

ACT 69

H.B. NO. 2668-80

A Bill for an Act Relating to Trade Regulation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. **Purpose.** The purpose of this Act is to review and amend chapter 480 respecting the ability of the Attorney General to recover damages in class actions on behalf of indirect purchasers who paid illegally high prices for a product as a result of an antitrust violation to recover damages despite their lack of privity with the manufacturers, and the ability of indirect purchasers of our State.

SECTION 2. Section 480-14, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 480-14 Suits by the State; amount of recovery. (a) Whenever the State, any county, or city and county is injured in its business or property by reason of anything forbidden or declared unlawful by this chapter, it may sue to recover actual damages sustained by it.

(b) The attorney general may bring an action on behalf of the State or any of its political subdivisions or governmental agencies to recover the damages provided for by this section, or by any comparable provisions of federal law.

(c) This chapter shall not be construed to deny the right to sue for damages to any person by reason of such person’s status as indirect purchaser injured by illegal overcharge.

(d) No person other than the attorney general of the State shall be authorized to bring a class action in any court of this State for indirect purchasers asserting claims under this chapter. Such action shall be brought as *parens patriae* on behalf of natural persons residing in the State, to secure monetary relief as provided in this section for injuries sustained by such natural persons to their property by reason of any violation of this chapter.

(e) If judgment is in favor of the State or any of its political subdivisions or governmental agencies under any provision of this chapter, the attorney general shall be awarded reasonable attorney’s fees together with the cost of suit; provided further, that in any class action lawsuit brought by the attorney general in behalf of indirect purchasers, the attorney general shall in addition be awarded an amount commensurate with expenses reasonably expected to be expended in distribution of damages to the indirect purchasers.”

SECTION 3. Section 480-13, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 480-13 Suits by persons injured; amount of recovery, injunctions.

(a) Any person who is injured in his business or property by reason of anything forbidden or declared unlawful by this chapter:

- (1) May sue for damages sustained by him, and, if the judgment is for the plaintiff, he shall be awarded a sum not less than \$1,000.00 or threefold damages by him sustained, whichever sum is the greater, and reasonable attorneys fees together with the cost of suit; provided that no showing that the proceeding or suit would be in the public interest (as these terms are interpreted under section 5(b) of the Federal Trade Commission Act) is necessary when the party against whom the proceeding or suit is brought is a merchant as that term is defined in chapter 490; and
- (2) May bring proceedings to enjoin the unlawful practices, and if the decree is for the plaintiff, he shall be awarded reasonable attorneys fees together with the cost of suit.

(b) The remedies provided in this section are cumulative and may be sought in one action.

(c) The remedies provided in this section shall be applied in class action lawsuits or proceedings brought in behalf of direct purchasers or in behalf of indirect purchasers by the attorney general under section 480-14, so that:

- (1) The minimum \$1,000 amount shall not apply;
- (2) In actions where both direct and indirect purchasers are involved, a defen-

dant shall be entitled to prove as a partial or complete defense to claim of compensatory damages that illegal overcharge has been passed on to others who are themselves entitled to recover so as to avoid duplication of recovery of compensatory damages;

- (3) That portion of threefold damages in excess of compensatory damages shall be apportioned and allocated by the court in its exercise of discretion so as to promote effective enforcement of this chapter and deterrence from violation of its provisions;
- (4) In no event shall an indirect purchaser be awarded less than the full measure of compensatory damages attributable to him;
- (5) In any case in which claims are asserted by both direct purchasers and in behalf of indirect purchasers, the court is authorized to exercise its discretion in apportionment of damages, and transfers and consolidation of cases to avoid duplication of recovery of damages and multiplicity of suits, and in other respects to obtain substantial fairness;
- (6) In any case in which claims are being asserted by a part of the claimants in a court of this State and another part of the claimants in a court other than of this State, where the claims arise out of same or overlapping transaction or transactions, the court is authorized to take all steps reasonable and necessary to avoid duplication of recovery of damages and multiplicity of suits, and in other respects, to obtain substantial fairness;
- (7) In instances where the attorney general representing indirect purchasers files an action and obtains a judgment or settlement prior to the completion of a direct purchaser's action in courts other than this State, the court shall delay disbursement of the damages until such time as the direct purchaser's suits are resolved to either final judgment, consent decree or settlement, or in the absence of a direct purchaser's lawsuit in the courts other than this State by direct purchasers, the expiration of the statute of limitations, or in such manner that will minimize duplication of damages to the extent reasonable and practicable, avoid multiplicity of suit and obtain substantial fairness; and
- (8) In the event damages obtained by the attorney general remain unclaimed by indirect purchasers, the attorney general shall apply to the court and such funds shall escheat to the State upon showing that reasonable efforts made by the State to distribute the same have been unsuccessful."

SECTION 4. Severability. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 5. Statutory material to be repealed is bracketed. New material is underscored.*

SECTION 6. This Act shall take effect upon its approval.

(Approved May 17, 1980.)

*The text has been edited pursuant to HRS §23G-16.5, authorizing omission of the brackets, bracketed material, and underscoring.