

## ACT 274

H.B. NO. 1525

A Bill for an Act Relating to Restraint of Trade; Monopolies.

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

SECTION 1. Section 480-1, Hawaii Revised Statutes, is amended by adding three new definitions to be appropriately inserted and to read as follows:

“Class action” includes the definition as provided in rule 23 of the Hawaii rules of civil procedure.

“Consumer” means a natural person who, primarily for personal family, or household purposes, purchases, attempts to purchase, or is solicited to purchase goods or services or who commits money, property, or services in an investment.

“De facto class action” means an action that has not been certified by the court but includes identical considerations as provided in Hawaii rules of civil procedure rule 23 such as common questions of law or fact, claims or defenses of the representative parties are typical of the claims or defenses of non-parties and, as a practical matter, the disposition of the interest of the class or other members not parties to the adjudications would substantially impair or impede their ability to protect their interest.”

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 or<sup>1</sup> consumer protection shall be guided by 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.

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

“§480-3 Interpretation. This chapter shall be construed in accordance with judicial interpretations of similar federal antitrust statutes[.], except that lawsuits by indirect purchasers may be brought as provided in this chapter.”

SECTION 4. Section 480-13, Hawaii Revised Statutes, is amended to read as follows:

“§480-13 Suits by persons injured; amount of recovery, injunctions. (a) Except as provided in subsections (b) and (c), [Any] any person who is injured in the person’s business or property by reason of anything forbidden or declared unlawful by this chapter:

- (1) May sue for damages sustained by the person, and, if the judgment is for the plaintiff, the plaintiff shall be awarded a sum not less than \$1,000 or threefold damages by the plaintiff sustained, whichever sum is the greater, and reasonable attorneys fees together with the costs of suit; provided that indirect purchasers injured by an illegal overcharge shall recover only compensatory damages, and reasonable attorneys fees together with the costs of suit; [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, the plaintiff shall be awarded reasonable attorneys fees together with the cost of suit.

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

- (1) May sue for damages sustained by the consumer, and, if the judgment is for the plaintiff, the plaintiff shall be awarded a sum not less than \$1,000 or threefold damages by the plaintiff sustained, whichever sum is the greater, and reasonable attorneys fees together with the costs of suit; and
- (2) May bring proceedings to enjoin the unlawful practices, and if the decree is for the plaintiff, the plaintiff shall be awarded reasonable attorneys fees together with the cost of suit.

(c) The remedies provided in subsections (a) and (b)<sup>1</sup> shall be applied in class action and de facto class action lawsuits or proceedings including actions brought in behalf of direct purchasers, and<sup>1</sup> actions brought in behalf of<sup>1</sup> indirect purchasers by the attorney general under section 480-14, [so that] provided that:<sup>1</sup>

- (1) The minimum \$1,000 [amount] recovery provided in subsections (a) and (b) shall not apply<sup>1</sup> in a class action or a de facto class action lawsuit;<sup>1</sup>
- (2) In class actions or de facto class actions where both direct and indirect purchasers are involved,<sup>1</sup> 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<sup>1</sup> compensatory damages that the<sup>1</sup> 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 [case] lawsuit or lawsuits in which claims are asserted by both direct purchasers and [in behalf of] indirect purchasers, the court is authorized to exercise its discretion in the apportionment of damages, and in the transfer[s] 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 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 in a class action or de facto class action remain unclaimed by the direct or 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] funds have been unsuccessful.

[(b)] (d) The remedies provided in this section are cumulative and may be brought<sup>1</sup> in one action."

SECTION 5. Section 480-14, Hawaii Revised Statutes is amended to read as follows:

"§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 threefold the action<sup>1</sup> 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.

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

[(d)] (c) 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 and 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. Such actions shall be brought as parens patriae on behalf of natural persons residing in this<sup>1</sup> State, to secure [monetary relief as provided in this section] compensatory damages for injuries sustained by such natural persons to their property by reason of any violation of this chapter.

[(e)] (d) If judgment is in favor of the State or any of its political subdivisions or governmental agencies under any provisions<sup>1</sup> 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 of<sup>1</sup> the indirect purchasers."

SECTION 6. 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 7. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 8. This Act shall take effect upon its approval.

(Approved June 24, 1987.)

### Note

1. So in original.