
A BILL FOR AN ACT

RELATING TO ANTITRUST.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 480-13, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§480-13 Suits by persons injured; amount of recovery,**
4 **injunctions.** (a) Except as provided in subsections (b) and
5 (c), any person who is injured in the person's business or
6 property by reason of anything forbidden or declared unlawful by
7 this chapter:

8 (1) May sue for damages sustained by the person, and, if
9 the judgment is for the plaintiff, the plaintiff shall
10 be awarded a sum not less than \$1,000 or threefold
11 damages by the plaintiff sustained, whichever sum is
12 the greater, and reasonable attorney's fees together
13 with the costs of suit; provided that indirect
14 purchasers injured by an illegal overcharge shall
15 recover only compensatory damages, and reasonable
16 attorney's fees together with the costs of suit in
17 actions not brought under section 480-14(c); and



1 (2) May bring proceedings to enjoin the unlawful
2 practices, and if the decree is for the plaintiff, the
3 plaintiff shall be awarded reasonable attorney's fees
4 together with the costs of suit.

5 (b) Any consumer who is injured by any unfair or deceptive
6 act or practice forbidden or declared unlawful by section 480-2:

7 (1) May sue for damages sustained by the consumer, and, if
8 the judgment is for the plaintiff, the plaintiff shall
9 be awarded a sum not less than \$1,000 or threefold
10 damages by the plaintiff sustained, whichever sum is
11 the greater, and reasonable attorney's fees together
12 with the costs of suit; provided that where the
13 plaintiff is an elder, the plaintiff, in the
14 alternative, may be awarded a sum not less than \$5,000
15 or threefold any damages sustained by the plaintiff,
16 whichever sum is the greater, and reasonable
17 attorney's fees together with the costs of suit. In
18 determining whether to adopt the \$5,000 alternative
19 amount in an award to an elder, the court shall
20 consider the factors set forth in section 480-13.5;
21 and



1 (2) May bring proceedings to enjoin the unlawful
2 practices, and if the decree is for the plaintiff, the
3 plaintiff shall be awarded reasonable attorney's fees
4 together with the costs of suit.

5 (c) The remedies provided in subsections (a) and (b) shall
6 be applied in class action and de facto class action lawsuits or
7 proceedings, including actions brought on behalf of direct or
8 indirect purchasers; provided that:

9 (1) The minimum \$1,000 recovery provided in subsections
10 (a) and (b) shall not apply in a class action or a de
11 facto class action lawsuit;

12 (2) In class actions or de facto class actions where both
13 direct and indirect purchasers are involved, or where
14 more than one class of indirect purchasers are
15 involved, a defendant shall be entitled to prove as a
16 partial or complete defense to a claim for
17 compensatory damages that the illegal overcharge has
18 been passed on or passed back to others who are
19 themselves entitled to recover so as to avoid the
20 duplication of recovery of compensatory damages;

21 (3) That portion of threefold damages in excess of
22 compensatory damages shall be apportioned and



1 allocated by the court in its exercise of discretion
2 so as to promote effective enforcement of this chapter
3 and deterrence from violation of its provisions;

4 (4) In no event shall an indirect purchaser be awarded
5 less than the full measure of compensatory damages
6 attributable to the indirect purchaser;

7 (5) In any lawsuit or lawsuits in which claims are
8 asserted by both direct purchasers and indirect
9 purchasers, the court is authorized to exercise its
10 discretion in the apportionment of damages, and in the
11 transfer and consolidation of cases to avoid the
12 duplication of the recovery of damages and the
13 multiplicity of suits, and in other respects to obtain
14 substantial fairness;

15 (6) In any case in which claims are being asserted by a
16 part of the claimants in a court of this State and
17 another part of the claimants in a court other than of
18 this State, where the claims arise out of same or
19 overlapping transactions, the court is authorized to
20 take all steps reasonable and necessary to avoid
21 duplication of recovery of damages and multiplicity of



1 suits, and in other respects, to obtain substantial
2 fairness;

3 (7) In instances where indirect purchasers file an action
4 and obtain a judgment or settlement prior to the
5 completion of a direct purchaser's action in courts
6 other than this State, the court shall delay
7 disbursement of the damages until such time as the
8 direct purchaser's suits are resolved to either final
9 judgment, consent decree or settlement, or in the
10 absence of a direct purchaser's lawsuit in the courts
11 other than this State by direct purchasers, the
12 expiration of the statute of limitations, or in such
13 manner that will minimize duplication of damages to
14 the extent reasonable and practicable, avoid
15 multiplicity of suit, and obtain substantial fairness;
16 and

17 (8) In the event damages in a class action or de facto
18 class action remain unclaimed by the direct or
19 indirect purchasers, the class representative or the
20 attorney general shall apply to the court and such
21 funds shall escheat to the State upon showing that



1 reasonable efforts made by the State to distribute the
2 funds have been unsuccessful.

3 (d) The remedies provided in this section are cumulative
4 and may be brought in one action.

5 (e) Any person or other entity that is sued under section
6 480-2 or this section and obtains a judgment as a prevailing
7 party shall be entitled to recover reasonable attorney's fees
8 and the costs of the suit."

9 SECTION 2. This Act does not affect rights and duties that
10 matured, penalties that were incurred, and proceedings that were
11 begun, before its effective date.

12 SECTION 3. New statutory material is underscored.

13 SECTION 4. This Act shall take effect upon its approval.

14

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Report Title:

Antitrust; Recovery of attorney's fees and costs of suit

Description:

Allows a defendant who obtains a judgment as a prevailing party in an antitrust suit to recover attorney's fees together with the costs of the suit.

