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May 26, 2023

The Honorable Governor Greg Abbott
State Capitol Building
1100 Congress Avenue, Room 2S.1
Austin, Texas 78701

Dear Governor Abbott:

We are writing to respectfully ask you to veto HB 5232. We do not make this request lightly, but we believe that this bill poses a distinct threat to the future ability of the state to attract and retain significant new investment, particularly in corporate headquarters projects. It is ironic that in a session in which your office and the Legislature have taken positive steps to enhance the “Texas Miracle,” for example enacting first-ever business court legislation and establishing a new school tax abatement incentive, we should also pass a bill that mitigates our progress.

As you know, HB 5232 increases the amount of the civil fine the attorney general may recover under § 15.20, Business & Commerce Code. Currently, the statute sets the amount of the civil fine at \$1 million for a corporate violator and \$100,000 for any other entity or individual. HB 5232 raises those amounts to \$300,000 for an individual and: (1) \$30 million for business entities with the lesser of assets or market capitalization of \$500 million or more; (2) \$20 million for entities with at least \$100 million but less than \$500 million; and (3) \$3 million for entities with less than \$100 million.

We recognize that the amount of the civil fine has not been increased since the statute was enacted in 1983, so simply adjusting for inflation would produce the proposed \$300,000 figure for individuals and \$3 million for corporate entities. We have no objection whatever to adjusting the 1983 amounts to reflect inflation, and if that were all the bill did, we would not be writing to you today. But that is not all the bill does.

Instead of updating the 1983 levels, HB 5232 indexes the fines by the size of the entity. As a standalone concept, this approach could work, but the way the bill accomplishes that is arbitrary and unjust. First, the asset or market capitalization thresholds do not seem in any way connected to economic reality nor do they treat businesses in each category equitably. For example, an entity with assets or market cap of less than \$100 million could be subjected to a 3% fine (\$3 million), but that

number *increases* as the threshold figures goes lower. At the next level, assets or market cap between \$100 million and \$500 million, the fine at the lowest threshold figure is 2% or lower—perhaps much lower—as the size of the entity gets bigger. And at the highest level, assets or market cap of \$500 million or more, the fine is 6% at the \$500 million threshold and declines thereafter. There is no rhyme or reason for a scheme that could well punish smaller entities at a higher level for the *same* conduct as larger ones.

The Notre Dame law professor who testified for HB 5232 at both the House and Senate committee hearings cited the need to “deter” wrongdoers like Google and Apple. We have heard this deterrence argument for years in many contexts, but it simply perpetuates a false narrative that businesses are *always* looking for ways to wreck the competition and cheat their customers. Perhaps a few do; that’s what the Clayton Act and state antitrust laws are for. But what they are not for is sacrificing “ancient and venerable” common law rules that protect defendants from the arbitrary exercise of state power. That is exactly what HB 5232 does.

Again, we appreciate the difficult task you face in evaluating thousands of pieces of legislation in a short timeframe. We would not request you to veto this bill unless we strongly believed that it is fundamentally unfair and injurious to the state’s business climate. Thank you for all of your efforts to strengthen the business climate in our state and for your consideration of this request.

Sincerely,



George Christian
Senior Counsel



Carol Sims
Executive Director