorney in actions involving violation of a county ordinance, or any city attorney of a city, or city and county, having

a population in excess of 750,000, and, with the consent of the district attorney, by a city prosecutor in any city having a full-time city prosecutor or, with the consent of the district attorney, by a city attorney in any city and county 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.

17206.7 **Civil Penalties; Enforcement**

Any civil penalties collected pursuant to sections 17206 or 17536 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 17535 is amended to read:

17535. **Injunctive relief; orders; prosecutor; complainant**

Any person, corporation, firm, partnership, joint stock company, or any other association or organization which violates or proposes to violate this chapter may be enjoined by any court of competent jurisdiction. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person, corporation, firm, partnership, joint stock company, or any other association or organization of any practices which violate this chapter, or which may be necessary to restore to any person in interest any money or property, real or