

SA2003RF0078,  
Amot. # 1-5

## Law Offices of James Wheaton

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30 December 2003

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

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DEC 30 2003

INITIATIVE COORDINATOR  
ATTORNEY GENERAL'S OFFICE

By Facsimile (Sacramento)

Attn: Trisha Knight, Initiative Coordinator

Re: Initiatives

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. SA2003RF0078 (indicated as 11.6 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.)  
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

SA2003RF0078,  
AMOT.# 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 30<sup>th</sup> day of December, 2003

**RECEIVED**  
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INITIATIVE COORDINATOR  
ATTORNEY GENERAL'S OFFICE

SA2003RF0078,  
AmDt. #1-S

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 proliferation of for-profit telemarketers is seriously eroding our ability to control unsolicited intrusions into our homes. Current federal controls on telemarketing are inadequate to protect Californians' privacy rights.
6. 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.

7. 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.

**17153 Social Security Numbers; Prohibition on Sale and Use**

No business shall either seek to profit or actually profit from disclosing any consumer's social security number to any other person or business, nor use a social security number as an identifier for a consumer, save and except:

- (a) with express permission from the consumer whose social security number is disclosed, consistent with all the terms of section 17300(l), or
- (b) to the extent necessary to effect, administer, or enforce a transaction requested or authorized by the consumer whose social security number is disclosed, or
- (c) to the extent required by state or federal law, or permitted by a federal law that preempts this section.

**17155 Identity Theft; Treble Damages**

Any consumer who is a victim of identity theft and suffers any loss therefrom who can establish the identity of the business from whom the perpetrator or perpetrators of the identity theft received, directly or indirectly, any personal identifying information used to perpetrate the identity theft, shall be entitled to recover from such business all of the remedies provided for in section 1798.93 of the Civil Code, plus three times the amount of the loss, in addition to any other remedy.

**17157 California Family Hours; No Telemarketing**

Californians hereby declare their intention to enjoy family hours uninterrupted by unwanted commercial intrusions. To that end, no unsolicited telemarketing call for commercial purposes may be made to any California residential telephone or cellular telephone number issued to a California resident between the hours of 5:00 p.m. and 8:00 a.m. the next day.

**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