

**76-10-3109 Person may bring action for injunctive relief and damages -- Treble damages -- Recovery of actual damages or civil penalty by state or political subdivisions -- Immunity of political subdivisions from damages, costs, or attorney fees.**

- (1)
  - (a) A person who is a citizen of this state or a resident of this state and who is injured or is threatened with injury in his business or property by a violation of the Utah Antitrust Act may bring an action for injunctive relief and damages, regardless of whether the person dealt directly or indirectly with the defendant. This remedy is in addition to any other remedies provided by law. It may not diminish or offset any other remedy.
  - (b) Subject to the provisions of Subsections (3), (4), and (5), the court shall award three times the amount of damages sustained, plus the cost of suit and a reasonable attorney fees, in addition to granting any appropriate temporary, preliminary, or permanent injunctive relief.
- (2)
  - (a) If the court determines that a judgment in the amount of three times the damages awarded plus attorney fees and costs will directly cause the insolvency of the defendant, the court shall reduce the amount of judgment to the highest sum that would not cause the defendant's insolvency.
  - (b) The court may not reduce a judgment to an amount less than the amount of damages sustained plus the costs of suit and reasonable attorney fees.
- (3) The state or any of its political subdivisions may recover the actual damages it sustains, or the civil penalty provided by the Utah Antitrust Act, in addition to injunctive relief, costs of suit, and reasonable attorney fees.
- (4) No damages, costs, or attorney fees may be recovered under this section:
  - (a) from any political subdivision;
  - (b) from the official or employee of any political subdivision acting in an official capacity; or
  - (c) against any person based on any official action directed by a political subdivision or its official or employee acting in an official capacity.
- (5) Subsection (4) does not apply to cases filed before April 27, 1987, unless the defendant establishes and the court determines that in light of all the circumstances, including the posture of litigation and the availability of alternative relief, it would be inequitable not to apply Subsection (4) to a pending case.
- (6) When a defendant has been sued in one or more actions by both direct and indirect purchasers, whether in state court or federal court, a defendant shall be entitled to prove as a partial or complete defense to a claim for damages that the damages incurred by the plaintiff or plaintiffs have been passed on to others who are entitled to recover so as to avoid duplication of recovery of damages. In an action by indirect purchasers, any damages or settlement amounts paid to direct purchasers for the same alleged antitrust violations shall constitute a defense in the amount paid on a claim by indirect purchasers under this chapter so as to avoid duplication of recovery of damages.
- (7) It shall be presumed, in the absence of proof to the contrary, that the injured persons who dealt directly with the defendant incurred at least 1/3 of the damages, and shall, therefore, recover at least 1/3 of the awarded damages. It shall also be presumed, in the absence of proof to the contrary, that the injured persons who dealt indirectly with the defendant incurred at least 1/3 of the damages, and shall, therefore, recover at least 1/3 of the awarded damages. The final 1/3 of the damages shall be awarded by the court to those injured persons determined by the court as most likely to have absorbed the damages.
- (8) There is a presumption, in the absence of proof to the contrary and subject to Subsection (7), that each level in a product's or service's distribution chain passed on any and all increments

in its cost due to an increase in the cost of an ingredient or a component product or service that was caused by a violation of this chapter. This amount will be presumed, in the absence of evidence to the contrary, to be equal to the change in the cost, in dollars and cents, of the ingredient, component product, or service to its first purchaser.

- (9) The attorney general shall be notified by the plaintiff about the filing of any class action involving antitrust violations that includes plaintiffs from this state. The attorney general shall receive a copy of each filing from each plaintiff. The attorney general may, in his or her discretion, intervene or file amicus briefs in the case, and may be heard on the question of the fairness or appropriateness of any proposed settlement agreement.
- (10) If, in a class action or parens patriae action filed under this chapter, including the settlement of any action, it is not feasible to return any part of the recovery to the injured plaintiffs, the court shall order the residual funds be applied to benefit the specific class of injured plaintiffs, to improve antitrust enforcement generally by depositing the residual funds into the Attorney General Litigation Fund created by Section 76-10-3114, or both.
- (11) In any action brought under this chapter, the court shall approve all attorney fees and arrangements for the payment of attorney fees, including contingency fee agreements.

Renumbered and Amended by Chapter 187, 2013 General Session

Amended by Chapter 278, 2013 General Session