

1-1 By: West S.B. No. 542
1-2 (In the Senate - Filed February 16, 2005; February 28, 2005,
1-3 read first time and referred to Committee on Business and Commerce;
1-4 May 16, 2005, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 7, Nays 0; May 16, 2005,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 542 By: Lucio

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

1-10 relating to the authority of the attorney general to bring suit on
1-11 behalf of individuals injured by unlawful practices in restraint of
1-12 trade.

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

1-14 SECTION 1. Subchapter C, Chapter 15, Business & Commerce
1-15 Code, is amended by adding Section 15.211 to read as follows:

1-16 Sec. 15.211. ATTORNEY GENERAL MAY BRING SUIT ON BEHALF OF
1-17 INJURED PERSONS. (a) The attorney general may bring suit under
1-18 Section 15.21(a) of this Act on behalf of a governmental entity and,
1-19 as parens patriae, on behalf of an individual residing in this state
1-20 for damages incurred directly or indirectly because of a violation
1-21 of Subsection (a), (b), or (c) of Section 15.05 of this Act.

1-22 (b) In any suit brought by the attorney general as parens
1-23 patriae under Subsection (a):

1-24 (1) the attorney general shall give the best
1-25 practicable notice through any means necessary to give due process
1-26 of law to the affected individuals, as required by the court;

1-27 (2) an individual on whose behalf the attorney general
1-28 brings suit may elect to exclude from adjudication the portion of
1-29 damages attributable to the individual by filing notice of the
1-30 individual's election with the court not later than the date
1-31 specified in the notice provided under Subdivision (1);

1-32 (3) the final judgment is res judicata for the matters
1-33 alleged or proven in the suit as to any claim under this Act on
1-34 behalf of an individual;

1-35 (A) on whose behalf the attorney general brought
1-36 the action; and

1-37 (B) who fails to comply with Subdivision (2); and

1-38 (4) the damages awarded shall be distributed to ensure
1-39 that each individual has a reasonable opportunity to secure a fair
1-40 share of the damages.

1-41 (c) If claims based on substantially the same conduct are
1-42 asserted against a defendant by the attorney general on behalf of
1-43 indirect purchasers and by direct purchasers, the court shall avoid
1-44 imposing duplicate liability for the same injury.

1-45 (d) The right to sue under Subsection (a) applies only to
1-46 the attorney general and does not create a right of another person,
1-47 including another governmental entity, to sue on its own behalf for
1-48 damages incurred indirectly because of a violation of Subsection
1-49 (a), (b), or (c) of Section 15.05 of this Act.

1-50 SECTION 2. The change in law made by this Act applies only
1-51 to a suit arising out of an injury that an individual suffers on or
1-52 after the effective date of this Act. A suit arising out of an
1-53 injury suffered by an individual before the effective date of this
1-54 Act is governed by the law in effect at the time the individual
1-55 suffered the injury, and the former law is continued in effect for
1-56 that purpose.

1-57 SECTION 3. This Act takes effect immediately if it receives
1-58 a vote of two-thirds of all the members elected to each house, as
1-59 provided by Section 39, Article III, Texas Constitution. If this
1-60 Act does not receive the vote necessary for immediate effect, this
1-61 Act takes effect September 1, 2005.

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