

ACT 229

S.B. NO. 1320

A Bill for an Act Relating to Antitrust.

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

SECTION 1. Chapter 480, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§480- Class actions by private persons. (a) A class action for claims for a violation of this chapter other than claims for unfair or deceptive acts or practices may be filed, and may be prosecuted on behalf of indirect purchasers by a person other than the attorney general as follows:

- (1) A filed copy of the complaint and all relevant supporting and exculpatory materials in possession of the proposed class representative or its counsel shall be served on the attorney general not later than seven days after filing of the complaint. The complaint shall be filed in camera, and shall not be served on the defendant until the court so orders. The complaint shall remain under seal for at least sixty days after service upon the attorney general of the complaint and all relevant supporting and exculpatory materials in possession of the proposed class representative or its counsel. The defendant named in the complaint shall not be required to respond to the complaint until twenty

days after the complaint has been unsealed and served upon the defendant in accordance with the Hawaii rules of civil procedure;

- (2) After service upon the attorney general of both the complaint and the relevant supporting and exculpatory materials in possession of the proposed class representative or its counsel, the attorney general may request the proposed class representative or its counsel to provide other materials deemed necessary by the attorney general;
- (3) The attorney general may move the court for extensions of the sixty-day period, which request shall be granted for good cause shown. The motion may be supported by affidavits or other submissions in camera;
- (4) The attorney general shall have the sole discretion to determine whether the State will proceed with the action or file its own action involving the same or similar claim or claims set forth in the complaint filed by the proposed class representative, which determination shall not be subject to review or appeal; and
- (5) On or before the expiration of the sixty-day period or any extensions obtained, the attorney general shall notify the court of its decision on whether the State will proceed with the action or file its own action involving the same or similar claim or claims set forth in the complaint filed by the proposed class representative:
 - (A) If the State proceeds with the action, the action shall be conducted by the attorney general and the seal shall be lifted;
 - (B) If the State files its own action involving the same or similar claim or claims set forth in the complaint filed by the proposed class representative, then the complaint filed by the proposed class representative shall be dismissed; and
 - (C) If the State declines or fails to timely elect to proceed with the action, or declines to file its own action involving the same or similar claim or claims set forth in the complaint filed by the proposed class representative, the proposed class representative shall have the right to conduct the action, and the complaint shall be unsealed and served upon the defendant by order of court. If the attorney general so requests, the State shall be served with copies of all pleadings filed in the action, and shall be supplied with copies of all deposition transcripts at the State's expense. When the proposed class representative proceeds with the action, the court without limiting the status and rights of such person may nevertheless permit the State to intervene at a later date upon showing of good cause, and upon such terms and conditions that the court deems just.

(b) This section shall not limit the rights of consumers to bring class actions against any person based on unfair or deceptive acts or practices declared unlawful by section 480-2."

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

"§480-2 Unfair competition, practices, declared unlawful. (a) Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful.

(b) In construing this section, the courts and the office of consumer protection shall give due consideration to the rules, regulations, and decisions of the Federal Trade Commission and the federal courts interpreting section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. 45(a)(1)), as from time to time amended.

(c) 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 in any action brought under this section.

(d) No person other than a consumer, the attorney general or the director of the office of consumer protection may bring an action based upon unfair or deceptive acts or practices declared unlawful by this section.

(e) Any person may bring an action based on unfair methods of competition declared unlawful by this section.

SECTION 3. Section 480-13, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The remedies provided in subsections (a) and (b) shall be applied in class action and de facto class action lawsuits or proceedings including actions brought ~~in~~ on behalf of direct ~~[purchasers, and actions brought in behalf of]~~ or indirect purchasers ~~[by the attorney general under section 480-14,];~~ provided that:

- (1) The minimum \$1,000 recovery provided in subsections (a) and (b) shall not apply in a class action or a de facto class action lawsuit;
- (2) In class actions or de facto class actions where both direct and indirect purchasers are involved, or where more than one class of indirect purchasers are involved, a defendant shall be entitled to prove as a partial or complete defense to a claim for compensatory damages that the illegal overcharge has been passed on or passed back to others who are themselves entitled to recover so as to avoid the 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 the indirect purchaser;
- (5) In any lawsuit or lawsuits in which claims are asserted by both direct purchasers and indirect purchasers, the court is authorized to exercise its discretion in the apportionment of damages, and in the transfer and consolidation of cases to avoid the duplication of the recovery of damages and the 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]~~ file an action and ~~[obtains]~~ obtain 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~~] in a class action or de facto class action remain unclaimed by the direct or indirect purchasers, the class representative or 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 funds have been unsuccessful.”

SECTION 4. Section 480-14, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) [~~No person other than the~~] The attorney general of the State shall be authorized to bring a class action for indirect purchasers asserting claims under this chapter. The attorney general or the director of the office of consumer protection may bring a class action on behalf of consumers based on unfair or deceptive acts or practices declared unlawful by section 480-2. Actions brought under this [section] subsection shall be brought as parens patriae on behalf of natural persons residing in the State, to secure¹ compensatory damages for injuries sustained by such natural persons to their property by reason of any violation of this chapter.”

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.²

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

(Approved June 28, 2002.)

Notes

1. Prior to amendment “threefold” appeared here.
2. Edited pursuant to HRS §23G-16.5.