

December 1, 2003

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 initiative amending California's Unfair Competition Law (File No. SA2003RF0051).

Background

California's Unfair Competition Law prohibits any person 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. Recent lawsuits against some businesses, including auto repair shops, restaurants, and nail salons have raised concerns that some private attorneys filing lawsuits on the behalf of the public are abusing the unfair competition law.

Key Features of the Measure

The proposed initiative makes the following changes to the current unfair competition law:

- ***Restricts Private Attorneys.*** This measure prohibits private attorneys from bringing legal action for unfair competition when they have no client who has suffered injury and lost money or property. Thus, only public attorneys (for example, county district attorneys) could bring legal action on behalf of the general public under the amended unfair competition law.

- ***Requires Class Action of Representative Claims.*** This measure requires that private attorneys pursuing representative claims or relief on behalf of others meet the class action requirements to bring legal action under the unfair competition law.
- ***Specifies the Use of Civil Penalties.*** This measure further specifies that existing civil penalties—up to \$2,500 for each violation of the unfair competition law—shall only be used by local and state public prosecutors for the enforcement of consumer protection laws.

Fiscal Effect

State Government. This measure would have an unknown fiscal impact on the state General Fund. This effect would depend primarily on whether the measure increases or decreases the level of court workload dedicated to unfair competition cases. If the level of court workload decreases because of restrictions on private attorneys' ability to bring unfair competition cases, there would be state savings. Alternatively, if it increases court workload, there would be state costs. 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.

Under current law, civil penalties may be ordered by the judge on the party that is found guilty of violating the unfair competition law. The civil penalty revenue is then deposited into the state General Fund to be used for general state purposes. The proposed measure requires that civil penalty revenue be diverted from general state purposes to the Attorney General for enforcement of consumer protection laws. To the extent that this diverted revenue is replaced by the General Fund, there would be minor state costs. However, there is no provision in the measure requiring such replacement.

Local Governments. As indicated above, the measure requires that civil penalty revenue be used by public attorneys for enforcement of consumer protection laws. To the extent that this diverted revenue is replaced by local General Fund monies, there would be a cost to local government. Accordingly, the measure could result in unknown costs to local governments.

Indirect Effects. The proposed measure would result in unknown potential indirect fiscal effects on the state and localities. For example, to the extent the measure reduces business costs associated with lawsuits, it may improve firms' profitability, eventually encourage additional economic activity, and thus increase state and local revenues. Conversely, there could be increased costs to the extent that future legal actions that would have been brought under current law by private attorneys, on behalf of the general public, are not brought by a public attorney. These types of cases involve

violations of health and safety requirements, for example, which could potentially result in increased health care costs paid by government.

Summary of Fiscal Effects

This measure would result in the following direct fiscal effects:

- Unknown fiscal impact on the state depending on whether the measure increases or decreases court workload related to unfair competition lawsuits.
- Unknown potential costs to local governments, depending on the extent to which diverted funds are replaced.

Sincerely,

Elizabeth G. Hill
Legislative Analyst

Donna Arduin
Director of Finance