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A BILL FOR AN ACT

RELATING TO CHAPTER 480, HAWAII REVISED STATUTES.

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

1 SECTION 1. Section 480-14, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "**§480-14 Suits by the State; amount of recovery.**

4 (a) Whenever the State [~~any county~~] or any of its political  
5 subdivisions or governmental agencies [~~any~~] is injured, directly or  
6 indirectly, in its business or property by reason of anything  
7 forbidden or declared unlawful by this chapter, it may sue to  
8 recover threefold the actual damages sustained by it [~~-~~

9 ~~(b)~~], whether direct or indirect. The attorney general may  
10 bring an action on behalf of the State [~~any county~~] or any of  
11 its political subdivisions or governmental agencies to recover  
12 the damages provided for by this section, or by any comparable  
13 provisions of federal law.

14 [~~(e)~~] (b) The attorney general of the State shall be  
15 authorized to bring a class action for indirect purchasers  
16 asserting claims under this chapter. The attorney general or  
17 the director of the office of consumer protection may bring a  
18 class action on behalf of consumers based on unfair or deceptive

1 acts or practices declared unlawful by section 480-2. Actions  
2 brought under this subsection shall be brought as parens patriae  
3 on behalf of natural persons residing in the State, to secure  
4 threefold damages for injuries sustained by such natural persons  
5 to their property by reason of any violation of this chapter.

6 [~~(d)~~] (c) If judgment is in favor of the State [~~any~~  
7 ~~county,~~] or any of its political subdivisions or governmental  
8 agencies under any provision of this chapter, the attorney  
9 general, or the director of the office of consumer protection  
10 shall be awarded reasonable attorney's fees together with the  
11 cost of suit; provided further that in any class action lawsuit  
12 brought by the attorney general in behalf of indirect  
13 purchasers, the attorney general shall in addition be awarded an  
14 amount commensurate with expenses reasonably expected to be  
15 expended in distribution of damages to the indirect purchasers."

16 SECTION 2. Section 480-21, Hawaii Revised Statutes, is  
17 amended to read as follows:

18 "**§480-21 Court and venue.** (a) Any criminal action or  
19 proceeding [~~whether civil or criminal,~~] authorized by this  
20 chapter shall be brought in any appropriate court in the circuit  
21 in which the defendant resides, engages in business, or has an  
22 agent [~~unless otherwise specifically provided herein~~].



**Report Title:**

Antitrust.

**Description:**

Clarifies antitrust law to reconfirm the right of government entities to bring an action for damages notwithstanding their status as indirect purchasers.

JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO CHAPTER 480, HAWAII REVISED STATUTES.

PURPOSE: To amend chapter 480, Hawaii Revised Statutes, to: (1) reconfirm the right of government entities to bring an action for damages notwithstanding their status as indirect purchasers; and (2) clarify that any civil action or proceeding authorized by chapter 480 may be brought in any appropriate court.

MEANS: Amend sections 480-14 and 480-21, Hawaii Revised Statutes.

JUSTIFICATION: **Amendment of section 480-14.** This bill proposes to amend section 480-14 as a result of a court order which dismissed with prejudice the claims of state agencies as indirect purchasers.

In *Illinois Brick v. Illinois*, 431 U.S. 720 (1977), the United States Supreme Court held that only direct purchasers may pursue private actions for money damages under federal antitrust laws.

In 1980, the Legislature took steps to clarify the rights of indirect purchasers in the wake of the ruling in *Illinois Brick*, and to dispel any misconceptions regarding the right of indirect purchasers to recover.

In 1980, the Legislature deliberated on a bill, House Bill No. 2668-80, the purpose of which was "to amend chapter 480, Hawaii Revised Statutes, relating to the bringing of actions on behalf of indirect purchasers by the attorney general." Sen. Standing Committee Report No. 971-80, 1980 Senate Journal at p. 1493.

The Legislature determined it was appropriate to use the measure to "clarify what was originally intended by the enactment of [the Hawaii antitrust laws]" in light of the ruling issued in *Illinois Brick*. *Id.*

First, the Legislature affirmed its commitment to the original basic concept that the antitrust laws were designed to benefit consumers "and others" injured by antitrust violators, and that such intent "was and continues to be the intent of chapter 480." *Id.*

Second, the Legislature expressed its desire to dispel any possible misconception that may be read into the implications of *Illinois Brick* as to the rights of indirect purchasers under Hawaii law, noting that "such right of consumers should be clarified as existing under chapter 480 irrespective of archaic notions of privity between (1) defendant manufacturers, and others and (2) indirect consumers." *Id.*

Third, the Legislature expressed its view that "the fact that anyone has 'paid more than he should and his property has been illegally diminished' is, we think, sufficient basis for invoking the protection intended by our antitrust laws." *Id.*, citing *Hanover Shoe, Inc. v. United Shoe Machinery Corp.*, 392 U.S. 481, 489 (1968).

Finally, the Legislature made it very clear that "indirect purchasers need simply show in some fashion that by reason of antitrust violation their purchase prices were elevated by the consequent illegal overcharge." Sen. Standing Committee Report No. 971-80, 1980 Senate Journal at p. 1493.

These excerpts from the legislative history, following the ruling in *Illinois Brick*, clearly show that Hawaii law provides that

all indirect purchasers, of whatever ilk, have a strong basis and right to invoke the protection of Hawaii's antitrust laws, notwithstanding the ruling in *Illinois Brick*.

Likewise, the right to invoke the protection of Hawaii's antitrust laws extends to Hawaii state agencies. Section 480-14(a) provides a broad remedy and clearly authorizes the State to sue if it is injured by anything forbidden or declared unlawful by chapter 480, Hawaii Revised Statutes.

Section 480-14(b) authorizes the Attorney General to sue on behalf of the State to recover damages provided by this section, or by any comparable provisions of federal law.

In light of the broad remedy in chapter 480 and the actions of the Legislature in 1980, if the State as an indirect purchaser "has paid more than [it] should and [its] property has been illegally diminished," then the State has "a sufficient basis for invoking the protection intended by [Hawaii's] antitrust laws." *Id.*, citing *Hanover Shoe, Inc. v. United Shoe Machinery Corp.*, 392 U.S. at 489.

However, in 2007, a claim asserted on behalf of state agencies as indirect purchasers was dismissed with prejudice by a federal district court in California because section 480-14(b) did not expressly authorize suits on behalf of indirect purchasers who were state government entities.

To counter the adverse effects of this ruling in the future, this bill seeks to reconfirm what was "originally intended by the enactment of [the Hawaii antitrust laws]" in light of the ruling issued in *Illinois Brick*, and thereby reaffirm the Legislature's commitment to the original basic concept that the antitrust laws were designed to benefit consumers "and others"

injured by antitrust violators, and that such intent "was and continues to be the intent of chapter 480." Sen. Standing Committee Report No. 971-80, 1980 Senate Journal at p. 1493.

This bill proposes to amend section 480-14(a) to expressly provide that whenever the State or any county is injured, directly or indirectly, in its business or property by reason of anything forbidden or declared unlawful by this chapter, it may sue to recover threefold the actual damages sustained by it.

The bill proposes to include the wording of section 480-14(b) into section 480-14(a), and to redesignate subsections (c) and (d) accordingly.

**Amendment of section 480-21.** This bill seeks to clarify that any civil action or proceeding authorized by this chapter may be brought in any appropriate court, not just the court in the circuit in which the defendant resides, engages in business, or has an agent. This amendment seeks to ensure that section 480-21 is not used as a basis to dismiss claims based on chapter 480 that are properly asserted in a complaint filed in courts outside of the State.

Impact on the public: The bill is intended to impact antitrust actions brought on behalf of government entities. The public may be indirectly benefitted to the extent amounts are recovered and returned to the general fund, and thereafter used to provide government services and benefits.

Impact on the department and other agencies: The bill may yield mixed results for the department. The bill may impact the department by increasing enforcement activity, workload, and recoveries, including deposits to the antitrust trust fund. However, the bill may reduce the



department's workload if it has the effect of curbing illegal activity.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION: ATG 100

OTHER AFFECTED  
AGENCIES: Department of Commerce and Consumer Affairs  
and counties.

EFFECTIVE DATE: This Act shall take effect upon its approval.