

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

SB 461 (Cortese)
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Fiscal: No
Urgency: No
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SUBJECT

Unfair Competition Law: enforcement

DIGEST

This bill authorizes a county counsel of a county within which a city has a population in excess of 750,000 people to bring an action under California's Unfair Competition Law.

EXECUTIVE SUMMARY

The Unfair Competition Law (UCL), Business and Professions Code Section 17200 et seq., protects consumers against unlawful, unfair, or fraudulent business practices and advertising. The UCL provides for civil penalties to be assessed and recovered from violators in the name of the people of California by various governmental agencies. The UCL specifically details how the proceeds from those actions are to be distributed and used.

Currently, a county counsel is only authorized to bring a UCL action if authorized by agreement with the district attorney and the action is for a violation of a county ordinance. Therefore, larger, established county counsel offices are unable to maximize their impact in consumer protection cases. This bill addresses this gap by authorizing a county counsel of any county within which a city has a population in excess of 750,000 to bring UCL actions. This change provides authority for county counsel in Los Angeles, San Diego, and Santa Clara counties to bring UCL claims.

This bill is co-sponsored by Santa Clara County and the Los Angeles County Board of Supervisors. It is supported by consumer and environmental advocacy groups. It is opposed by the Civil Justice Association of California.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the UCL and defines “unfair competition” to mean and include any unlawful, unfair, or fraudulent business act or practice and unfair, deceptive, untrue, or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code. (Bus. & Prof. Code § 17200 et seq.)
- 2) Provides that any person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction. Any person may pursue representative claims or relief on behalf of others only if the claimant meets the standing requirements of Business and Professions Code Section 17204 and complies with Section 382 of the Code of Civil Procedure, but these limitations do not apply to claims brought under this chapter by the Attorney General, or any district attorney, county counsel, city attorney, or city prosecutor in this state. (Bus. & Prof. Code § 17203.)
- 3) Requires actions for relief pursuant to the UCL be prosecuted exclusively in a court of competent jurisdiction and only by the following:
 - a) the Attorney General;
 - b) a district attorney;
 - c) a county counsel authorized by agreement with the district attorney in actions involving violation of a county ordinance;
 - d) a city attorney of a city having a population in excess of 750,000;
 - e) a city attorney in a city and county;
 - f) a city prosecutor in a city having a full-time city prosecutor in the name of the people of the State of California upon their own complaint or upon the complaint of a board, officer, person, corporation, or association with the consent of the district attorney; or
 - g) a person who has suffered injury in fact and has lost money or property as a result of the unfair competition. (Bus. & Prof. Code § 17204.)
- 4) Holds any person who engages, has engaged, or proposes to engage in unfair competition liable for a civil penalty not to exceed \$2,500 for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General, by any district attorney, by any county counsel authorized by agreement with the district attorney in actions involving violation of a county ordinance, by any city attorney of a city having a population in excess of 750,000, by any city attorney of any city and county, or, with the consent of the district attorney, by a city

prosecutor in any city having a full-time city prosecutor, in any court of competent jurisdiction. (Bus. & Prof. Code § 17206(a).)

- 5) Requires the penalties collected pursuant to the UCL to be used for enforcement of consumer protection laws and provides for the distribution of those funds based on the entity bringing the action:
 - a) if the action is brought by the Attorney General, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the General Fund;
 - b) if the action is brought by a district attorney or county counsel, the penalty collected shall be paid to the treasurer of the county in which the judgment was entered;
 - c) if the action is brought by a city attorney of a city and county, the entire amount of the penalty collected shall be paid to the treasurer of the city and county in which the judgment was entered;
 - d) if the action is brought by a city attorney or city prosecutor, one-half of the penalty collected shall be paid to the treasurer of the city in which the judgment was entered, and one-half to the treasurer of the county in which the judgment was entered, except as provided; and
 - e) if the action is brought by the City Attorney of San Diego, the penalty collected shall be paid to the treasurer of the City of San Diego. (Bus. & Prof. Code § 17206.)
- 6) Holds liable any person who intentionally violates any injunction prohibiting unfair competition issued pursuant to Section 17203 for a civil penalty not to exceed \$6,000 for each violation. This civil penalty shall be assessed and recovered in a civil action brought in any county in which the violation occurs or where the injunction was issued in the name of the people of the State of California by the Attorney General or by any district attorney, any county counsel authorized by agreement with the district attorney in actions involving violation of a county ordinance, or any city attorney in any court of competent jurisdiction within the attorney's jurisdiction. (Bus. & Prof. Code § 17207.)
- 7) Provides that the proceeds of civil penalties or other monetary awards recovered in any civil action brought jointly in the name of the people of the State of California by the Attorney General, one or more district attorneys, or by one or more city attorneys, or any combination thereof, shall be paid as approved by the court. (Gov. Code § 26506.) A district attorney, city attorney, or any combination thereof, may, in agreement with other district attorneys or city attorneys, act jointly in prosecuting a civil cause of action of benefit to his own county in a court of the other jurisdiction. (Gov. Code § 26507.)

This bill authorizes a county counsel of a county within which a city has a population in excess of 750,000 people to bring an action under the UCL.

COMMENTS

1. Stated intent of the bill

According to the author:

California's Unfair Competition law allows the Attorney General, district attorneys, and city attorneys of cities with a population of over 750,000 the authority to bring civil action against dubious business practices. However, county counsels do not have the same authority. Senate Bill 461 will enhance consumer protection and fair competition enforcement to protect the public by aligning the authority of large county counsel offices with the pre-existing authority of their city attorney counterparts.

By giving county counsels of counties with cities having a population of greater than 750,000 the authority to bring UCL actions, SB 461 will close an enforcement gap and enable these county counsels to better protect consumers and promote fair competition. The bill also aligns with other important consumer protection statutes in California, such as the False Advertising Law, which broadly authorizes county counsels to combat deceptive business practices.

The County of Santa Clara, a co-sponsor of this bill, writes: "SB 461 will align the authority of county counsels of large-population counties with their large-population city counterparts, allowing consumer protection enforcement under the UCL." The county asserts that the bill will "create efficiencies by allowing the county counsels of these large-population counties to partner with other government entities in prosecuting UCL violations."

2. Expanding UCL enforcement

Unfair business practices encompass fraud, misrepresentation, and oppressive or unconscionable acts or practices by businesses, often against consumers. In California, affected individuals and specified governmental agencies are authorized to bring civil actions for unfair competition and to recover civil penalties or injunctive relief pursuant to the UCL.

The UCL identifies specific agencies authorized to bring such actions and to recover civil penalties. This includes the Attorney General and district attorneys. City prosecutors in cities having a full-time prosecutor can also bring UCL claims on behalf of the people of California if they have the consent of the district attorney. Certain city

attorneys have expanded authority. City attorneys of cities with populations in excess of 750,000 and city attorneys of a city and county may bring UCL actions without seeking consent. Currently, the City and County of San Francisco is the only consolidated city-county in California, a status it has held since 1856. Thus, in practice, San Francisco is the only public entity that is affected by the statutory provisions granting authority to a city attorney of a city and county to bring unfair competition actions. Currently, the only city attorneys granted authority to bring actions under the UCL based on population are those in San Jose, San Diego, and Los Angeles.

On the other end of the spectrum, county counsel are only permitted to bring UCL actions if authorized by the district attorney, and only in actions involving a county ordinance violation. This extremely narrow authority prevents county counsel that might otherwise be able from pursuing claims against those engaging in unfair business practices. While county counsel are authorized to bring claims pursuant to the False Advertising Law, Business and Professions Code section 17500 et seq., they are unable to assert UCL claims alongside them.

This bill extends the authority to three county counsel in California, those in San Diego County, Los Angeles County, and Santa Clara County, as the cities of San Diego, Los Angeles, and San Jose have populations over 750,000. This adds an additional tool for these three large, municipal, civil law offices to fight for consumers. The Los Angeles County Board of Supervisors, a co-sponsor of the bill, makes the case for it to be included in the offices authorized to bring such cases:

Los Angeles County has shown a commitment to protecting consumers through its creation of a specialized consumer protection division and by taking on issues important to county and state residents. The County, in 2018, formalized an Affirmative Litigation and Consumer Protection Division (ALCP) within County Counsel to file civil cases that protect consumers and the public. ALCP has brought False Advertising (Business and Professions Code Section 17500) and UCL cases based on violations of County ordinances and County code and has enforced environmental and public nuisance laws. Los Angeles County Counsel has worked on various consumer protection, UCL and false advertising investigations and cases with various partners including the Attorney General, the Los Angeles District Attorney, several other District Attorney offices, the Los Angeles City Attorney and others.

3. Stakeholder positions

Earthjustice writes in support of the bill:

Unlawful pollution has devastating impacts on the health, safety, and quality of life of communities in California. In counties with populations

greater than 750,000, a significant portion of polluting businesses are located in communities of color and low-income communities. Current restrictions significantly limit the ability of County Counsels to hold polluters accountable for unfair business practices, which include unlawful environmental harms. We support SB 461 as an important tool to protect communities, by enabling County Counsel to address unfair and unlawful business practices.

The Civil Justice Association of California, representing a wide coalition of groups that have included pharmaceutical companies, oil companies, banks, and automakers, opposes the bill:

CJAC opposes expansion of enforcement of state laws to local governments when California already has a well-funded state agency in the Office of the Attorney General to handle enforcement. Since local governments receive penalty amounts into their own coffers, this incentivizes more actions to be brought against businesses.

Writing in support, the Consumer Federation of California writes that it “has long supported policies designed to expand enforcement of laws and policies designed to protect consumers. By allowing counties with high population cities to bring an action under the UCL, this bill will help ensure that there is robust enforcement of the law.”

SUPPORT

Santa Clara County (co-sponsor)
Los Angeles County Board of Supervisors (co-sponsor)
Consumer Attorneys of California
Consumer Federation of California
Earthjustice
Los Angeles County District Attorney’s Office
Urban Counties of California

OPPOSITION

Civil Justice Association of California

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

AB 3020 (Gloria, Ch. 75, Stats. 2020) adjusts the distribution of civil penalties recovered by the City Attorney of San Diego in Unfair Competition Law actions. If the action is brought by the City Attorney of San Diego, the penalty collected shall be fully paid to the treasurer of the City of San Diego.

AB 814 (Bloom, 2017) would have granted certain city attorneys the power to conduct investigations, including the ability to issue pre-litigation subpoenas, when they reasonably believe there has been a violation of the UCL. This bill died on the Senate Floor.
