
Judiciary Committee

HB 1177

Title: An act relating to protection of indirect purchasers for injuries arising from violations of state antitrust laws.

Brief Description: Protecting indirect purchasers for injuries arising from state antitrust law violations.

Sponsors: Representatives Lantz, Rodne and Wallace; by request of Attorney General.

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| <p style="text-align: center;">Brief Summary of Bill</p> <ul style="list-style-type: none">• Allows the Attorney General to sue on behalf of indirect purchasers of goods or services sold in violation of the Unfair Business Practices - Consumer Protection Act. |
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Hearing Date: 1/24/07

Staff: Bill Perry (786-7123).

Background:

Under the state's Unfair Business Practices - Consumer Protection Act (CPA), various business practices are declared unlawful. These practices include:

- Engaging in unfair methods of competition and unfair or deceptive acts or practices in the conduct of commerce, including contracts, trusts or conspiracies in restraint of trade;
- Monopolizing or attempting to monopolize trade;
- Entering agreements not to purchase from the competitors of a particular seller when the agreement substantially lessens competition or tends to create a monopoly;
- Acquiring corporate stock when the acquisition substantially lessens competition or tends to create a monopoly.

In addition to the acts declared unlawful by the CPA itself, other statutes elsewhere in the code declare violations of their provisions to be violations of the CPA.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

A party injured by a violation of the CPA may bring an action for damages. Recovery may include the trebling of actual damages (not to exceed \$10,000 for some violations) and reasonable attorneys' fees. For some violations, civil penalties of up to \$100,000 in the case of an individual, and up to \$500,000 in the case of a corporation, may also be imposed. A civil penalty of up to \$2,000 per violation may be imposed for each violation amounting to an unfair method of competition or an unfair or deceptive act in the conduct of commerce. In addition, the Attorney General may bring an action to restrain a person from violating the CPA.

The CPA's grant of authority to the Attorney General is expressly for the purposes of bringing an action "in the name of the state." Such an action by the Attorney General may seek to prevent or restrain violations of the act and may seek restoration for persons injured by violation of the CPA. As an outgrowth of federal court rulings, a question has arisen as to whether the authority of the Attorney General extends to bringing an action for a CPA violation on behalf of persons who are themselves "downstream," or "indirect purchasers," of goods or services. An example of an indirect purchaser might be the ultimate consumer of a product that was bought from a retailer who bought from a producer who violated the act. The retailer would be the direct purchaser, and the consumer would be the indirect purchaser of the product.

The U.S. Supreme Court in Illinois Brick Co v. Illinois, 431 U.S. 720 (1977), held that under federal antitrust law, indirect purchasers may not bring an action. Only a party who directly purchases from the violator can sue. However, Illinois Brick left open the possibility of states enacting their own laws to allow indirect purchasers to sue for unfair business practices. Many states have enacted so-called "Illinois Brick Repealer" laws. Some of these laws allow an indirect purchaser to bring a suit directly, while other allow such suits only when brought by the Attorney General on behalf of the indirect purchasers.

Washington has not enacted an "Illinois Brick Repealer." However, based in part on dicta from the state court of appeals decision in Blewett v. Abbott Laboratories, 86 Wn. App 782 (1997), the state Attorney General has brought suits on behalf of indirect purchasers under the common law doctrine of *parens patriae*. In Blewett v. Abbott Laboratories, while the court rejected a CPA suit by indirect purchasers by citing Illinois Brick, the court noted that some of the CPA's restrictive language with respect to suits brought by indirect purchasers does not extend to suits brought by the Attorney General. The common law *parens patriae* doctrine allows the state (literally as "parent of the country") to bring legal actions or seek remedies on behalf of individuals in order to protect them from harm. The Attorney General reports, however, that in at least one multistate case, a federal judge has rejected the Attorney General's attempts to sue on behalf of indirect purchasers.

Summary of Bill:

The Attorney General is given explicit authority to bring *parens patriae* actions under the CPA on behalf of persons residing in the state.

In cases in which the Attorney General has brought an action under the CPA, the court is authorized to order restoration for an injured party regardless of whether the injury was the result of a direct or indirect purchase of goods or services.

The ability of the state itself to sue for damages under the CPA is expressly made applicable to cases in which the state is indirectly injured by a violation of the act.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill contains an emergency clause and takes effect immediately.