

BILL ANALYSIS

H.B. 5214
By: Spiller
Judiciary & Civil Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

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.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

H.B. 5214 amends the Business & Commerce Code to authorize 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 the Texas Free Enterprise and Antitrust Act of 1983. The action may be brought in district court in Travis County, or in any county 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.

H.B. 5214 requires the attorney general, if the attorney general prevails in the action, to recover actual damages sustained by the individual or governmental entity, interest on actual damages for a specified period calculated in a manner specified by the bill, the cost of suit, including a reasonable attorney's fee, and if applicable, expert witness fees. If the trier of fact finds that the unlawful conduct was willful or flagrant, the court must increase the recovery to threefold the damages sustained and the cost of suit. Interest on actual damages may not be recovered when recovered damages are increased threefold. In an action under the bill's provisions in which a

claim is asserted against a defendant relating to injury to both direct and indirect purchasers, the bill requires the court to take all steps necessary to avoid duplicative recovery from that defendant.

H.B. 5214 defines "governmental entity" as:

- the state, including each department, board, agency, instrumentality, authority, or commission of the state;
- a political subdivision of the state, including a county, city, municipality, school district, local improvement district, law enforcement authority, or special district, including a water, sanitation, fire protection, metropolitan, irrigation, drainage, or other special district;
- a municipal, quasi-municipal, or public corporation organized under the Texas Constitution or other law; and
- a department, board, agency, instrumentality, authority, or commission of a political subdivision or applicable corporation.

H.B. 5214 applies only to a cause of action that accrues on or after the bill's effective date.

EFFECTIVE DATE

September 1, 2023.