

11-21-1995

Attorney-Client Fee Arrangements. Securities Fraud.

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State of California

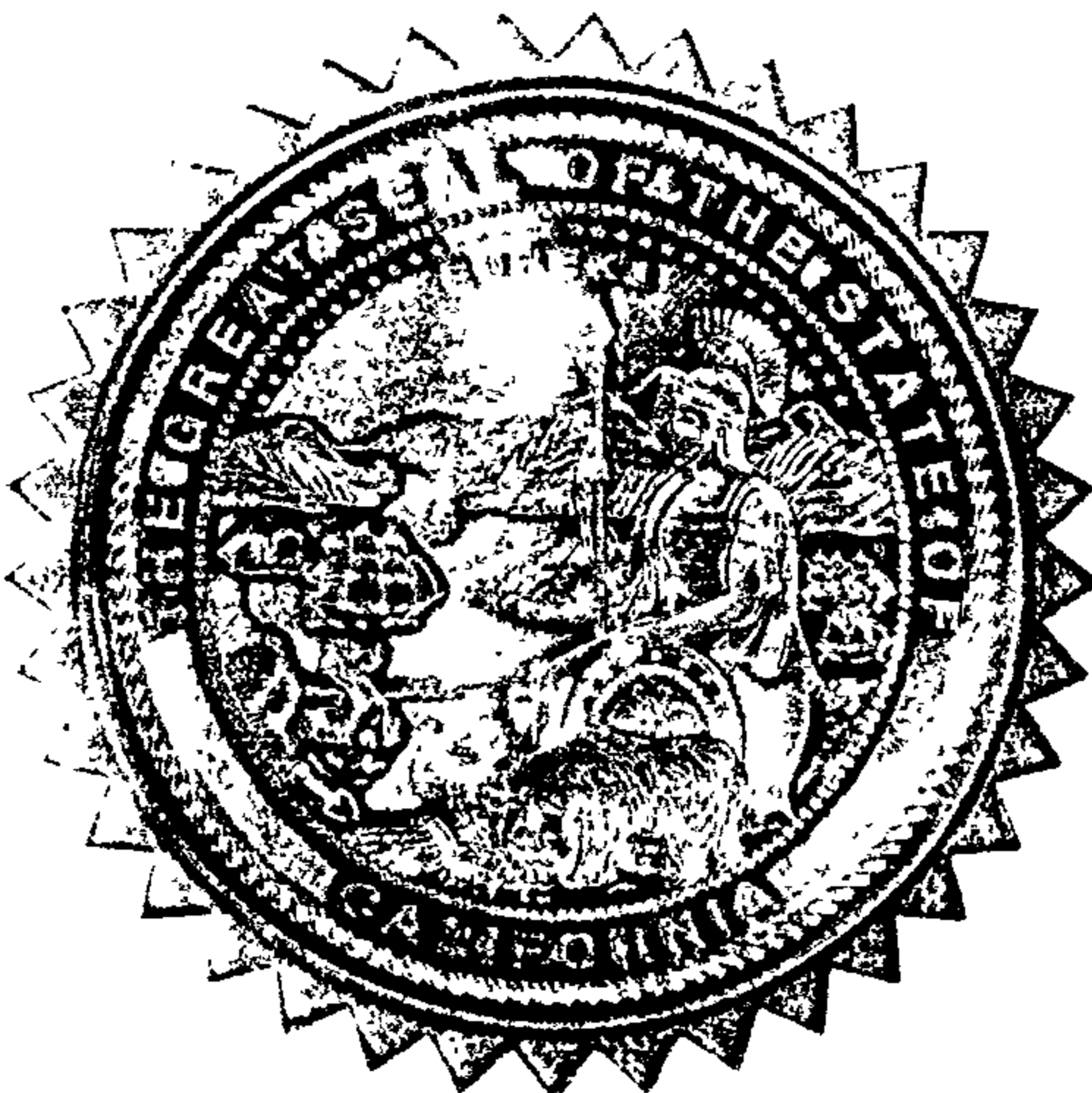
SECRETARY OF STATE

June 4, 1996

TO: ALL COUNTY CLERKS/REGISTRARS OF VOTERS (96189)

Pursuant to Section 9033 of the Elections Code, I hereby certify that on June 4, 1996 the certificates received from the County Clerks or Registrars of Voters by the Secretary of State established that the Initiative Statute, ATTORNEY-CLIENT FEE ARRANGEMENTS. SECURITIES FRAUD. has been signed by the requisite number of qualified electors needed to declare the petition sufficient. The ATTORNEY-CLIENT FEE ARRANGEMENTS. SECURITIES FRAUD. INITIATIVE STATUTE. is, therefore, qualified for the November 5, 1996 General Election.

ATTORNEY-CLIENT FEE ARRANGEMENTS. SECURITIES FRAUD. INITIATIVE STATUTE. Prohibits restrictions on fee arrangements attorneys may make with clients, except those existing on January 1, 1995. Allows courts to prohibit illegal or unconscionable fees. Prohibits deceptive conduct in purchase or sale of securities resulting in loss to institutional or personal retirement funds, savings. Imposes civil liability, including punitive damages, for losses. Authorizes class actions, derivative suits; declares "fraud on market" doctrine applicable. Business entities cannot indemnify officers found liable for specified deceptive practices, but may purchase insurance covering such liability. Declares measure conflicts with ballot measures restricting attorney fees or securities fraud actions. Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local governments: Possible increase in securities fraud lawsuits with an unknown increase in court related costs to state and local governments. Could result in additional revenue to the state from civil damages payable to state General Fund.



IN WITNESS WHEREOF, I hereunto set my hand and affix the Great Seal of the State of California this 4th day of June, 1996.

BILL JONES
Secretary of State

1)

2)



Bill Jones
Secretary of State

1500 - 11th Street
Sacramento, CA 95814

Elections Division
(916) 657-2166
For Hearing and Speech
Impaired Only: (800) 833-8683

#680

November 21, 1995

TO ALL REGISTRARS OF VOTERS, OR COUNTY CLERKS, AND PROPONENTS (95161)

Pursuant to Section 336 of the Elections Code, we transmit herewith a copy of the Title and Summary prepared by the Attorney General on a proposed Initiative Measure entitled:

ATTORNEY-CLIENT FEE ARRANGEMENTS.
SECURITIES FRAUD.
INITIATIVE STATUTE.

Circulating and Filing Schedule

- 1. Minimum number of signatures required 433,269
Cal. Const., Art. II, Sec. 8(b).
- 2. Official Summary Date Tuesday, 11/21/95
Elec. C., Sec. 336.
- 3. Petition Sections:
 - a. First day Proponents can circulate Sections for
signatures Tuesday, 11/21/95
Elec. C., Sec. 336.
 - b. Last day Proponents can circulate and file with
the county. All sections are to be filed at
the same time within each county Thursday, 04/18/96
Elec. C., Secs. 336, 9030(a)
 - c. Last day for county to determine total number of
signatures affixed to petition and to transmit total
to the Secretary of State Tuesday, 04/30/96
Elec. C., Sec. 9030(b)

(If the Proponents file the petition with the county on a date prior to 04/18/96, the county has eight working days from the filing of the petition to determine the total number of signatures affixed to the petition and to transmit the total to the Secretary of State.) Elec. C., Sec. 9030(b).

- d. Secretary of State determines whether the total number of signatures filed with all county clerks meets the minimum number of required signatures, and notifies the counties Thursday, 05/09/96*
Elec. C., Sec. 9030(c)
- e. Last day for county to determine total number of qualified voters who signed the petition, and to transmit certificate with a blank copy of the petition to the Secretary of State Friday, 06/21/96
Elec. C., Sec. 9030(b)
- (If the Secretary of State notifies the county to determine the number of qualified voters who signed the petition on a date other than 05/09/96, the last day is no later than the thirtieth day after the county's receipt of notification.)
Elec. C., Sec. 9030(d), (e).
- f. If the signature count is more than 476,596 or less than 411,606 then the Secretary of State certifies the petition has qualified or failed, and notifies the counties. If the signature count is between 411,606 and 476,596 inclusive, then the Secretary of State notifies the counties using the random sampling technique to determine the validity of all signatures . . . Monday, 07/01/96*
Elec. C., Sec. 9030(f), (g); 9031(a)
- g. Last day for county to determine actual number of all qualified voters who signed the petition, and to transmit certificate with a blank copy of the petition to the Secretary of State Tuesday, 08/13/96
Elec. C., Sec. 9031(b), (c)
- (If the Secretary of State notifies the county to determine the number of qualified voters who have signed the petition on a date other than 07/01/96, the last day is no later than the thirtieth working day after county's receipt of notification.)
Elec. C., Sec. 9031(b), (c).
- h. Secretary of State certifies whether the petition has been signed by the number of qualified voters required to declare the petition sufficient Saturday, 08/17/96*
Elec. C., Sec. 9031(d), 9033

* Date varies based on receipt of county certification.

4. The Proponents of the above-named measure are:

Lois Wellington, Mary Alexander, Ramona Jacobs
c/o: Joseph Remcho and Robin Johansen
Remcho, Johansen & Purcell
220 Montgomery Street, Suite 800
San Francisco, CA 94104
(415) 398-6230 FAX (415) 398-7256

5. Important Points:

- (a) California law prohibits the use of signatures, names and addresses gathered on initiative petitions for any purpose other than to qualify the initiative measure for the ballot. This means that the petitions cannot be used to create or add to mailing lists or similar lists for any purpose, including fund raising or requests for support. Any such misuse constitutes a crime under California law. Elections Code section 18650; *Bilofsky v. Deukmejian* (1981) 123 Cal.App. 3d 825, 177 Cal.Rptr. 621; 63 Ops. Cal.Atty.Gen. 37 (1980).
- (b) Please refer to Elections Code sections 100, 101, 104, 9001, 9008, 9009, 9021, and 9022 for appropriate format and type consideration in printing, typing, and otherwise preparing your initiative petition for circulation and signatures. Please send a copy of the petition after you have it printed. This copy is not for our review or approval, but to supplement our file.
- (c) Your attention is directed to the campaign disclosure requirements of the Political Reform Act of 1974, Government Code section 81000 et seq.
- (d) When writing or calling state or county elections officials, provide the official title of the initiative which was prepared by the Attorney General. Use of this title will assist elections officials in referencing the proper file.
- (e) When a petition is presented to the county elections official for filing by someone other than the proponent, the required authorization shall include the name or names of the persons filing the petition.
- (f) When filing the petition with the county elections official, please provide a blank petition for elections official use.

NOTE TO PROPONENTS WHO WISH TO QUALIFY FOR THE NOVEMBER 5, 1996 GENERAL ELECTION: This initiative must be certified for the ballot 131 days before the election (June 27, 1996). Please remember to time your submissions accordingly. For example, in order to allow the maximum time permitted by law for the random sample verification process, it is suggested that proponents file their petitions to county elections officials by April 19, 1996. If a 100% check of signatures is necessary, it is advised that the petitions be filed by February 28, 1996.

Sincerely,



CATHY MITCHELL
INITIATIVE COORDINATOR

Date: November 21, 1995
File No: SA95RF0027

The Attorney General of California has prepared the following title and summary of the chief purpose and points of the proposed measure:

ATTORNEY-CLIENT FEE ARRANGEMENTS. SECURITIES FRAUD. INITIATIVE STATUTE. Prohibits restrictions on fee arrangements attorneys may make with clients, except those existing on January 1, 1995. Allows courts to prohibit illegal or unconscionable fees. Prohibits deceptive conduct in purchase or sale of securities resulting in loss to institutional or personal retirement funds, savings. Imposes civil liability, including punitive damages, for losses. Authorizes class actions, derivative suits; declares "fraud on market" doctrine applicable. Business entities cannot indemnify officers found liable for specified deceptive practices, but may purchase insurance covering such liability. Declares measure conflicts with ballot measures restricting attorney fees or securities fraud actions.

Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local governments: Possible increase in securities fraud lawsuits with an unknown increase in court related costs to state and local governments. Could result in additional revenue to the state from civil damages payable to state General Fund.

DANIEL E. LUNGREN
Attorney General

State of California
DEPARTMENT OF JUSTICE



1300 I STREET, SUITE 125
P.O. BOX 944255
SACRAMENTO, CA 94244-2550
(916) 445-9555

Facsimile: (916) 323-2137
(916) 324-5490

November 21, 1995

FILED
In the office of the Secretary of State
of the State of California

NOV 21 1995

BILL JONES, Secretary of State
By *[Signature]*
Deputy Secretary of State

Bill Jones
Secretary of State
1500 - 11th Street
Sacramento, CA 95814

Re: Initiative Title and Summary
Subject: ATTORNEY-CLIENT FEE ARRANGEMENTS. SECURITIES FRAUD.
INITIATIVE STATUTE.
File No: SA 95 RF 0027

Dear Mr. Jones:

Pursuant to the provisions of sections 9004 and 336 of the Elections Code, you are hereby notified that on this day we mailed to the proponents of the above-identified proposed initiative our title and summary.

Enclosed is a copy of our transmittal letter to the proponents, a copy of our title and summary, a declaration of mailing thereof, and a copy of the proposed measure.

According to information available in our records, the names and address of the proponents are as stated on the declaration of mailing.

Sincerely,

DANIEL E. LUNGREN
Attorney General

[Signature]

KATHLEEN F. DaROSA
Initiative Coordinator

KFD:ms
Enclosures

VIA MESSENGER

October 2, 1995

RECEIVED

OCT 3 1995

COORDINATOR
GENERAL'S OFFICE

Office of the Attorney General
Department of Justice
1515 K Street
Sacramento, CA 95814

Attention: Kathleen DaRosa, Initiative Coordinator

Re: Retirement Savings and Consumer Protection Act

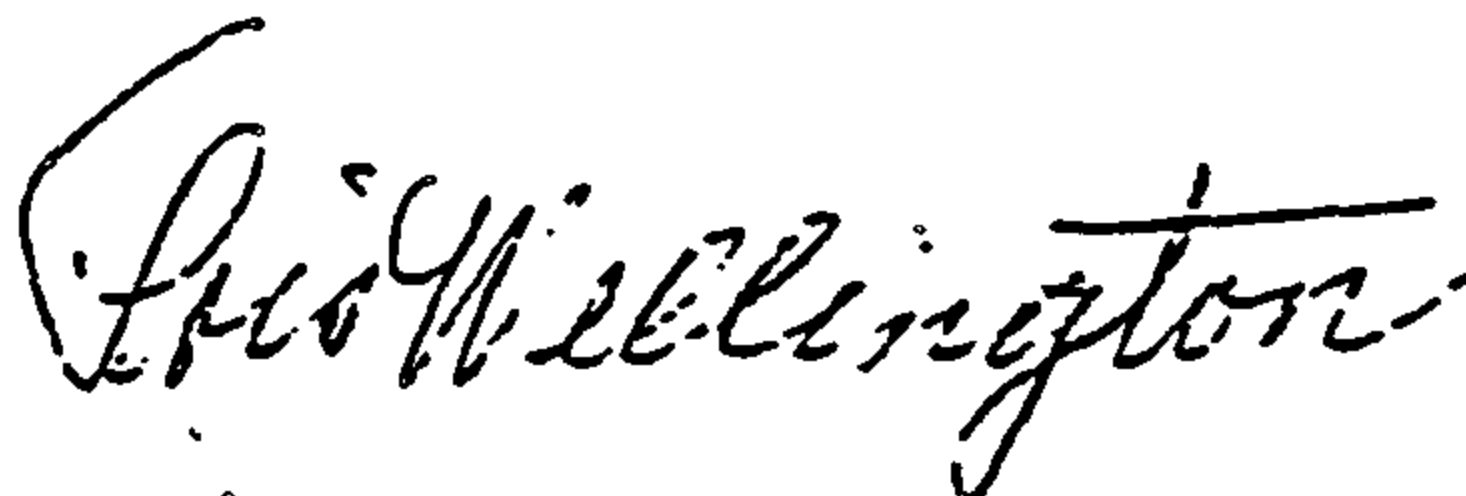
Dear Ms. DaRosa:

Pursuant to Elections Code section 9002, we request the Attorney General to prepare a title and summary of an initiative measure entitled "Retirement Savings and Consumer Protection Act." The text of the measure, a check for \$200, and the addresses at which we are registered to vote are attached.

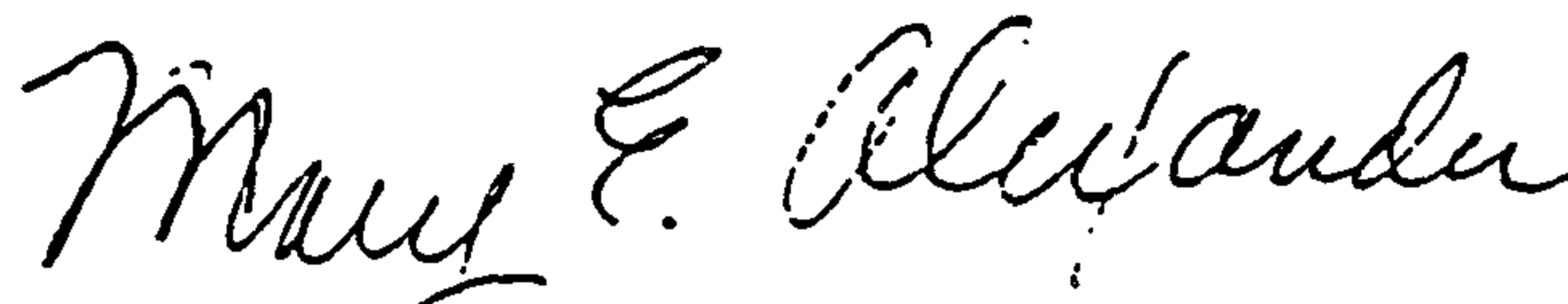
Please direct all correspondence and inquiries regarding this measure to my attorneys:

Joseph Remcho
Robin Johansen
Remcho, Johansen & Purcell
220 Montgomery St. Suite 800
San Francisco, CA 94104
Tel. (415) 398-6230
Fax. (415) 398-7256

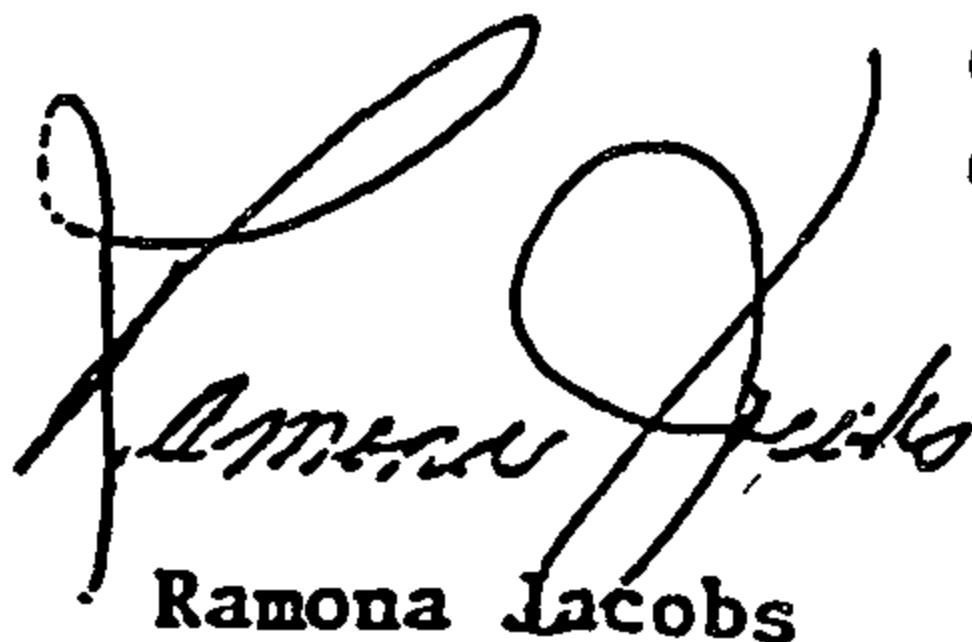
Sincerely,



Lois Wellington,
President, Congress of
California Seniors



Mary Alexander
President-elect,
Consumer Attorneys of
California



Ramona Jacobs

RETIREMENT SAVINGS AND CONSUMER PROTECTION ACT

- SECTION 1. TITLE: "RETIREMENT SAVINGS AND CONSUMER PROTECTION ACT"
- SECTION 2. FINDINGS AND DECLARATIONS
- SECTION 3. PROHIBITED CONDUCT
- SECTION 4. CIVIL LIABILITY
- SECTION 5. ATTORNEY'S FEES
- SECTION 6. INDEMNIFICATION
- SECTION 7. RELATIONSHIP TO OTHER INITIATIVES
- SECTION 8. SEVERABILITY
- SECTION 9. AMENDMENT

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. TITLE

This initiative statute shall be known and may be cited as the "Retirement Savings and Consumer Protection Act."

SECTION 2. FINDINGS AND DECLARATIONS

The People of the State of California find and declare as follows:

(a) Millions of Californians work hard, pay their taxes, and save their money in order to provide for their economic security upon retirement. In doing so, they help support their state and local governments as taxpayers and insure that they do not become responsibilities of the state once they leave the workforce.

(b) Many Californians are members of or have contributed to private and public pension and retirement funds that invest in securities of corporations that are publicly traded or sold and other for-profit business entities. Many others invest their retirement savings themselves in such securities.

(c) Financial disasters like the collapse of many savings and loan institutions or the bankruptcy of Orange County result in devastating harm to the pensions and retirement savings of working people.

(d) Full and complete disclosure of material information affecting the value of securities is necessary to protect the millions of Californians who invest in them for their retirement. Existing laws inadequately protect pension and retirement investments in these securities from losses resulting from deceptive activities, including the misrepresentation and/or concealment of material information affecting the true value of these securities.

(e) An individual's retirement savings can also be threatened by an unexpected accident or injury. Unless victims of such accidents or injuries are able to obtain full compensation for their losses, they are often forced to use up their retirement savings to pay for medical bills or living expenses after their injury.

(f) Consumers, pension investors, and victims of injuries need access to the civil justice system to insure that they are fully compensated for their losses and damages. Ordinary working people are often denied such access because they cannot afford to hire an attorney to represent them. Proposals are being put forward daily that would limit people's right to contract with the attorney of their choice and make it more difficult for all but the very wealthy to obtain legal representation. These proposals include, but are not limited to, efforts to make it harder for

people to find representation to protect their retirement savings and investments.

(g) In order to protect the retirement savings of all Californians, it is necessary to require full disclosure of material information that affects the value of securities or individual savings and to insure that the right to contract with an attorney to obtain compensation for injury or loss shall not be impaired, or subject to interference by the government.

SECTION 3. PROHIBITED CONDUCT

Section 25400.1 is added to the Corporations Code, to read:

25400.1. It shall be unlawful, in connection with the purchase or sale of securities, for any person, for-profit corporation or other for-profit business entity, directly or indirectly, to willfully, knowingly or recklessly:

(a) make or cause to be made untrue statements of material facts,

(b) omit to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, or

(c) participate or assist in any deceptive practice, statement, course of conduct or scheme,

resulting in loss to any pension fund, retirement fund, or retirement savings. This Section shall not apply to any government entity or to any government official acting in his or her official capacity.

SECTION 4. CIVIL LIABILITY

Section 25500.1 is added to the Corporations Code, to read:

25500.1(a) In addition to any other provision of law, any person, for-profit corporation or other for-profit business entity that willfully, knowingly or recklessly engages in conduct prohibited by Section 25400.1 shall be liable for the losses caused by that violation, as determined in an action brought in a court of competent jurisdiction by or on behalf of any person or entity, including any government entity, whose pension funds and/or retirement funds or savings have suffered a loss as a result of that violation.

(b) To remedy harm to the public and to deter willful, outrageous or despicable conduct in violation of Section 25400.1 that causes loss to pension funds, retirement funds or retirement savings, any person who engages in such conduct shall be liable for additional civil damages in such amount as the finder of fact shall

determine is necessary to punish the wrongdoer and deter similar conduct by others, which civil penalty shall be paid, less fees and expenses, to the General Fund of the Treasury of the State of California.

(c) Any action under this Section or under Civil Code Sections 1709 or 1710 in connection with the purchase or sale of securities may be brought as a class action; the fraud on the market doctrine shall apply; and it shall be presumed that the market value of a security reflected the impact of any prohibited conduct, and reliance upon any material misrepresentation or omission shall be presumed, subject to rebuttal by defendant establishing that the security would have been purchased or sold even if plaintiff had known of the misconduct. Any action under this Section may also be brought derivatively, without regard to any limitations or requirements currently imposed on derivative actions.

(d) For purposes of this Section and Section 25400.1, "retirement savings" means and includes:

(1) any tax advantaged retirement account or plan, whether group, individual or joint, or

(2) any other form of retirement savings, however denominated and in whatever form, of a person over 40 years of age, if it had been in existence for over one year or had a value of \$1,000 or more before suffering any loss sought to be recovered under this Title.

(e) Except as otherwise provided by law in effect on January 1, 1995:

(1) In any individual, class or derivative action brought pursuant to this or any other section of the Corporations Code, including Section 800, or under Civil Code Sections 1709 or 1710, each party shall bear his, her, or its own fees and costs, provided, however, that:

(A) the power of the parties to agree to, or a court to award, fees and costs for plaintiffs' counsel in any class or derivative action shall not be restricted or impaired; and

(B) a party shall be entitled to recover his, her, or its reasonable attorneys' fees and costs incurred in the defense or prosecution of the action in the event the Court finds that the opposing party's claims or defenses were frivolous.

(2) For purposes of this Section, a frivolous claim or defense is one that is either (A) totally and completely without merit, or (B) filed for the sole purpose of harassing an opposing party.

(3) The right of any person, corporation or other entity to contract with and pay counsel to pursue or defend any action, whether brought under this Section or otherwise, shall not be restricted or the validity of such contracts be impaired.

Nothing in this Section shall impair the authority of the courts to regulate the practice of law or to prohibit illegal or unconscionable fees.

SECTION 5. ATTORNEY'S FEES

Section 6146.6 of the Business and Professions Code is added, to read:

6146.6. Except as otherwise provided by law in effect on January 1, 1995, the right of any person, corporation or other entity to contract with and pay counsel to pursue or defend any action shall not be restricted or the validity of such contracts be impaired. Nothing in this Section shall impair the authority of the courts to regulate the practice of law or to prohibit illegal or unconscionable fees.

SECTION 6. INDEMNIFICATION

Section 25505.1 is added to the Corporations Code, to read:

Notwithstanding any other provision of law, any principal executive officer, director, or controlling person of a corporation or other for-profit business entity who is found individually liable for knowingly or recklessly engaging in deceptive conduct, as prohibited by Section 25400.1 shall not be indemnified by the corporation or other for-profit business entity for any costs of defense or amounts paid in settlement or judgment against that person. Nothing in this Section shall prohibit a corporation or other for-profit business entity from purchasing insurance on behalf of its directors, officers, employees or agents to cover liability under this Section.

SECTION 7. RELATIONSHIP TO OTHER INITIATIVES

The people recognize that more than one initiative measure dealing with the general matters set forth in this measure may be on the ballot at the same time. It is the intent of the voters that the provisions in this measure be considered, for purposes of Article II, Section 10 of the California Constitution, to be in conflict with any other measure that would either restrict the right to bring securities fraud or misrepresentation actions or the procedures by which such actions are prosecuted, or which would restrict the right of a client and an attorney to contract freely with each other and to enforce such contracts.

SECTION 8. SEVERABILITY

If any provision of this Act or its application to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 9. AMENDMENT

The provisions of this Act may be amended by a statute that becomes effective upon approval by the electorate.