SA2003RF0078


# LAW OFFICES OF JAMES WHEATON

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DEC 18 2003
INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE


17 December 2003

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

By Hand Delivery (Oakland) and Overnight Courier (Sacramento)

Attention: Attn: Trisha Knight, Initiative Coordinator

Re: Initiatives

Dear Mr. Lockyer:

Enclosed is an initiative, submitted for title and summary, bearing the suggested title "California Privacy Protection Act."

I am submitting these initiatives by hand to your Oakland office, and by overnight courier to the Sacramento office, directed to your initiative coordinator.

I may be contacted at the address above. My bona fides as a registered voter are on the attached affidavit.

Cordially,

James Wheaton

Enclosures

SA2003RF0078

**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 17th day of December, 2003

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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, <u>but is not limited to</u> any unlawful, unfair or fraudulent business act or practice<u>, any business act or practice that violates the Constitutional Right of Privacy in Article 1, Section 1 of the California</u>

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 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) "Telephone call made by a business for commercial purposes" means a communication primarily for the purpose of offering or entering into a transaction for, or inducing a consumer to purchase, goods or services.

(c) For purposes of section 17157, "unsolicited telemarketing call" means a telemarketing (as defined in 15 U.S.C. section 6106(4)) telephone call made by a business for commercial purposes that is not specifically requested by the recipient. It includes intrastate telephone calls. It does not include any telephone call not made for commercial purposes that is protected political activity under the First Amendment to the United States Constitution. A "California residential telephone or cellular telephone number issued to a California resident" means a residential telephone located in California, and a commercial mobile telephone service subscriber, in which the billing address is located in California. A "business" under section 17152 shall not include any charity or other tax-exempt organization recognized as such under Internal Revenue Code section 501(c), except subsection (6) thereof.

(d) For purposes of sections 17153 and 17155, "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, or any unaffiliated business with fewer than 25 employees and less than $1,000,000 in annual gross revenue. To "seek to or actually profit from disclosing any consumer's social security number to any other person or business" includes selling, leasing, trading or otherwise receiving any consideration of any kind in exchange for the

disclosure of any consumer's social security number, whether alone or in combination with any other information about the consumer, and does not include using or revealing a social security number in conjunction with law enforcement to detect or prevent fraud, or as required to comply with any law.

(e) For purposes of section 17155, "identity theft" and "victim of identity theft" have the same meanings as that in subsections 1798.92(b) and (d) of the Civil Code. "Suffers any loss" means any loss of money or property, plus any costs associated with remedying the effects of the identity theft, including reasonable compensation for the victim's time. "Perpetrator or perpetrators of the identity theft" means any person or entity who unlawfully received any consideration or thing of value as a result of the identity theft, regardless of whether the person or entity has been adjudged civilly or criminally liable for the identity theft.

(f) 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.

(g) 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.

(h) For purposes of sections 17155, 17160 and 17300(j), "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.

(i) "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 state. "Consumer" means an actual, prospective or solicited consumer, customer or client.

(j) For purposes of sections 17153 and 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.

(k) 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.

(l) For purposes of sections 17153 and 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: xxxxx@xxx.xxx].

(m) 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.

(n) 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.

(o) 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.

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.