

By: West

S.B. No. 767

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the authority of the attorney general to bring suit on
3 behalf of individuals injured by unlawful practices in restraint of
4 trade.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

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

8 Sec. 15.211. ATTORNEY GENERAL MAY BRING SUIT ON BEHALF OF
9 INJURED PERSONS. (a) The attorney general may bring suit under
10 Section 15.21(a) of this Act on behalf of a governmental entity and,
11 as parens patriae, on behalf of an individual residing in this state
12 for damages incurred directly or indirectly because of a violation
13 of Section 15.05(a), (b), or (c) of this Act.

14 (b) In any suit brought by the attorney general as parens
15 patriae under Subsection (a):

16 (1) the attorney general shall give the best
17 practicable notice through any means necessary to give due process
18 of law to the affected individuals, as required by the court, and
19 shall include in the notice the date by which the individual must
20 elect to be excluded from the suit under Subdivision (2);

21 (2) an individual on whose behalf the attorney general
22 brings suit may elect to be excluded from the suit by filing, not
23 later than the date specified in the notice provided under
24 Subdivision (1):

1 (A) notice of the individual's election with the
2 court; or

3 (B) a separate action in a district court in
4 Travis County or a district court in the county in which the
5 attorney general's suit is pending;

6 (3) the final judgment is res judicata for the matters
7 alleged or proven in the suit as to any claim under this Act on
8 behalf of an individual:

9 (A) on whose behalf the attorney general brought
10 the action; and

11 (B) who fails to comply with Subdivision (2); and

12 (4) the damages awarded shall be distributed to ensure
13 that each individual has a reasonable opportunity to secure a fair
14 share of the damages.

15 (c) If claims based on substantially the same conduct are
16 asserted against a defendant by the attorney general on behalf of
17 indirect purchasers and by direct purchasers, the court shall avoid
18 imposing duplicate damages for the same injury.

19 (d) The right to sue under Subsection (a) applies only to
20 the attorney general and does not create or abolish a right of
21 another person, including another governmental entity, to sue on
22 its own behalf for damages incurred indirectly because of a
23 violation of Section 15.05(a), (b), or (c) of this Act.

24 SECTION 2. The change in law made by this Act applies only
25 to a suit arising out of an injury that an individual suffers on or
26 after the effective date of this Act. A suit arising out of an
27 injury suffered by an individual before the effective date of this

1 Act is governed by the law in effect at the time the individual
2 suffered the injury, and the former law is continued in effect for
3 that purpose.

4 SECTION 3. This Act takes effect immediately if it receives
5 a vote of two-thirds of all the members elected to each house, as
6 provided by Section 39, Article III, Texas Constitution. If this
7 Act does not receive the vote necessary for immediate effect, this
8 Act takes effect September 1, 2009.