

## **BILL ANALYSIS**

Senate Research Center  
80R2939 HLT-F

S.B. 1465  
By: West, Royce  
Business & Commerce  
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As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Currently, the Texas Free Enterprise and Antitrust Act does not expressly address an indirect purchaser's ability to seek redress. Because Texas lacks an indirect purchaser statute, the State of Texas will continue to recover less in damages from nationwide antitrust settlements than is recovered by attorneys general in similarly situated and less populous states that have adopted such legislation.

As proposed, S.B. 1465 recognizes a cause of action on behalf of Texas consumers and governmental entities who have been directly or indirectly injured by a violation of the Texas Free Enterprise and Antitrust Act. The bill gives the attorney general the exclusive authority to enforce this cause of action.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subchapter C, Chapter 15, Business & Commerce Code, by adding Section 15.211, as follows:

Sec. 15.211. ATTORNEY GENERAL MAY BRING SUIT ON BEHALF OF INJURED PERSONS. (a) Authorizes the attorney general to bring suit under Section 15.21(a) of this Act on behalf of a governmental entity and, as *parens patriae*, on behalf of an individual residing in this state for damages incurred directly or indirectly because of a violation of Section 15.05(a), (b), or (c) of this Act.

(b) Requires the attorney general, in any suit brought by the attorney general under Subsection (a), to give the best practicable notice through any means necessary to give due process of law to the affected individuals, as required by the court. Authorizes an individual on whose behalf the attorney general brings suit under Subsection (a) to elect to exclude from adjudication the portion of damages attributable to the individual by filing notice of the individual's election with the court not later than the date specified in the notice provided under Subdivision (1). Provides that the final judgment of any suit brought under Subsection (a) is *res judicata* for the matters alleged or proven in the suit as to any claim under this Act on behalf of a certain individual. Requires the damages awarded to be distributed to ensure that each individual has a reasonable opportunity to secure a fair share of the damages.

(c) Requires the court to avoid imposing duplicate damages for the same injury if claims based on substantially the same conduct are asserted against a defendant by the attorney general on behalf of indirect purchasers and by direct purchasers.

(d) Provides that the right to sue under Subsection (a) applies only to the attorney general and does not create a right of another person, including another governmental entity, to sue on its own behalf for damages incurred indirectly because of a violation of Section 15.05(a), (b), or (c) of this Act.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: upon passage or September 1, 2007.