

BILL ANALYSIS

Senate Research Center
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S.B. 1617
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As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Deceptive Trade Practices Act allows the consumer protection division of the attorney general's office to bring an action in the name of the state against any person it believes is engaging in, has engaged in, or is about to engage in any act or practice declared to be unlawful by the Act (passing off goods or services as those of another, causing confusion or misunderstanding as to the source of goods or services, representing that used goods are new, etc.). In order for settlement negotiations between the Office of the Attorney General and defendants in Deceptive Trade Practices Act suits to proceed smoothly, it is imperative that any materials or information collected, assembled, or developed by or on behalf of the attorney general related to these negotiations remain privileged. S.B. 1617 seeks to address this issue by providing that materials related to settlement communications in deceptive trade practices investigations or actions remain privileged and not subject to disclosure under Chapter 552 of the Government Code.

Key Provisions:

- Defines "settlement communications" as documentary materials or information collected, assembled, drafted, developed, used, received, or maintained by or on behalf of the attorney general with respect to an investigation or litigation conducted under this subchapter and that reflects or is regarding negotiations made for the purpose of achieving a resolution of a matter without the need for continuing with litigation or trial.
- Provides that an attorney general settlement negotiation is privileged and not subject to disclosure under Chapter 552 of the Government Code from the date the attorney general's investigation begins until the earlier of the following dates:
 - The case is reported closed.
 - The final judgment, assurance of voluntary compliance, or other settlement agreement is entered by the court.
 - The settlement documents are executed by all parties.
 - The order of dismissal or nonsuit disposing of all parties is entered by the court.

As proposed, S.B. 1617 amends current law relating to disclosure under the public information law of settlement communications maintained by or on behalf of the attorney general as part of a deceptive trade practices investigation or action.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 17.45, Business and Commerce Code, by adding Subdivision (18) to define "settlement communications."

SECTION 2. Amends Subchapter E, Chapter 17, Business and Commerce Code, by adding Section 17.475, as follows:

Sec. 17.475. CONFIDENTIALITY OF SETTLEMENT COMMUNICATIONS. Provides that an attorney general settlement communication is privileged and not subject to disclosure under Chapter 552 (Public Information), Government Code, from the date the attorney general's investigation begins, as indicated in the attorney general's case management records, until the earlier of the date:

- (1) the case is reported closed in the attorney general's case management records;
- (2) the final judgment, assurance of voluntary compliance, or other settlement agreement is entered by the court, and the period for filing a notice of appeal has passed;
- (3) the settlement documents are executed by all parties, if the documents are not filed in court;
- (4) the order of dismissal or nonsuit disposing of all parties is entered by the court; or
- (5) all appeals are finalized.

SECTION 3. Makes application of this Act prospective.

SECTION 4. Effective date: September 1, 2023.