

August 23, 2007

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INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

VIA MESSENGER

Office of the Attorney General
1300 "I" Street
Sacramento, CA 95814

Attention: Toni Melton

Re: *The Corporate Crime Reporting Act (Version 2)*

Dear Ms. Melton:

Pursuant to Elections Code section 9002, we request that the Attorney General prepare a title and summary of version 2 of a measure entitled "The Corporate Crime Reporting Act." The text of the measure, a check for \$200.00, the address at which we are registered to vote and the signed statement certifying that we will not willfully allow initiative signatures to be used for purposes other than qualification of the measure are enclosed.

Please direct all correspondence and inquiries regarding this measure to:

James C. Harrison
Margaret R. Prinzing
Remcho, Johansen & Purcell, LLP
201 Dolores Avenue
San Leandro, CA 94577
Phone: (510) 346-6200
Fax: (510) 346-6201

Sincerely,

 James C. Harrison

 Margaret R. Prinzing

JCH:NL
Enclosures
(00039923)

THE CORPORATE CRIME REPORTING ACT

SECTION ONE. FINDINGS AND DECLARATIONS.

The People of the State of California find and declare the following:

(a) Chief executive officers and corporate managers should be required to report violations of the law to state authorities and should be punished if they conceal illegal activity at their companies.

(b) Corporate managers are already criminally liable in California for concealing workplace dangers and the same standard should apply if they conceal other violations of the law at their company from the public.

(c) Individuals who run corporations must be held personally accountable for their conduct if corporations are to be accountable to the rule of the law.

SECTION TWO. PURPOSE AND INTENT.

In enacting this Act, it is the purpose and intent of the People of the State of California to:

(a) Require directors, officers, members and managers of foreign and domestic corporations and limited liability companies to report acts or omissions by the corporation or limited liability company that violate the law to the Attorney General or the appropriate government agency.

(b) Impose criminal penalties against corporate directors, officers, members and managers who fail to report their corporation or limited liability company's unlawful activities to the Attorney General or the appropriate government agency.

SECTION THREE. Section 388 is hereby added to Part 1, Title 10 of the Penal Code to read:

(a) An officer or director of a domestic or foreign corporation as defined in Corporations Code section 162, 167 or 171, respectively, an officer or member of a limited liability company, or a manager of a corporation or limited liability company as defined in paragraph (1) of subdivision (e), is guilty of a public offense punishable by imprisonment in the county jail for a term not exceeding one year, or by a fine not exceeding one hundred thousand dollars (\$100,000), or by both a fine and imprisonment, if:

(1) The officer, director or manager of a corporation or officer, member or manager of a limited liability company has actual knowledge of an action taken or about to be taken, or a failure to act, by the corporation or an officer, director, agent or manager of the corporation, or the limited liability company or an officer, member or manager of the limited liability company, in violation of a state or federal statute or regulation

concerning financial fraud, consumer protection, health and safety, the environment or labor that is applicable to the corporation or an officer, director, agent or manager of the corporation, or limited liability company or an officer, member or manager of the limited liability company; and

(2) The officer, director or manager of a corporation or officer, member or manager of a limited liability company knowingly fails to inform the Attorney General or a government agency with enforcement authority over the state or federal statute or regulation that has been violated of the action or failure to act in writing within 15 days after the actual knowledge is acquired, unless the officer, director or manager of a corporation or officer, member or manager of a limited liability company has actual knowledge that the Attorney General or appropriate government or law enforcement agency has been informed; and

(3) A state or federal court or agency later finds or determines that the action or failure to act by the corporation or an officer, director, agent or manager of the corporation, or the limited liability company or an officer, member or manager of the limited liability company violated a state or federal statute or regulation.

(b) Disclosure is not required under this section if the action taken or about to be taken, or failure to act, by the corporation or an officer, director, agent or manager of the corporation, or the limited liability company or an officer, member or manager of the limited liability company under paragraph (1) of subdivision (a) is abated within the time prescribed for reporting, unless a state or federal statute or regulation otherwise requires disclosure.

(c) If the action or failure to act reported to the Attorney General pursuant to this section implicates the enforcement authority of a government agency other than, or in addition to, the Attorney General, the Attorney General shall promptly inform that agency of the notice. If the action or failure to act reported to a government agency implicates the authority of the Attorney General, the agency shall promptly inform the Attorney General of the notice. This subdivision shall not preclude the Attorney General from prosecuting any action within his or her jurisdiction.

(d) If the Attorney General was not notified pursuant to paragraph (2) of subdivision (a), but the officer, director or manager of the corporation or officer, member or manager of the limited liability company reasonably and in good faith believed that he or she was complying with the notification requirements of this section by notifying a government agency with enforcement authority over the state or federal statute or regulation that has been violated, no penalties shall apply.

(e) For purposes of this section:

(1) "Manager" means a person having both management authority and significant responsibility for an aspect of a business entity.

- (2) "Actual knowledge" means information that would convince a reasonable person under the circumstances that a violation of a statute or regulation exists.
- (f) A disclosure made by any person pursuant to this section shall not relieve any other person from the obligation to make the disclosure required by this section, except as provided in paragraph (2) of subdivision (a).
- (g) A disclosure made by any person pursuant to this section shall not relieve that person from any liability for his or her own wrongdoing.
- (h) This section may not be interpreted to require an officer, director or manager of a corporation or an officer, member or manager of a limited liability company to make any disclosure that would violate the lawyer-client privilege of Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code.
- (i) This section shall not be interpreted to deprive an officer, director or manager of a corporation or an officer, member or manager of a limited liability company of the privilege against self-incrimination as guaranteed by the United States and California Constitutions, nor to prevent him or her from exercising that privilege.
- (j) An action pursuant to this section may be brought by the Attorney General or a district attorney or city attorney in the name of the people of the State of California.
- (k) Nothing in this section affects any other existing statute, right or remedy.

SECTION FOUR. SEVERABILITY.

If any provision of this act, or part of this act, is for any reason held to be invalid, the remaining provisions shall not be affected, but shall remain in full force and effect, and to this end the provisions of this act are severable.

SECTION FIVE. CONFLICTING INITIATIVES.

In the event that this measure and another initiative measure or measures concerning the reporting of corporate wrongdoing shall appear on the same statewide election ballot, the provisions of the other measure or measures shall be deemed to be in conflict with this measure. In the event that this measure receives a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and all provisions of the other measure or measures shall be null and void.