

FINAL BILL REPORT

SSB 5228

C 66 L 07

Synopsis as Enacted

Brief Description: Revising provisions concerning actions under the consumer protection act.

Sponsors: Senate Committee on Judiciary (originally sponsored by Senators Kline, McCaslin and Weinstein; by request of Attorney General).

Senate Committee on Judiciary

House Committee on Judiciary

Background: Under the state's Unfair Business Practices - Consumer Protection Act (CPA), various business practices are declared unlawful. These practices include engaging in monopoly, and the restraint of trade or competition.

The Attorney General may bring an action to restrain a person from violating the CPA. An action by the Attorney General may seek to prevent violations of the act and may seek relief for persons injured by violation of the CPA. As a result of a federal court ruling, a question has arisen as to whether the Attorney General is authorized to bring an action for a CPA violation on behalf of persons who are "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.

Many states have enacted laws that allow an indirect purchaser to bring a suit directly, while others allow such suits only when brought by the Attorney General on behalf of the indirect purchasers. Washington has not enacted either type of law. However, based in part on 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*, which permits the state (literally as "parent of the country") to bring legal actions on behalf of individuals in order to protect them from harm. The Attorney General reports, however, that in at least one multi-state case, a federal judge has rejected the Attorney General's attempts to sue on behalf of indirect purchasers.

Summary: 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 for antitrust violations, 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's antitrust provisions.

Courts are required to: (1) exclude from the amount of monetary relief awarded in antitrust actions brought by the Attorney General any amount already awarded for the same violation; and (2) consider consolidating or coordinating related actions to avoid duplicate recovery.

Votes on Final Passage:

Senate	47	2
House	95	0

Effective: April 17, 2007