

February 9, 2004

Hon. Bill Lockyer
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Tricia Knight
Initiative Coordinator

Dear Attorney General Lockyer:

Pursuant to Elections Code Section 9005, we have reviewed the proposed statutory initiative cited as the “California Privacy Protection Act” (File No. SA2003RF0078, Amendment No. 1-S).

Background

Privacy Laws. Both the state and federal government regulate the use of Californians’ personal and financial information. Current law:

- Restricts the sharing of financial-related information, as well as the use of Social Security numbers in many cases.
- Establishes a “Do Not Call” list for individuals to register their phone numbers in order to restrict telemarketing.
- Allows individuals to place a freeze on credit reports, be notified when one’s identity may have been used without consent, and take various steps to protect the accuracy and safety of credit reports.

Unfair Competition Law. California’s unfair competition law prohibits individuals from engaging in any unlawful, unfair, or fraudulent business act. This law may be enforced by the Attorney General, local public prosecutors, or any individual or group of individuals acting in the interest of itself, its members, or the public. Cases brought on behalf of the public may involve, for example, deceptive or misleading advertising or other violations of state law—such as health and safety requirements—intended to protect the public well being. Violators of the unfair competition law may be required to pay civil penalties up to \$2,500 per violation. Currently, state and local governments use the revenue from civil penalties for general purposes.

Key Provisions

This measure—which would be effective January 1, 2005—restricts businesses from conducting some activities and changes unfair competition laws. The measure generally exempts political activities from its provisions. In addition, charitable and other nonprofit organizations and specified small businesses are exempt from particular provisions.

Privacy-Related Provisions. The measure makes the following changes to privacy-related provisions of state law:

- *Social Security Numbers.* Businesses could not (1) sell or otherwise benefit from sharing customers' Social Security numbers or (2) use Social Security numbers to identify customers. The measure provides exceptions to these provisions: (1) with customer consent (using specified means), (2) to complete a customer transaction, or (3) as required by law. A customer would be able to decline, change, or revoke permission to disclose personal information.
- *Customer Information.* Any information collected by businesses during a transaction would be considered confidential. Similar exceptions as noted above would apply.
- *Telemarketing.* The measure restricts businesses from making commercial telemarketing calls to residential or cellular phone numbers between 5:00 P.M. and 8:00 A.M.
- *Identity Theft.* If an "identity theft" victim can identify the business that disclosed personal information used in the crime, the victim would be entitled to three times the amount lost (in addition to existing remedies) from the business.

These provisions would generally expand protections under current law. Violations of these provisions would be subject to the greater of actual damages or penalties up to the amount imposed for violating the federal Do Not Call registry (up to \$11,000 per incident), plus costs and fees. In addition, violations would also be subject to unfair competition laws, as amended by this measure (discussed below).

Unfair Competition Laws. The measure would allow courts to order the surrender of financial gains acquired unlawfully by violating these provisions. Any recovered funds could be used for specified purposes, including remedying harm done to the

affected individuals and enforcing unfair business practice laws by governments. Civil penalties would go to the state or local governments without restrictions on the use of the funds.

Current law requires the restoration of harm done to any individuals due to the unfair business practice. Current law, however, does not require surrender of unlawfully acquired financial gains.

Fiscal Effect

The measure would have the following fiscal effects on state and local governments.

Enforcement Costs. The level of ongoing enforcement costs by the state and local governments would depend on decisions by the Legislature and local entities to devote additional resources to enforce the measure's provisions. Any enforcement would likely increase civil penalty revenues.

Unfair Competition Laws. By enhancing the potential recovery of financial damages, the proposed changes to unfair competition laws would likely increase the level of court workload dedicated to unfair competition cases, leading to additional state costs. The magnitude of these additional costs is not known. The state does not collect data on the number of filings and the number of cases tried by public and private attorneys under the unfair competition law. Thus, it is unknown as to the amount of court resources that are currently devoted to these types of lawsuits. The required surrender of unlawful financial gains, as well as civil penalties, could increase state and local revenues to the extent these funds did not go to individuals to remedy harm done.

Other Possible Impacts. The measure could have various impacts on businesses in the state—such as affecting the types of information that they can use, limiting telemarketing, and increasing the number of suits filed against them. Some of these changes could affect the operations of businesses and their profitability. This would potentially result in some reduction in the tax revenues paid to state and local governments. The magnitude of any such reduction is unknown.

Fiscal Summary. This measure could have the following major fiscal impacts:

- Additional state and local government court and enforcement costs.
- Additional state and local government revenues from civil and other penalties.

Sincerely,

Elizabeth G. Hill
Legislative Analyst

Donna Arduin
Director of Finance