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AB-2766 Unfair Competition Law: enforcement powers: investigatory subpoena. (2021-2022)

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Assembly Bill No. 2766

CHAPTER 698

An act to amend Section 16759 of the Business and Professions Code, relating to business.

[Approved by Governor September 28, 2022. Filed with Secretary of State September 28, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2766, Maienschein. Unfair Competition Law: enforcement powers: investigatory subpoena.

The Unfair Competition Law (UCL) establishes a statutory cause of action for unfair competition, including any unlawful, unfair, or fraudulent business act or practice and unfair, deceptive, untrue, or misleading advertising. Under this law, actions for relief are required to be prosecuted exclusively by the Attorney General, a district attorney, a county counsel authorized by agreement with the district attorney in actions involving violation of a county ordinance, a city attorney of a city having a population in excess of 750,000 or by a county counsel of any county within which a city has a population in excess of 750,000, or a city attorney in a city and county, or, with the consent of the district attorney, by a city prosecutor in a city having a full-time city prosecutor in the name of the people of the State of California, as specified, or by a person who has suffered injury in fact and has lost money or property as a result of the unfair competition.

Existing law authorizes a district attorney, upon reasonable belief that there has been a violation of the UCL or various other laws related to unfair business practices, to exercise all of the powers granted to the Attorney General as a head of a department to investigate the potential violation, including the authority to issue subpoenas.

This bill would grant the investigatory power granted to the Attorney General as a head of a department to the city attorney of any city having a population in excess of 750,000, to the county counsel of any county within which a city has a population in excess of 750,000, or to a city attorney of a city and county, when the city attorney or county counsel reasonably believes that there may have been a violation of the UCL. The bill would require the recipient of a subpoena issued pursuant to those investigatory powers granted to a city attorney or to a county counsel who objects to the request, to serve their objection and to meet and confer with the issuer of the subpoena to attempt to address their objection. The bill would authorize the recipient of the subpoena to petition the superior court for an order quashing or modifying the subpoena, if, after meeting and conferring, the issuer and recipient cannot reach agreement.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 16759 of the Business and Professions Code is amended to read:

16759. (a) All those powers granted to the Attorney General as a head of a department under Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code shall be granted to the district attorney of any county

when that district attorney reasonably believes that there may have been a violation of Article 2 (commencing with Section 16720) or Article 3 (commencing with Section 16750) of this chapter, or a violation of Chapter 4 (commencing with Section 17000) of this part, or a violation of Chapter 5 (commencing with Section 17200) of this part, and shall be subject to the provisions of Chapter 20 (commencing with Section 7460) of Division 7 of Title 1 of the Government Code.

(b) All those powers granted to the Attorney General as head of a department under Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code shall be granted to the city attorney of any city having a population in excess of 750,000, to the county counsel of any county within which a city has a population in excess of 750,000, or to a city attorney of a city and county, when the city attorney or county counsel reasonably believes that there may have been a violation of Chapter 5 (commencing with Section 17200) of this part and shall be subject to the provisions of Chapter 20 (commencing with Section 7460) of Division 7 of Title 1 of the Government Code.

(c) Any investigation pursuant to these powers shall be conducted in accordance with the procedures set forth in Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code, including all applicable principles relating to immunity from self-incrimination. However, Section 16758 shall not be construed as providing automatic immunity with respect to the subject of a subpoena issued in connection with that investigation. Court orders sought pursuant to this section shall be sought in the superior court of the county in which the district attorney, authorized pursuant to subdivision (a), or the city attorney or county counsel, authorized pursuant to subdivision (b), seeking the order holds office.

(d) Should the recipient of such subpoena issued pursuant to the powers granted in subdivision (b) object to the request in whole or in part, the recipient must serve objections and meet and confer with the issuer of the subpoena in an attempt to address those objections. If after meeting and conferring, the issuer and recipient cannot reach agreement, the recipient may petition the superior court for an order quashing or modifying the subpoena in whole or in part.