

CIVIL ANTITRUST AMENDMENTS

2006 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lyle W. Hillyard

House Sponsor: Stephen H. Urquhart

LONG TITLE

General Description:

This bill gives consumers and others the right to obtain judicial relief for violations of the Utah Antitrust Act even though they have not dealt directly with the wrongdoer.

Highlighted Provisions:

This bill:

- ▶ provides that the attorney general and any person who is injured or threatened with injury in his business or property as a result of a violation of this act may bring an action under this act regardless of whether the person dealt directly or indirectly with the defendant;
- ▶ provides that a defendant is entitled to prove as a partial or complete defense to a claim for damages that the illegal overcharge has been passed on to others who are themselves entitled to recover so as to avoid duplication of recovery of damages;
- ▶ provides for rebuttable presumptions that allocate damages among injured plaintiffs who dealt directly or indirectly with the defendant;
- ▶ provides for notification to the attorney general of any private class action alleging a violation of the act; and
- ▶ authorizes cy pres distributions of damage and settlement awards in antitrust cases.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

30 AMENDS:

31 **76-10-918**, as last amended by Chapters 83 and 99, Laws of Utah 1991

32 **76-10-919**, as last amended by Chapter 13, Laws of Utah 1987

33

34 *Be it enacted by the Legislature of the state of Utah:*

35 Section 1. Section **76-10-918** is amended to read:

36 **76-10-918. Attorney general may bring action for injunctive relief, damages, or**
37 **civil penalty.**

38 (1) The attorney general may bring an action for appropriate injunctive relief, and for
39 damages or a civil penalty in the name of the state, any of its political subdivisions or agencies,
40 or as parens patriae on behalf of natural persons in this state, for a violation of this act. Actions
41 may be brought under this section regardless of whether the plaintiff dealt directly or indirectly
42 with the defendant. This remedy is an additional remedy to any other remedies provided by
43 law. It may not diminish or offset any other remedy.

44 (2) Any individual who violates this act is subject to a civil penalty of not more than
45 \$100,000 for each violation. Any person, other than an individual, who violates this act is
46 subject to a civil penalty of not more than \$500,000 for each violation.

47 Section 2. Section **76-10-919** is amended to read:

48 **76-10-919. Person may bring action for injunctive relief and damages -- Treble**
49 **damages -- Recovery of actual damages or civil penalty by state or political subdivisions**
50 **-- Immunity of political subdivisions from damages, costs, or attorney's fees.**

51 (1) (a) A person who is a citizen of this state or a resident of this state and who is
52 injured or is threatened with injury in his business or property by a violation of the Utah
53 Antitrust Act may bring an action for injunctive relief and damages[-], regardless of whether
54 the person dealt directly or indirectly with the defendant. This remedy is in addition to any
55 other remedies provided by law. It may not diminish or offset any other remedy.

56 (b) Subject to the provisions of Subsections (3), (4), and (5), the court shall award three
57 times the amount of damages sustained, plus the cost of suit and a reasonable attorney's fee, in

58 addition to granting any appropriate temporary, preliminary, or permanent injunctive relief.

59 (2) (a) If the court determines that a judgment in the amount of three times the
60 damages awarded plus attorney's fees and costs will directly cause the insolvency of the
61 defendant, the court shall reduce the amount of judgment to the highest sum that would not
62 cause the defendant's insolvency.

63 (b) The court may not reduce a judgment to an amount less than the amount of
64 damages sustained plus the costs of suit and a reasonable attorney's fee.

65 (3) The state or any of its political subdivisions may recover the actual damages it
66 sustains, or the civil penalty provided by the Utah Antitrust Act, in addition to injunctive relief,
67 costs of suit, and a reasonable attorney's fee.

68 (4) No damages, costs, or attorney's fee may be recovered under this section:

69 (a) from any political subdivision;

70 (b) from the official or employee of any political subdivision acting in an official
71 capacity; or

72 (c) against any person based on any official action directed by a political subdivision or
73 its official or employee acting in an official capacity.

74 (5) (a) Subsection (4) does not apply to cases filed before April 27, 1987, unless the
75 defendant establishes and the court determines that in light of all the circumstances, including
76 the posture of litigation and the availability of alternative relief, it would be inequitable not to
77 apply Subsection (4) to a pending case.

78 (b) In determining the application of Subsection (4), existence of a jury verdict, court
79 judgment, or any subsequent litigation is prima facie evidence that Subsection (4) is not
80 applicable.

81 (6) When a defendant has been sued in one or more actions by both direct and indirect
82 purchasers, whether in state court or federal court, a defendant shall be entitled to prove as a
83 partial or complete defense to a claim for damages that the damages incurred by the plaintiff or
84 plaintiffs have been passed on to others who are entitled to recover so as to avoid duplication
85 of recovery of damages. In an action by indirect purchases, any damages or settlement amounts

86 paid to direct purchases for the same alleged antitrust violations shall constitute a defense in
87 the amount paid on a claim by indirect purchases under this act so as to avoid duplication of
88 recovery of damages.

89 (7) It shall be presumed, in the absence of proof to the contrary, that the injured
90 persons who dealt directly with the defendant incurred at least 1/3 of the damages, and shall,
91 therefore, recover at least 1/3 of the awarded damages. It shall also be presumed, in the
92 absence of proof to the contrary, that the injured persons who dealt indirectly with the
93 defendant incurred at least 1/3 of the damages, and shall, therefore, recover at least 1/3 of the
94 awarded damages. The final 1/3 of the damages shall be awarded by the court to those injured
95 persons determined by the court as most likely to have absorbed the damages.

96 (8) There is a presumption, in the absence of proof to the contrary, that each level in a
97 product's or service's distribution chain passed on any and all increments in its cost due to an
98 increase in the cost of an ingredient or a component product or service that was caused by a
99 violation of this act. This amount will be presumed, in the absence of evidence to the contrary,
100 to be equal to the change in the cost, in dollars and cents, of the ingredient, component product,
101 or service to its first purchaser.

102 (9) The attorney general shall be notified by the plaintiff about the filing of any class
103 action involving antitrust violations that includes plaintiffs from this state. The attorney
104 general shall receive a copy of each filing from each plaintiff. The attorney general may, in his
105 or her discretion, intervene or file amicus briefs in the case, and may be heard on the question
106 of the fairness or appropriateness of any proposed settlement agreement.

107 (10) If, in a class action or parens patriae action filed under this act, including the
108 settlement of any action, it is not feasible to return any part of the recovery to the injured
109 plaintiffs, the court shall order the residual funds be applied to benefit the specific class of
110 injured plaintiffs, to improve antitrust enforcement generally by depositing the residual funds
111 into the Attorney General Litigation Fund created by Section 76-10-922, or both.

112 (11) In any action brought under this act, the court shall approve all attorney's fees and
113 arrangements for the payment of attorney's fees, including contingency fee agreements.

