

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

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

**May 15, 2017**

**TO:** Honorable Joan Huffman, Chair, Senate Committee on State Affairs

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

**IN RE: HB2612** by Meyer (Relating to civil liability of a person who produces, distributes, sells, or provides or aids in the production, distribution, sale, or provision of certain synthetic substances to another person for damages caused by the other person and to certain actions and investigations under the Deceptive Trade Practices-Consumer Protection Act.), **As Engrossed**

**The bill would have a positive, but indeterminate, impact to the state due to increases in deposits to Judicial Fund No. 573 for basic civil legal services resulting from increased litigation under the Deceptive Trade Practices Act; however, the increase in litigation cases brought by district and county attorneys provided by the bill cannot be determined.**

The bill would amend the Health and Safety Code to create a private cause of action for damages caused by synthetic substances. The bill would make an actor liable for damages proximately caused by the consumption or ingestion of a synthetic substance by another person if the actor produced, distributed, sold, or provided the substance to the other person or aided in the production, distribution, sale, or provision of the substance to the other person and strictly liable if the substance is ingested by a minor. The bill would allow claims to be brought under the Deceptive Trade Practices Act, and would allow for the recovery of exemplary damages.

The bill would amend the Business and Commerce Code to allow a district or county attorney to initiate an enforcement action under the Deceptive Trade Practices and Consumer Protection Act under certain circumstances involving the production, sale, distribution, or promotion of a synthetic substance. The bill would allow district or county attorneys to pursue action in these circumstances, but only if the consumer protection division within the Office of the Attorney General does not intend to act with respect to the matter and no sooner than the 90th day after the date the district or county attorney provides notice to the Attorney General requesting assistance from the Office of the Attorney General. The Office of the Attorney General would be required to provide assistance to a district or county attorney to the extent that resources are available to provide that support in these circumstances.

The bill would provide that any settlement or penalties resulting from an action authorized by the bill must be divided equally between the state and the county in which the attorney brought suit, with 50 percent deposited with the comptroller for deposit into the Judicial Fund No. 573 (Other Funds) to support basic civil legal services, and 50 percent deposited with the county to be used for law enforcement, public health programs, or drug abuse prevention programs.

Under current law, civil penalties collected up to \$50 million by the Attorney General are deposited in Judicial Fund No. 573 for basic civil legal services. The bill would allow other

attorneys to collect civil penalties and settlements under circumstances authorized in the bill and to direct half of any such penalty or settlement to the county instead of to the Judicial Fund; however, district and county attorneys would only be able to litigate these cases if the Office of the Attorney General is not pursuing the case and 50 percent of the penalties would be deposited to Judicial Fund No. 573 for basic civil legal services. Therefore, there may be an increase in deposits to the state for basic civil legal services from actions brought by district or county attorneys, but this amount cannot be determined.

According to the Office of Court Administration and the Office of the Attorney General, any expanded prosecutorial authority that might result in increased litigation under the Deceptive Trade Practices and Consumer Protection Act would likely be absorbed by existing resources.

The bill would take effect September 1, 2017.

This legislation would do one or more of the following: create or recreate a dedicated account in the General Revenue Fund, create or recreate a special or trust fund either with or outside of the Treasury, or create a dedicated revenue source. The fund, account, or revenue dedication included in this bill would be subject to funds consolidation review by the current Legislature.

### **Local Government Impact**

The bill would have a positive, but indeterminate, impact to local governments due to the bill authorizing county and district attorneys to pursue action through the Deceptive Trade Practices Act under circumstances outlined in the bill. Of the total amount collected from these actions in civil penalties, the bill provides that 50 percent are to be deposited with the county to be used for law enforcement, public health programs, or drug abuse prevention programs.

**Source Agencies:** 212 Office of Court Administration, Texas Judicial Council, 302 Office of the Attorney General, 304 Comptroller of Public Accounts

**LBB Staff:** UP, AG, MW, GDz, JGA, LBO, KJH, JSm