

1 **UTAH ANTITRUST ACT AMENDMENTS**

2 2007 GENERAL SESSION

3 STATE OF UTAH

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

5 House Sponsor: Fred R. Hunsaker

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**LONG TITLE**

7 **General Description:**

8 This bill makes a clarifying amendment to the Utah Antitrust Act.

9 **Highlighted Provisions:**

10 This bill:

11 ► clarifies that the assumption that a violator of the act passed costs down the chain of  
12 purchasers is subject to the presumption dividing damages.

13 **Monies Appropriated in this Bill:**

14 None

15 **Other Special Clauses:**

16 None

17 **Utah Code Sections Affected:**

18 AMENDS:

19 **76-10-919**, as last amended by Chapter 19, Laws of Utah 2006

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

21 Section 1. Section **76-10-919** is amended to read:

22 **76-10-919. Person may bring action for injunctive relief and damages -- Treble**  
23 **damages -- Recovery of actual damages or civil penalty by state or political subdivisions**  
24 **-- Immunity of political subdivisions from damages, costs, or attorney fees.**

25 (1) (a) A person who is a citizen of this state or a resident of this state and who is



28 injured or is threatened with injury in his business or property by a violation of the Utah  
29 Antitrust Act may bring an action for injunctive relief and damages, regardless of whether the  
30 person dealt directly or indirectly with the defendant. This remedy is in addition to any other  
31 remedies provided by law. It may not diminish or offset any other remedy.

32 (b) Subject to the provisions of Subsections (3), (4), and (5), the court shall award three  
33 times the amount of damages sustained, plus the cost of suit and a reasonable [attorney's]  
34 attorneys' fee, in addition to granting any appropriate temporary, preliminary, or permanent  
35 injunctive relief.

36 (2) (a) If the court determines that a judgment in the amount of three times the damages  
37 awarded plus [attorney's] attorneys' fees and costs will directly cause the insolvency of the  
38 defendant, the court shall reduce the amount of judgment to the highest sum that would not  
39 cause the defendant's insolvency.

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

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

45 (4) No damages, costs, or [attorney's] attorneys' fee may be recovered under this  
46 section:

47 (a) from any political subdivision;

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

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

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

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

59 (6) When a defendant has been sued in one or more actions by both direct and indirect  
60 purchasers, whether in state court or federal court, a defendant shall be entitled to prove as a  
61 partial or complete defense to a claim for damages that the damages incurred by the plaintiff or  
62 plaintiffs have been passed on to others who are entitled to recover so as to avoid duplication  
63 of recovery of damages. In an action by indirect [~~purchases~~] purchasers, any damages or  
64 settlement amounts paid to direct [~~purchases~~] purchasers for the same alleged antitrust  
65 violations shall constitute a defense in the amount paid on a claim by indirect [~~purchases~~]  
66 purchasers under this [~~act~~] chapter so as to avoid duplication of recovery of damages.

67 (7) It shall be presumed, in the absence of proof to the contrary, that the injured  
68 persons who dealt directly with the defendant incurred at least 1/3 of the damages, and shall,  
69 therefore, recover at least 1/3 of the awarded damages. It shall also be presumed, in the  
70 absence of proof to the contrary, that the injured persons who dealt indirectly with the  
71 defendant incurred at least 1/3 of the damages, and shall, therefore, recover at least 1/3 of the  
72 awarded damages. The final 1/3 of the damages shall be awarded by the court to those injured  
73 persons determined by the court as most likely to have absorbed the damages.

74 (8) There is a presumption, in the absence of proof to the contrary and subject to  
75 Subsection (7), that each level in a product's or service's distribution chain passed on any and  
76 all increments in its cost due to an increase in the cost of an ingredient or a component product  
77 or service that was caused by a violation of this [~~act~~] chapter. This amount will be presumed,  
78 in the absence of evidence to the contrary, to be equal to the change in the cost, in dollars and  
79 cents, of the ingredient, component product, or service to its first purchaser.

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

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

90 (11) In any action brought under this [act] chapter, the court shall approve all  
91 [attorney's] attorneys' fees and arrangements for the payment of [attorney's] attorneys' fees,  
92 including contingency fee agreements.

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**Legislative Review Note**  
**as of 1-31-07 4:05 PM**

**Office of Legislative Research and General Counsel**

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**S.B. 216 - Utah Antitrust Act Amendments**

**Fiscal Note**

2007 General Session

State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations.

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**Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.

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