

Introduced by Senator Wieckowski

(Coauthors: Assembly Members Bonta, Gordon, Low, and Mark Stone)

February 17, 2016

An act to amend Section 17508 of the Business and Professions Code, relating to false advertising.

LEGISLATIVE COUNSEL'S DIGEST

SB 1130, as introduced, Wieckowski. False advertising: substantiation of claims: county counsel.

Under existing law, it is unlawful for a person doing business in California and advertising to consumers in California to make any false or misleading advertising claim. Existing law requires any person doing business, and in whose behalf advertising claims are made to consumers, in California to, upon request of the Director of Consumer Affairs, the Attorney General, any city attorney, or any district attorney, provide evidence of the facts on which the advertising claims are based. Existing law authorizes the Director of Consumer Affairs, the Attorney General, any city attorney, or any district attorney to take specified actions upon failure of the advertiser to adequately substantiate a claim within a reasonable time or if the requesting official has reason to believe that the advertising claim is false or misleading.

This bill would additionally authorize a county counsel to request official evidence of the facts on which the advertising claims are based and take the above-referenced actions on the failure of the advertiser to respond or if the county counsel has reason to believe the advertising claim is false or misleading.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 17508 of the Business and Professions
2 Code is amended to read:

3 17508. (a) It shall be unlawful for any person doing business
4 in California and advertising to consumers in California to make
5 any false or misleading advertising claim, including claims that
6 (1) purport to be based on factual, objective, or clinical evidence,
7 (2) compare the product's effectiveness or safety to that of other
8 brands or products, or (3) purport to be based on any fact.

9 (b) Upon written request of the Director of Consumer Affairs,
10 the Attorney General, *or any city attorney, county counsel, or any*
11 *district attorney*, any person doing business in California and in
12 whose behalf advertising claims are made to consumers in
13 California, including claims that (1) purport to be based on factual,
14 objective, or clinical evidence, (2) compare the product's
15 effectiveness or safety to that of other brands or products, or (3)
16 purport to be based on any fact, shall provide to the department or
17 official making the request evidence of the facts on which the
18 advertising claims are based. The request shall be made within
19 one year of the last day on which the advertising claims were made.

20 Any ~~city attorney~~ *attorney, county counsel*, or district attorney
21 who makes a request pursuant to this subdivision shall give prior
22 notice of the request to the Attorney General.

23 (c) The Director of Consumer Affairs, Attorney General, *or any*
24 *city attorney, county counsel, or any* district attorney may, upon
25 failure of an advertiser to respond by adequately substantiating
26 the claim within a reasonable time, or if the Director of Consumer
27 Affairs, Attorney General, city attorney, *county counsel*, or district
28 attorney shall have reason to believe that the advertising claim is
29 false or misleading, do either or both of the following:

30 (1) Seek an immediate termination or modification of the claim
31 by the person in accordance with Section 17535.

32 (2) Disseminate information, taking due care to protect
33 legitimate trade secrets, concerning the veracity of the claims or
34 why the claims are misleading to the consumers of this state.

35 (d) The relief provided for in subdivision (c) is in addition to
36 any other relief that may be sought for a violation of this chapter.
37 Section 17534 shall not apply to violations of this section.

1 (e) Nothing in this section shall be construed to hold any
2 newspaper publisher or radio or television broadcaster liable for
3 publishing or broadcasting any advertising claims referred to in
4 subdivision (a), unless the publisher or broadcaster is the person
5 making the claims.

6 (f) The plaintiff shall have the burden of proof in establishing
7 any violation of this section.

8 (g) If an advertisement is in violation of subdivision (a) and
9 Section 17500, the court shall not impose a separate civil penalty
10 pursuant to Section 17536 for the violation of subdivision (a) and
11 the violation of Section 17500 but shall impose a civil penalty for
12 the violation of either subdivision (a) or Section 17500.