

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

April 10, 2011

TO: Honorable Joe Deshotel, Chair, House Committee on Business & Industry

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB2846 by Madden (Relating to certain procedures and civil penalties under the Deceptive Trade Practices-Consumer Protection Act.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for HB2846, As Introduced: an impact of \$0 through the biennium ending August 31, 2013.
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General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2012	\$0
2013	\$0
2014	\$0
2015	\$0
2016	\$0

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain/(Loss) from <i>Judicial Fund</i> 573
2012	(\$468,000)
2013	(\$468,000)
2014	(\$468,000)
2015	(\$468,000)
2016	(\$468,000)

Fiscal Analysis

The bill would amend Chapter 17 of the Business and Commerce Code. The bill would reduce civil penalties collected under the Deceptive Trade Practices Act (DTPA) from \$20,000 per violation to \$10,000 per violation, not to exceed a total of \$250,000 if the defendant, or a person that owns or controls the defendant, has assets of less than \$25 million. The cap for defendants - or the owner or controller - who have assets of more than \$25 million is \$1 million. Under the current statute the court is given discretion to consider the respondent's ability to pay when assessing penalties and has no cap on civil penalties. The bill would extend the time allowed to respond to requests for information. The bill would require the use of identified versus identifiable consumers as a basis for determining restitution.

Civil penalties from DTPA actions are allocated to the Supreme Court Judicial Fund. Because the bill would reduce civil penalties that can be recovered, it would have a negative impact on the Judicial Fund.

The bill would take effect September 1, 2011.

Methodology

The bill would reduce the basic per violation penalty for DTPA violations by half and establish a cumulative penalty cap of between \$250,000 and \$1 million based on the assets of the respondent company. The Office of Attorney General (OAG) estimates that the bill's penalty cap would decrease the amount of civil penalties recovered by half. In fiscal year 2011, the OAG collected \$936,539 in civil penalties under the DTPA. Based on those collections, the OAG projects that the bill would reduce penalties by \$468,000 a year. That reduction would affect the Judicial Fund, which receives its funding from civil penalties under Section 402.007 of the Government Code.

The OAG anticipates any additional costs associated with implementation of the legislation could be absorbed within existing resources.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 302 Office of the Attorney General, 304 Comptroller of Public Accounts

LBB Staff: JOB, AG, SD