

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION**

**April 18, 2017**

**TO:** Honorable John T. Smithee, Chair, House Committee on Judiciary & Civil Jurisprudence

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB1435** by Wu (Relating to the commencement and prosecution of certain actions by county and district attorneys under the Deceptive Trade Practices-Consumer Protection Act.), **As Introduced**

**The bill would have a negative, but indeterminate, fiscal impact to the state, due to anticipated decreases in the amount of civil penalties and attorney's fees collected by the Office of Attorney General from enforcement actions undertaken through the Deceptive Trade Practices and Consumer Protection Act in an amount that cannot be determined. The bill would also have an indeterminate impact on the caseload of the Office of the Attorney General due to the lack of available data on the potential amount of cases that would be taken by district and county prosecutors that request assistance from the Office of Attorney General.**

The bill would amend the Business and Commerce Code to allow a district attorney, county attorney, or the Consumer Affairs Division of the Office of the Attorney General (OAG) to serve as prosecuting attorney by initiating an enforcement action under the Deceptive Trade Practices and Consumer Protection Act to seek injunctive relief or civil penalties. The bill would authorize these district or county attorneys to collect civil penalties in addition to their current authority to obtain injunctive relief.

Government Code provisions currently require that collections from actions undertaken by the State through this Act can only be collected by the State if the OAG takes the action. The OAG is authorized to retain a portion of these collections as reimbursement for prosecuting the case as attorney's fees. In addition, pursuant to the Government Code, the Supreme Court of Texas is allocated to the Judicial Fund an amount not to exceed \$50 million each biennium in civil penalties from collections resulting from these actions to be used for basic civil legal services to the indigent.

By authorizing district and county attorneys to initiate enforcement actions through the Deceptive Trade Practices and Consumer Protection Act that may exclude the OAG's Consumer Affairs Division and since the bill authorizes that counties may collect any associated civil penalties, the bill may result in a revenue decrease to the State of an indeterminate amount because the number of district and county attorneys that might undertake such actions and the amount that counties may collect in associated civil penalties that were previously collected by the OAG cannot be determined. This would result in reductions in revenue to the OAG for reimbursement of attorney's fees and to the Supreme Court of Texas for funding for basic civil legal services to the indigent.

The bill would also have an indeterminate impact on the caseload of the OAG due to statute

requiring the OAG Consumer Affairs Division, on request, to provide assistance to district and county prosecutors in bringing these actions. The impact cannot be determined, positively or negatively, due to inadequate available data on the potential amount of cases to be taken by district and county prosecutors that request assistance from the OAG's Consumer Affairs Division.

The bill would take effect September 1, 2017.

### **Local Government Impact**

The bill would have a positive, but indeterminate, fiscal impact to local governments due to anticipated increases in the amount of civil penalties and attorney's fees collected by authorizing district and county prosecutors to take enforcement actions through the Deceptive Trade Practices and Consumer Protection Act, the prosecution of which was is currently reserved for the Office of Attorney General.

**Source Agencies:** 212 Office of Court Administration, Texas Judicial Council, 302 Office of the Attorney General

**LBB Staff:** UP, LBO, MW, GDz, JSm