

SENATE JUDICIARY COMMITTEE
Senator Hannah-Beth Jackson, Chair
2019-2020 Regular Session

AB 3020 (Gloria)
Version: February 21, 2020
Hearing Date: July 30, 2020
Fiscal: No
Urgency: No
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SUBJECT

Unfair Practices Act

DIGEST

This bill adjusts the distribution of civil penalties recovered by the City Attorney of San Diego in Unfair Competition Law actions.

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, if the action is brought by a city attorney or city prosecutor, one-half of the penalty collected is paid to the city in which the judgment was entered, and one-half to the county in which the judgment was entered. This bill amends that allotment if the action is brought by the City Attorney of San Diego. The penalty collected must instead be paid to the treasurer of the City of San Diego in full.

This bill is sponsored by Mara Elliot, the San Diego City Attorney. There is no known opposition.

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. The court may make such orders or judgments as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition or as may be necessary to restore to any person in interest any money or property, which may have been acquired by means of such unfair competition. 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; and
 - 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. (Bus. & Prof. Code § 17206.)
- 6) Provides that if the action is brought at the request of a board within the Department of Consumer Affairs or a local consumer affairs agency, the court shall determine the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action. Before any penalty collected is paid out pursuant to the provisions above, the amount of any reasonable expenses incurred by the board shall be paid to the Treasurer for deposit in the special fund of the board described in Section 205. If the board has no such special fund, the moneys shall be paid to the Treasurer. The amount of any reasonable expenses incurred by a local consumer affairs agency shall be paid to the general fund of the municipality or county that funds the local agency. (Bus. & Prof. Code § 17206(e).)
- 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 provides that if a UCL 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.

COMMENTS

1. 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. County counsel are also permitted to bring such actions if authorized by the district attorney and only in actions involving a county ordinance violation. 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.

2. Distribution of UCL civil penalties

The UCL also specifically details how the civil penalties collected pursuant to it are to be distributed. This is currently based primarily on which governmental entity is bringing the action. Relevant here, the law provides that "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." (Bus. & Prof. Code § 17206.) Therefore, regardless of whether the county was involved, the county is receiving half of the proceeds from these actions. For comparison, if the action is brought by a district

attorney or county counsel, the entire penalty collected is received by the county in which the judgment was entered.

This bill amends the above provision by providing that if the action is brought by the City Attorney of San Diego, the entire penalty collected shall be paid to the treasurer of the City of San Diego. The Office of the San Diego City Attorney, the sponsor of the bill, makes the case for why the bill is needed:

This bill protects consumers by ensuring a proper distribution of prosecutorial resources. Under AB 3020, when my Office successfully prosecutes a case under the UCL and obtains civil penalties, it will receive every dollar of those penalties to support work on other UCL cases and investigations. . . .

This puts my Office on equal footing with District Attorneys that are authorized to prosecute unfair business practices. Currently, when the District Attorney brings an action under the UCL, that county receives all of the civil penalties awarded by the court. But when my Office brings such an action, those civil penalties must be split evenly with the County of San Diego, even if the District Attorney was not at all involved with prosecuting the case.

The bill provides the City Attorney of San Diego with all of the proceeds if they bring the action, rather than sharing with San Diego County, which may not have been involved in the litigation at all.

It should be noted that existing law provides that if the UCL action is brought at the request of a board within the Department of Consumer Affairs or a local consumer affairs agency, the board's reasonable expenses incurred as a result of the investigation and prosecution of the action are to be reimbursed before the penalty collected is otherwise paid out.

3. Previous attempt to amend UCL penalty distributions

In 2019, a similar bill passed through the Legislature, AB 1477 (Gloria, 2019). It would have made a similar adjustment to the distribution of penalties collected in UCL actions. That bill was much broader in that it would have not been limited to San Diego, but have applied to all city attorneys eligible to bring such actions. It also included a one-year delay as to Los Angeles City Attorney claims and also provided that where a county agency "participated in the prelitigation investigation" of the UCL action brought by the city attorney, half of the penalties collected would go to the treasurer of the county in which the judgment was entered.

Governor Newsom vetoed the measure. In his veto message, the Governor stated:

This bill would adjust the distribution of civil penalties recovered by government entities in Unfair Competition Law actions.

This existing division is intended to ensure that both the city and county have resources to enforce consumer protection laws. This measure will revise longstanding practices and reduce the resources allocated to counties, putting in jeopardy important consumer protection services they provide.

I encourage the counties and cities impacted by this bill to work together to reach a resolution on this matter that is in the best interests of the public they serve.

AB 1477 was opposed by the County of Los Angeles along with the County of Santa Clara and the California State Association of Counties. The County of Los Angeles argued the bill “could discourage the Los Angeles City Attorney from involving the County’s Department of Consumer and Business Affairs [(DCBA)] in pre-filing investigations because by excluding them the City Attorney could keep all of the civil penalties recovered.” The county asserted that by “eliminating a vital source of funding for the County's consumer protection efforts by DCBA, the District Attorney, and County Counsel . . . the bill would continue to have an adverse fiscal impact on the County and on the consumer protection work that it does for the over 10 million people living in the County.”

This bill now limits its impact to claims brought by the San Diego City Attorney. There is no known opposition.

4. Stated intent of the bill

According to the author:

Proposition 64 (2004) limited private lawsuits, under the Unfair Competition Law, against a company only to those where an individual is actually injured by and suffers a financial loss due to an unfair, unlawful, or fraudulent business practice. Otherwise, only public prosecutors may file lawsuits charging unfair business practices. These actions may be brought forward by the Attorney General or district attorney. Additionally, the city attorney of any city with a population in excess of 750,000 may also bring actions under the Unfair Competition Law forward. However, even if an eligible city attorney brings the action forward, using only their own resources and without any assistance from a district attorney, any penalties awarded to the city attorney must be shared equally with the district attorney. The penalties awarded for an

action brought by a district attorney are not required to be shared with a city attorney.

AB 3020 requires penalties collected by the San Diego City Attorney from an action under the Unfair Competition Act to be paid to the City of San Diego entirely.

SUPPORT

San Diego City Attorney Mara Elliott (sponsor)

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

AB 1477 (Gloria, 2019) *See* Comment 3.

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.

PRIOR VOTES:

Assembly Floor (Ayes 57, Noes 17)

Assembly Judiciary Committee (Ayes 7, Noes 3)
