



DEPARTMENT OF JUSTICE
CIVIL ENFORCEMENT DIVISION

MEMORANDUM

DATE: March 6, 2013

TO: Honorable Jeff Barker, Chair
House Judiciary Committee

FROM: Aaron Knott, Legislative Director

SUBJECT: HB 2776 – Changes civil Investigative Demand authority

DOJ OPPOSES THIS BILL

BACKGROUND ON THE UNLAWFUL TRADE PRACTICES ACT

- The Unlawful Trade Practices Act (UTPA) was passed in 1971 and amended in 1977. It was based on a model consumer protection law. Additional changes have been made since to expand the “laundry list” of conduct covered by the UTPA.
- The UTPA protects both consumers and honest businesses by promoting a level playing field and a fair marketplace.
- The Attorney General has investigated, negotiated settlements and litigated violations of the UTPA in many different industries. Targets of enforcement actions run the gamut from telecommunications providers to lenders, debt relief services to major drug and food manufacturers, and motor vehicle dealers to internet and telemarketing sales. The Attorney General also uses the UTPA to attack scams targeting older Oregonians, those new to this country, and other vulnerable populations.

CIVIL INVESTIGATIVE DEMANDS

- The Attorney General has broad authority to investigate whether a person has engaged in, is engaging in, or is about to engage in any act or practice declared to be unlawful by the UTPA. By issuing a civil Investigative Demand (CID), the Attorney General can ascertain the substance of the alleged or suspected violations, the number and identities of consumers affected by the alleged unlawful practices, the amount of monetary damage sustained by consumers and additional information to aid in the determination as to whether it is appropriate and necessary for the Attorney General to take any further action.

- The Attorney General can take action when she has probable cause to believe that a person is engaging in, has engaged in, or is about to engage in an unlawful trade practice.
 - It is beneficial to businesses if the Attorney General can investigate alleged unlawful practices prior to commencing litigation. Litigation is expensive to all parties involved. Further, the reputation of a business may be unfairly damaged if the Attorney General is forced to bring a court action alleging that the business engaged in unlawful conduct in order to conduct discovery to determine if in fact the business is or was engaged in unlawful conduct.
 - It is crucial that the Attorney General be permitted to investigate and halt not only unlawful conduct that has occurred but also what reasonably may occur. For example, if the Attorney General discovers that a business has decided to stop one bad act only to move to another bad act, it is important to both consumers and competing businesses for the Attorney General to stop the imminent bad conduct before it begins. Otherwise a dishonorable business could continually change its business model but always engage in unlawful behavior. Stopping such a business would be akin to playing “whack a mole” and would unnecessarily waste limited state resources.

HOW HB 2776 WILL HARM CONSUMERS AND BUSINESSES

- HB 2776 eliminates the Attorney General’s ability to issue a CID if the Attorney General believes that a person is “about to” violate the UTPA. The Attorney General would not be able to investigate tips that allege a business is planning on engaging in unlawful conduct. This means that the Attorney General’s ability to stop potential unlawful conduct before it harms consumers and competing businesses would be thwarted.
- Fewer than a dozen states limit the Attorney General’s ability to issue a CID or subpoena to conduct that a person “has engaged in or is engaging in.” This bill would put Oregon in the distinct minority in limiting the Attorney General’s ability to investigate conduct that may be about to occur.
- The Unlawful Trade Practices Act, and the authority of the Attorney General to issue civil Investigative Demands under the Act, has served Oregon well for the past 42 years. There is no compelling reason to amend it as contemplated by HB 2776.

DOJ CONTACT

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