



DEPARTMENT OF JUSTICE

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April 14, 2015

The Honorable Chip Shields, Co-Chair
The Honorable Jennifer Williamson, Co-Chair
Joint Committee on Ways and Means, Public Safety Subcommittee
900 Court Street NE
H-178 State Capitol
Salem, OR 97301-4048

Dear Co-Chairpersons:

Please accept this letter as response to questions raised by the Subcommittee during the Department of Justice's (DOJ) budget presentation on March 24 and 30, 2015.

Follow-up from March 24:

Q1. Did the Criminal Justice Division make a sentencing recommendation in the Browning case? If yes, did that recommendation include PERS?

A1. Yes, the Criminal Justice Division made a recommendation, but it did not include any implication for PERS benefits. ORS 238.447 which permits execution or assignment of PERS benefits to collect restitution or compensatory fines for felonies did not become law until October 8, 2013. The crimes committed in this case and sentencing all occurred before that date.

Follow-up from March 30:

Q2. What would be the fiscal impact if the health care industry was brought under the Unlawful Trade Practice Act (UTPA)?

- A2. It is difficult to accurately predict the exact impact of this expansion; however, we believe it could significantly increase DOJ's workload in the Civil Enforcement Division, Financial Fraud/Consumer Protection Section (FF/CP).

Currently, the FF/CP Section receives approximately 60,000 complaints per year (50,000 via the consumer hotline and 10,000 written complaints). As an initial matter, adding the health care industry would require FF/CP to recruit additional volunteers to staff our hotline and would likely require additional space for the hotline, as well as phone technology. Once FF/CP receives these complaints, they are referred to Enforcement Officers (EO's) for initial intake and resolution. Health care, in general, is a complicated industry and we would expect complaints covering a wide variety of topics from insurance to faulty medical devices to issues related to care received. Each of these areas, insurance in particular, requires specialized knowledge. Based on our experience with insurance recoveries in other areas of DOJ (such as the ODOT cost recovery program), and due to the complexity of insurance transactions and complaints, we believe it would take substantial additional effort on the part of EO's to resolve these issues.

FF/CP is funded through the Consumer Protection & Education Account (P&E). We cannot predict at this time if, or when, additional revenues would be generated from adding the health care industry. For the 2015-17 biennium, the P&E account is expected to have a sufficient ending balance to cover current program expenditures. However, without the impacts from additional legislation or an increase in recoveries, the P&E balance is expected to be below \$1M by the end of 2017-19 biennium.

- Q3. The Department of Administrative Services analyst noted the Governor's budget addresses an emerging issue of "protecting Oregonians in unlawful trade practices, financial fraud, and consumer protection issues". Did the fiscal impact statements for bills passed by the Legislature during the last session accurately reflect the fiscal concern now being raised for the budget?**

- A3. Policy Package #132 requests staffing to pursue additional cases for the benefit of Oregon consumers and is not limited to the direct impact of one specific bill. Positions were last added to the Civil Division Financial Fraud/Consumer Protection (FF/CP) Section in 2009. Since then, more than 10 topic areas have been added to the workload. Since 2011, the number of hours FF/CP attorneys are spending on active litigation each year has tripled (from 4,286 in 2011 to a predicted 13,156 in 2015). This is due to the fact that the types of cases most important to consumers and that have the most impact on a large number of consumers tend to be more complex, requiring a significant investment of attorney time and resources. Because of the increased litigation workload, we are unable to address a number of smaller matters and cannot do the outreach and education required by bills such as the athlete agent bill.

To address the specific legislation from the last biennium, Senate Bill 1540 (2014) concerning "patent troll" had a minimal (i.e., less than \$50,000) fiscal impact statement, and House Bill 3296 (2013) concerning "athlete agents" had a no fiscal impact statement. To

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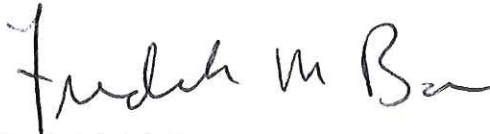
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date, DOJ has received only one complaint regarding SB 1540 and no formal complaints regarding HB 3296. However, we have had meetings and contact from Oregon's athletics programs who feel we are not meeting their needs under the legislation. This is part of the reason we need additional resources.

When evaluating pending legislation for this area, we attempt to split the fiscal analysis into two questions. First, is the scope of the programmatic change or size of the industry affected significant enough to burden our intake process (i.e., the volunteer hotline and initial screening by enforcement officers)? If yes, we attempt to quantify that resource need. The second fiscal question is generally indeterminate. The number of consumer protection actions in any biennium varies, and which cases are brought is a decision made through an extensive case-by-case screening process. DOJ integrates any potential cases arising from new legislation into the case review process and applies the current screening criteria to determine which of the cases to pursue.

If we can provide additional information on any of these topics, do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads "Frederick M. Boss". The signature is written in a cursive, slightly slanted style.

Frederick M. Boss
Deputy Attorney General

Cc: John Borden, Legislative Fiscal Office