

# SENATE AMENDMENTS

2<sup>nd</sup> Printing

By: Spiller

H.B. No. 5214

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to actions brought by the attorney general on behalf of  
3 certain persons under the Texas Free Enterprise and Antitrust Act  
4 of 1983.

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

6 SECTION 1. Section 15.21, Business & Commerce Code, is  
7 amended by adding Subsections (d) and (e) to read as follows:

8 (d) The attorney general may bring a civil action against a  
9 person on behalf of an individual or governmental entity for injury  
10 to that individual's or entity's business or property caused,  
11 directly or indirectly, by the person's violation of Section  
12 15.05(a), (b), or (c). An action under this subsection may be  
13 brought in district court in Travis County, or in any county in this  
14 state in which a named defendant resides, does business, or  
15 maintains a principal office, or in which the individual or  
16 governmental entity on whose behalf the action is brought resides  
17 at the time of the cause of action or any part of the cause of action  
18 accrues. If the attorney general prevails in an action under this  
19 subsection, the attorney general shall recover actual damages  
20 sustained by the individual or governmental entity, interest on  
21 actual damages for the period beginning on the date of service of  
22 the attorney general's pleading setting forth a claim under the  
23 antitrust laws and ending on the date of judgment (the rate of such  
24 interest to be in accordance with Texas law regarding postjudgment

1 interest rates and the amount of interest to be adjusted by the  
2 court if it finds that the award of all or part of such interest is  
3 unjust in the circumstances), and the cost of suit, including a  
4 reasonable attorney's fee, and if applicable, expert witness fees;  
5 provided, however, that if the trier of fact finds that the unlawful  
6 conduct was willful or flagrant, the court shall increase the  
7 recovery to threefold the damages sustained and the cost of suit,  
8 including a reasonable attorney's fee and, if applicable, expert  
9 witness fees; provided that interest on actual damages as  
10 specified above may not be recovered when recovered damages are  
11 increased threefold. In an action under this subsection in which a  
12 claim is asserted against a defendant relating to injury to both  
13 direct and indirect purchasers, the court shall take all steps  
14 necessary to avoid duplicative recovery from that defendant.

15 (e) For purposes of this section, "governmental entity"  
16 means:

17 (1) this state, including each department, board,  
18 agency, instrumentality, authority, or commission of this state;

19 (2) a political subdivision of this state, including a  
20 county, city, municipality, school district, local improvement  
21 district, law enforcement authority, or special district,  
22 including a water, sanitation, fire protection, metropolitan,  
23 irrigation, drainage, or other special district;

24 (3) a municipal, quasi-municipal, or public  
25 corporation organized under the Texas Constitution or other law;  
26 and

27 (4) a department, board, agency, instrumentality,

1 authority, or commission of an entity described by Subdivision (2)  
2 or (3).

3 SECTION 2. Sections 15.21(d) and (e), Business & Commerce  
4 Code, as added by this Act, apply only to a cause of action that  
5 accrues on or after the effective date of this Act.

6 SECTION 3. This Act takes effect September 1, 2023.

ADOPTED

V V  
MAY 16 2023

FLOOR AMENDMENT NO. 1

*Lately Spaw*  
Secretary of the Senate

BY:

*Joan Huffman*

1 Amend H.B. No. 5214 (senate committee printing) as follows:

2 (1) In SECTION 1 of the bill, in added Section 15.21(d),  
3 Business & Commerce Code (page 1, line 31), between "(c)" and the  
4 underscored period, add ", provided that the attorney general shall  
5 notify in writing any governmental entity of the attorney general's  
6 intention to bring any such action on the governmental entity's  
7 behalf, and at any time within 30 days after receiving the notice,  
8 the governmental entity may, by formal resolution of its governing  
9 body or as otherwise specifically provided by applicable law,  
10 withdraw the authority of the attorney general to bring the  
11 intended action".

12 (2) In SECTION 1 of the bill, in added Section 15.21(d),  
13 Business & Commerce Code (page 1, line 57), following the  
14 underscored period, add "In any action brought under this section  
15 on behalf of any governmental entity, the state shall retain for  
16 deposit in the general revenue fund of the State Treasury, out of  
17 the proceeds, if any, resulting from such action, an amount equal  
18 to the expense incurred by the state in the investigation and  
19 prosecution of such action".

**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 88TH LEGISLATIVE REGULAR SESSION**

**May 18, 2023**

**TO:** Honorable Dade Phelan, Speaker of the House, House of Representatives

**FROM:** Jerry McGinty, Director, Legislative Budget Board

**IN RE: HB5214** by Spiller (Relating to actions brought by the attorney general on behalf of certain persons under the Texas Free Enterprise and Antitrust Act of 1983.), **As Passed 2nd House**

**No significant fiscal implication to the State is anticipated.**

The bill would amend the Business and Commerce Code to allow the Office of the Attorney General to sue on behalf of certain persons under the Texas Free Enterprise and Antitrust Act of 1983.

According to the Office of the Attorney General, any additional work resulting from the provisions of the bill could be absorbed within current resources.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 302 Office of the Attorney General, 304 Comptroller of Public Accounts

**LBB Staff:** JMc, KDw, LCO, HGR, SMAT

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 88TH LEGISLATIVE REGULAR SESSION**

**May 7, 2023**

**TO:** Honorable Bryan Hughes, Chair, Senate Committee on State Affairs

**FROM:** Jerry McGinty, Director, Legislative Budget Board

**IN RE: HB5214** by Spiller (Relating to actions brought by the attorney general on behalf of certain persons under the Texas Free Enterprise and Antitrust Act of 1983.), **As Engrossed**

**No significant fiscal implication to the State is anticipated.**

The bill would amend the Business and Commerce Code to allow the Office of the Attorney General to sue for damages from indirect purchasers on behalf of natural persons and governmental entities.

According to the Office of the Attorney General, any additional work resulting from the provisions of the bill could be absorbed within current resources.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 302 Office of the Attorney General

**LBB Staff:** JMc, SMAT, HGR, KDw, LCO

**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 88TH LEGISLATIVE REGULAR SESSION**

**April 10, 2023**

**TO:** Honorable Jeff Leach, Chair, House Committee on Judiciary & Civil Jurisprudence

**FROM:** Jerry McGinty, Director, Legislative Budget Board

**IN RE: HB5214** by Spiller (Relating to actions brought by the attorney general on behalf of certain persons under the Texas Free Enterprise and Antitrust Act of 1983.), **As Introduced**

**No significant fiscal implication to the State is anticipated.**

The bill would amend the Business and Commerce Code to allow the Office of the Attorney General to sue for damages from indirect purchasers on behalf of natural persons and governmental entities.

According to the Office of the Attorney General, any additional work resulting from the provisions of the bill could be absorbed within current resources.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 302 Office of the Attorney General

**LBB Staff:** JMc, KDw, LCO, HGR