

NOVEMBER 2003

## Proposed California Ballot Initiative Could Eliminate Representative Lawsuits Brought by Uninjured Litigants under B&PC 17200

Cal. Bus. and Prof. Code Section 17200

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A group committed to reforming California's oft-criticized unfair competition law has unveiled a proposed ballot initiative to restrict the use of Cal. Bus. and Prof. Code Section 17200 ("UCL") to suits brought by public prosecutors (including the state Attorney General) and injured plaintiffs representing a certified class. The group behind the proposed initiative, known as "Californians Against Shakedown Lawsuits," hopes to quickly gather the 370,000 signatures it needs to place the proposed initiative on the November 2004 ballot.

The UCL prohibits unlawful, unfair, or fraudulent business acts or practices. It is currently extremely wide in scope, not only in terms of what kinds of acts and practices fall under the provisions, but also in terms of who may bring these lawsuits. Currently, the UCL allows a plaintiff to sue—in a representative capacity—on behalf of the general public, without the strict certification requirements of a true class action. Further, the UCL as written and applied by the courts has no real standing requirement—a plaintiff can sue on behalf of the general public for injuries that he did not in fact suffer himself. Because of its breadth, the California's UCL is a powerful tool used by plaintiffs, and virtually every complaint filed against a large or small business in a California court today includes a claim under the UCL. But that could all change with this proposed ballot initiative.

After numerous failed attempts to effect widespread reform of the UCL in the courts and the California legislature, the Californians Against Shakedown Lawsuits hopes to get California voters to approve of these changes.



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The proposed initiative would eliminate an uninjured private litigant's ability to sue for unfair competition; it would require any private litigant to have actually suffered injury or lost property before filing a complaint under the UCL. This would eliminate the ability of uninjured private litigants and law firms who specialize in this type of litigation to bring "representative suits" on behalf of the general public. It would also eliminate language in Section 17204 that allows anyone to bring a representative action on their own behalf or on behalf of the general public, leaving potential litigants and groups of litigants with the only options of asking a public prosecutor or the attorney general to file a suit on their behalf, or going through the class certification process. Finally, the proposed initiative would earmark any civil penalties collected under any public prosecution of the UCL to be used solely for the further enforcement of consumer protection laws.

Aside from these proposed changes, the other provisions of the UCL would remain unchanged. If the group proposing the initiative successfully obtains the requisite signature count, the state Attorney General's office will prepare a title and summary for the initiative. Governor-elect Schwarzenegger, who frequently targeted frivolous lawsuits during his campaign, would likely support the measure if it gets on the ballot.

We welcome your questions and input. If you need assistance on any matter, please call or email ([emailname@nixonpeabody.com](mailto:emailname@nixonpeabody.com)) any of the group members listed below:

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