

1 **CIVIL ANTITRUST AMENDMENTS**

2 2006 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Lyle W. Hillyard**

5 House Sponsor: Stephen H. Urquhart

6

7 **LONG TITLE**

8 **General Description:**

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

11 **Highlighted Provisions:**

12 This bill:

13 ▶ provides that the attorney general and any person who is injured or threatened with
14 injury in his business or property as a result of a violation of this act may bring an
15 action under this act regardless of whether the person dealt directly or indirectly
16 with the defendant;

17 ▶ provides that a defendant is entitled to prove as a partial or complete defense to a
18 claim for damages that the illegal overcharge has been passed on to others who are
19 themselves entitled to recover so as to avoid duplication of recovery of damages;

20 ▶ provides for rebuttable presumptions that allocate damages among injured plaintiffs
21 who dealt directly or indirectly with the defendant;

22 ▶ provides for notification to the attorney general of any private class action alleging a
23 violation of the act; and

24 ▶ authorizes cy pres distributions of damage and settlement awards in antitrust cases.

25 **Monies Appropriated in this Bill:**

26 None

27 **Other Special Clauses:**



28 None

29 **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



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) In actions where injured persons who dealt both directly and indirectly with the
82 defendant are involved, a defendant shall be entitled to prove as a partial or complete defense
83 to a claim for damages that the damages incurred by the plaintiff or plaintiffs have been passed
84 on to others who are entitled to recover so as to avoid duplication of recovery of damages.

85 (7) It shall be presumed, in the absence of proof to the contrary, that the injured
86 persons who dealt directly with the defendant incurred at least 1/3 of the damages, and shall,
87 therefore, recover at least 1/3 of the awarded damages. It shall also be presumed, in the
88 absence of proof to the contrary, that the injured persons who dealt indirectly with the
89 defendant incurred at least 1/3 of the damages, and shall, therefore, recover at least 1/3 of the

90 awarded damages. The final 1/3 of the damages shall be awarded by the court to those injured
91 persons determined by the court as most likely to have absorbed the damages.

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

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

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

Legislative Review Note
as of 11-9-05 6:18 PM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Interim Committee Note
as of 12-19-05 9:38 AM

The Judiciary Interim Committee recommended this bill.