

AMENDED IN ASSEMBLY APRIL 10, 2000

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 2186

Introduced by Assembly Member Robert Pacheco
*(Coauthors: Assembly Members Ackerman, Campbell, Cox,
House, and Zettel)*
(Coauthor: Senator Morrow)

February 23, 2000

An act to amend Sections 17204 and 17535 of the Business and Professions Code, relating to unfair competition.

LEGISLATIVE COUNSEL'S DIGEST

AB 2186, as amended, Robert Pacheco. Unfair competition.

Existing law prohibits unfair competition and certain unlawful, unfair, or fraudulent business acts or practices, and authorizes actions for relief to be brought by the Attorney General, a district attorney, a county counsel, a city attorney, or on the complaint of any board, officer, person, corporation, or association, or by any person acting for the interests of itself, its members, or on behalf of the general public. These provisions provide for various remedies, including injunctive relief, restitution, and civil penalties.

This bill would:

(1) Require a person bringing an action *seeking relief by restitution* under these provisions solely on his or her own behalf to have been harmed or threatened with some harm by the unlawful acts or practices.

(2) Require a person ~~acting for~~ *bringing an action seeking relief by restitution on behalf of* the interests of its members to prove that some or all of the members were harmed or threatened with some harm, and ~~if restitution is sought,~~ require the person to comply with certain provisions governing class actions.

(3) Require a private person who brings an action *seeking relief by restitution* under these provisions on behalf of the general public to have been harmed or threatened with some harm, be an adequate representative of the interests of the general public, have an attorney who will adequately represent the interests of the general public, and have claims or defenses typical of the claims or defenses of the general public, as determined by the court.

(4) Require court approval following a hearing in order for an action brought under (3) to be dismissed or compromised, as specified, and provide that a judgment approved by the court in that regard is conclusive and would bar any further similar representative actions against the same defendant based on substantially similar facts and theories of liability.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 17204 of the Business and
 2 Professions Code is amended to read:
 3 17204. (a) Actions for any relief pursuant to this
 4 chapter shall be prosecuted exclusively in a court of
 5 competent jurisdiction by the Attorney General, or any
 6 district attorney, or by any county counsel authorized by
 7 agreement with the district attorney in actions involving
 8 the violation of a county ordinance, or any city attorney
 9 of a city, or city and county, having a population in excess
 10 of 750,000, and, with the consent of the district attorney,
 11 by a city prosecutor in any city having a full-time city
 12 prosecutor or, with the consent of the district attorney, by
 13 a city attorney in any city and county in the name of the
 14 people of the State of California upon their own
 15 complaint or upon the complaint of any board, officer,



1 person, corporation, or association or by any person
2 acting for the interests of itself, its members, or the
3 general public.

4 (b) Any person bringing an action for relief *by*
5 *restitution* pursuant to this chapter solely on his or her
6 own behalf shall have been harmed or threatened with
7 some harm by the acts or practices prohibited by this
8 chapter in order to maintain the action.

9 (c) Any person acting for the interests of its members
10 who brings an action for relief *by restitution* pursuant to
11 this chapter shall prove that some or all of its members
12 have been harmed or threatened with some harm by the
13 acts or practices prohibited by this chapter, and ~~if~~
14 ~~restitution for its members is sought~~, shall satisfy the
15 requirements of Section 382 of the Code of Civil
16 Procedure.

17 (d) Any private person who brings an action for any
18 relief *by restitution* pursuant to this chapter on behalf of
19 the general public shall have been harmed or threatened
20 with some harm by the acts or practices prohibited by this
21 chapter, shall be an adequate representative of the
22 interests of the general public, shall have retained an
23 attorney who will adequately represent the interest of the
24 general public, and shall have claims or defenses typical
25 of the claims or defenses of the general public. As soon as
26 practical after the commencement of an action on behalf
27 of the general public, the court shall determine by order
28 whether the action may be maintained.

29 (e) Any action authorized by the court to be brought
30 by a private person acting on behalf of the general public
31 may not be dismissed or compromised without the
32 approval of the court, following a hearing in which the
33 court finds that the proposed judgment or dismissal of the
34 action is fair, reasonable, and adequate to protect the
35 interests of the general public. Notice of the proposed
36 demand or compromise shall be given as the court
37 directs. The determination of an action brought by a
38 person acting on behalf of the general public pursuant to
39 a judgment approved by the court is conclusive and bars
40 any further actions brought by private persons on behalf



1 of the general public against the same defendant based on
2 substantially similar facts and theories of liability.

3 (f) Nothing in this section shall preclude a person from
4 bringing a class action for relief *by restitution* pursuant to
5 this chapter if the requirements of Section 382 of the
6 Code of Civil Procedure are satisfied.

7 (g) Subdivisions (d) to (f), inclusive, do not apply to
8 actions brought by the Attorney General or by any
9 district attorney, county counsel, or city attorney
10 described in subdivision (a) above.

11 SEC. 2. Section 17535 of the Business and Professions
12 Code is amended to read:

13 17535. (a) Any person, corporation, firm,
14 partnership, joint stock company, or any other association
15 or organization that violates or proposes to violate this
16 chapter may be enjoined by any court of competent
17 jurisdiction. The court may make ~~such~~ *any* orders or
18 judgments, including the appointment of a receiver, ~~as~~
19 *that* may be necessary to prevent the use or employment
20 by any person, corporation, firm, partnership, joint stock
21 company, or any other association or organization of any
22 practices that violate this chapter, or that may be
23 necessary to restore to any person in interest any money
24 or property, real or personal, that may have been
25 acquired by means of any practice in this chapter
26 declared to be unlawful.

27 (b) Actions for injunction under this section may be
28 prosecuted by the Attorney General or any district
29 attorney, county counsel, city attorney, or city prosecutor
30 in this state in the name of the people of the State of
31 California upon their own complaint or upon the
32 complaint of any board, officer, person, corporation, or
33 association or by any person acting for the interests of
34 itself, its members, or the general public.

35 (c) Any person bringing an action for relief *by*
36 *restitution* pursuant to this chapter solely on his or her
37 own behalf shall have been harmed or threatened with
38 some harm by the acts or practices prohibited by this
39 chapter in order to maintain the action.



1 (d) Any person acting for the interests of its members
2 who brings an action for relief *by restitution* pursuant to
3 this chapter shall prove that some or all of its members
4 have been harmed or threatened with some harm by the
5 acts or practices prohibited by this chapter, and if
6 ~~restitution for its members is sought~~, shall satisfy the
7 requirements of Section 382 of the Code of Civil
8 Procedure.

9 (e) Any private person who brings an action for any
10 relief *by restitution* pursuant to this chapter on behalf of
11 the general public shall have been harmed or threatened
12 with some harm by the acts or practices prohibited by this
13 chapter, shall be an adequate representative of the
14 interests of the general public, shall have retained an
15 attorney who will adequately represent the interest of the
16 general public, and shall have claims or defenses typical
17 of the claims or defenses of the general public. As soon as
18 practical after the commencement of an action on behalf
19 of the general public, the court shall determine by order
20 whether the action may be maintained.

21 (f) Any action authorized by the court to be brought
22 by a private person acting on behalf of the general public
23 may not be dismissed or compromised without the
24 approval of the court, following a hearing in which the
25 court finds that the proposed judgment or dismissal of the
26 action is fair, reasonable, and adequate to protect the
27 interests of the general public. Notice of the proposed
28 demand or compromise shall be given as the court
29 directs. The determination of an action brought by a
30 person acting on behalf of the general public pursuant to
31 a judgment approved by the court is conclusive and bars
32 any further actions brought by private persons on behalf
33 of the general public against the same defendant based on
34 substantially similar facts and theories of liability.

35 (g) Nothing in this section shall preclude a person
36 from bringing a class action for relief *by restitution*
37 pursuant to this chapter if the requirements of Section
38 382 of the Code of Civil Procedure are satisfied.

39 (h) Subdivisions (c) to (g), inclusive, do not apply to
40 actions brought by the Attorney General or by any



- 1 district attorney, county counsel, or city attorney
- 2 described in subdivision (a) above.

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