

1-1 By: Van de Putte S.B. No. 1212  
1-2 (In the Senate - Filed March 12, 2003; March 19, 2003, read  
1-3 first time and referred to Committee on Jurisprudence;  
1-4 April 24, 2003, reported adversely, with favorable Committee  
1-5 Substitute by the following vote: Yeas 6, Nays 0; April 24, 2003,  
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1212 By: Bivins

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to participation by the attorney general's consumer  
1-11 protection division and the award of civil penalties in an action  
1-12 under the Deceptive Trade Practices-Consumer Protection Act.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Section 17.47, Business & Commerce Code, is  
1-15 amended by amending Subsection (c) and adding Subsection (g) to  
1-16 read as follows:

1-17 (c) In addition to the request for a temporary restraining  
1-18 order, or permanent injunction in a proceeding brought under  
1-19 Subsection (a) of this section, the consumer protection division  
1-20 may request, and the trier of fact may award, a civil penalty to be  
1-21 paid to the state in an amount of:

1-22 (1) not less than \$1,000 or more than \$20,000 [~~\$2,000~~]  
1-23 per violation [~~, not to exceed a total of \$10,000~~]; and [~~or~~]

1-24 (2) [~~not more than \$10,000 per violation, not to~~  
1-25 ~~exceed a total of \$100,000,~~] if [~~the consumer protection division~~  
1-26 ~~determines that~~] the act or practice that is the subject of the  
1-27 proceeding was calculated to acquire or deprive money or other  
1-28 property from a consumer who was 65 years of age or older when the  
1-29 act or practice occurred, an additional amount of not more than  
1-30 \$100,000 per violation.

1-31 (g) In bringing or participating in an action under this  
1-32 subchapter, the consumer protection division acts in the name of  
1-33 the state and does not establish an attorney-client relationship  
1-34 with another person, including a person to whom the consumer  
1-35 protection division requests that the court award relief.

1-36 SECTION 2. Subchapter E, Chapter 17, Business & Commerce  
1-37 Code, is amended by adding Section 17.501 to read as follows:

1-38 Sec. 17.501. CONSUMER PROTECTION DIVISION PARTICIPATION IN  
1-39 CLASS ACTION. (a) A consumer filing an action under Section 17.50  
1-40 that is to be maintained as a class action shall send to the  
1-41 consumer protection division:

1-42 (1) a copy of the notice required by Section  
1-43 17.505(a), by registered or certified mail, at the same time the  
1-44 notice is given to the person complained against; and

1-45 (2) a copy of the petition in the action not later than  
1-46 the earlier of:

1-47 (A) the 30th day after the date the petition is  
1-48 filed; or

1-49 (B) the 10th day before the date of any hearing on  
1-50 class certification or a proposed settlement.

1-51 (b) The court shall abate the action for 60 days if the court  
1-52 finds that notice was not provided to the consumer protection  
1-53 division as required by Subsection (a).

1-54 (c) The court, on a showing of good cause, may allow the  
1-55 consumer protection division, as representative of the public, to  
1-56 intervene in an action to which this section applies. The consumer  
1-57 protection division shall file its motion for intervention with the  
1-58 court before which the action is pending and serve a copy of the  
1-59 motion on each party to the action.

1-60 SECTION 3. This Act takes effect September 1, 2003.

1-61 SECTION 4. The change in law made by this Act applies only  
1-62 to an action instituted on or after the effective date of this Act.  
1-63 An action instituted before the effective date of this Act is

2-1 governed by the law in effect when the action was instituted, and  
2-2 the former law is continued in effect for that purpose.

2-3

\* \* \* \* \*