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A Growing Problem California's Unfair Competition Law

What is it?

California's **Unfair Competition Law (Business and Professions Code Sec. 17200)** is unique. It permits a private lawyer to act as a "private attorney general" and sue a company over an action which has broken no law and harmed or mislead no one. The attorney does not need a client. The attorney can get court-awarded attorney fees, but more often extracts his money via a "settlement" which most companies are willing to pay as a far less costly solution than fighting the case in court. Often a "17200" claim is added to another allegation to gain a discovery advantage, thereby driving up costs and increasing settlement values.

The law serves many useful purposes. But in the hands of many private attorneys it has become a tool for legal extortion. The law states that unfair competition is any behavior that is "unlawful, deceptive or unfair." This vagueness prevents courts from granting early dismissals of even some incredibly frivolous lawsuits. This means companies must choose between paying thousands in a nuisance suit settlement or incurring larger costs defending themselves in court.

California Supreme Court Justice Janice Brown has called 17200 "a means of generating attorneys fees without any corresponding public benefit."

No business is exempt from these suits. They have evolved to reach retailers, general manufacturers, health care, finance, builders, insurance, and high tech.

Why is "17200" a potential initiative subject?

Lobbying by wealthy personal injury lawyers has killed every legislative attempt to close private lawyer loopholes in the law. The courts have tinkered with 17200, but have done nothing substantial to reduce abuse – judges say it's the Legislature's responsibility to change the law.

With that background, the Civil Justice Association of California and a broad coalition of firms and association are exploring an initiative for the 2004 ballot.

Why is the problem attracting more attention?

In 2002 enterprising plaintiffs' lawyers began filing mass 17200 lawsuits against small businesses – restaurants, auto repair shops, nail salons, travel agents, convenience stores, and others. These suits soon became justifiably classed as "legal shakedowns." An explosion of news stories about small business 17200 victims has made politicians react. Legislative pressure inspired the State Bar to launch a mammoth investigation (8,000 hours) of three lawyers. The Attorney General has gone after the "shakedown" lawyers also, although seeming to back away from an earlier agreement with CJAC "that there are significant problems with existing law which allow bad actors to take advantage of business owners who are not guilty of any wrongdoing." Plaintiffs lawyers hope these attacks on selected lawyers will dampen pressure for reform. A dozen or so bills addressing 17200 were introduced early in this session. The plaintiffs' bar made sure all with even a hint of reform died in the Judiciary Committees in early May. The two remaining bills (SB 122/AB 95) controlled by the plaintiffs' lawyers not only do practically nothing to stop the shakedowns, but they actually expand these lawyers ability to make money on 17200 lawsuits!

A California Law Revision Commission official said he believes "there is a huge underground economy in 17200 claims." He is correct. This is an economy that keeps lawyers wealthy while significantly burdening companies with the high costs of a loophole that kills profits and jobs.