

BILL ANALYSIS

Senate Research Center

H.B. 5214
By: Spiller (Hughes)
State Affairs
5/5/2023
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

According to *Illinois v. Illinois Brick*, 431 U.S. 720 (1977), only those entities purchasing directly from antitrust violators have standing to recover economic damages under certain federal antitrust laws. The "Illinois Brick rule" results in harm to consumers because direct purchasers most often pass their injury on to ordinary consumers in the form of higher prices or lower quality goods instead of suing the actual violator of the antitrust laws. The application of Illinois Brick prevents the Texas attorney general from recovering monetary damages in markets that involve several layers of intermediaries, distributors, wholesalers, and other middlemen that are engaged in anticompetitive conduct. H.B. 5214 seeks to address this issue by enabling the attorney general to recover damages on behalf of ordinary consumers who have suffered an injury that was passed on to them by an intermediary. This will deter anticompetitive conduct in health care, pharmaceutical, and technology industries, because Texas will hold industry players accountable where middlemen or intermediaries that are dependent on them for access to markets would not.

H.B. 5214 amends current law relating to actions brought by the attorney general on behalf of certain persons under the Texas Free Enterprise and Antitrust Act of 1983.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 15.21, Business and Commerce Code, by adding Subsections (d) and (e), as follows:

(d) Authorizes the attorney general to bring a civil action against a person on behalf of an individual or governmental entity for injury to that individual's or entity's business or property caused, directly or indirectly, by the person's violation of certain statutes. Authorizes an action under this subsection to be brought in district court in Travis County, or in any county in this state in which a named defendant resides, does business, or maintains a principal office, or in which the individual or governmental entity on whose behalf the action is brought resides at the time of the cause of action or any part of the cause of action accrues. Requires the attorney general, if the attorney general prevails in an action under this subsection, to recover actual damages sustained by the individual or governmental entity, interest on actual damages for the period beginning on the date of service of the attorney general's pleading setting forth a claim under the antitrust laws and ending on the date of judgment (the rate of such interest to be in accordance with Texas law regarding postjudgment interest rates and the amount of interest to be adjusted by the court if it finds that the award of all or part of such interest is unjust in the circumstances), and the cost of suit, including a reasonable attorney's fee, and if applicable, expert witness fees; provided, however, that if the trier of fact finds that the unlawful conduct was willful or flagrant, the court is required to increase the recovery to threefold the damages sustained and the cost of suit, including a reasonable attorney's fee and, if applicable, expert witness fees; provided that interest on actual damages as specified above is prohibited from being recovered when recovered damages are

increased threefold. Requires the court, in an action under this subsection in which a claim is asserted against a defendant relating to injury to both direct and indirect purchasers, to take all steps necessary to avoid duplicative recovery from that defendant.

(e) Defines "governmental entity."

SECTION 2. Makes application of Sections 15.21(d) and (e), Business and Commerce Code, as added by this Act, prospective.

SECTION 3. Effective date: September 1, 2023.