

STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

SENATE BILL 540

By: Henry

AS INTRODUCED

An Act relating to trusts and pools; amending Section 5, Chapter 356, O.S.L. 1998 (79 O.S. Supp. 2000, Section 205), which relates to actions by injured parties; specifying parties who may obtain certain relief; deleting requirement for court to exclude certain amount from monetary award; requiring court to avoid duplicate liability in certain claims; entitling parties to assert specified defense; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY Section 5, Chapter 356, O.S.L. 1998 (79 O.S. Supp. 2000, Section 205), is amended to read as follows:

Section 205. A. 1. Any person who is injured either directly or indirectly in his or her business or property by a violation of this act, may obtain appropriate injunctive or other equitable relief and monetary damages and shall recover threefold the damages sustained, and the cost of suit, including a reasonable attorney fee. The Attorney General may bring an action in the name of the state, as parens patriae on behalf of natural persons injured either directly or indirectly and residing in the this state, for appropriate injunctive or other equitable relief and to secure monetary damages for injury sustained by ~~such~~ the natural persons to their business or property by reason of any violation of this act. ~~The court shall exclude from the amount of the monetary damages awarded in such action any amount of monetary damages:~~

~~a. which duplicates amounts which have been awarded for the same injury, or~~

~~b. which is properly allocable to:~~

~~(1) natural persons who have excluded their claims,~~

~~and~~

~~(2) any other persons.~~

The court shall award the state as parens patriae threefold the total damages sustained and the cost of suit, including a reasonable attorney fee. Whenever the state is hereafter injured either directly or indirectly in its business or property by anything forbidden in this act, it may obtain appropriate injunctive or other equitable relief and monetary damages therefor and shall recover actual damages by it sustained and the cost of suit including a reasonable attorney fee. The court may award under this section, pursuant to a motion by such person or the state, simple interest on actual damages for the period beginning on the date of service of such person's or the state's pleading setting forth a claim under this act and ending on the date of judgment, or for any shorter period therein, if the court finds that the award of such interest for such period is just in the circumstances. The Attorney General may bring an action on behalf of either the state or a political subdivision of the state when either is injured either directly or indirectly in its business or property by anything forbidden by the provisions of this act.

2. In any civil action brought by the Attorney General as parens patriae, the Attorney General shall, at such times, in such manner, and with such content as the court may direct, cause notice thereof to be given by publication. Any person on whose behalf an action is brought may elect to exclude from adjudication the portion of the claim for monetary damages attributable to him or her by filing notice of this election with the court within the time specified in the notice given pursuant to this paragraph.

3. In a civil action brought by the Attorney General as parens patriae, the final judgment shall be res judicata as to any claim

under this section by any person on behalf of whom the action was brought and who fails to give notice within the period specified in the notice given pursuant to paragraph 2 of this subsection.

4. In any action brought pursuant to this section, in which claims are asserted against a party by both direct and indirect purchasers, the court shall take all steps necessary to avoid duplicate liability, including, but not limited to, the transfer and consolidation of all related actions. In actions where both direct and indirect purchasers are parties, any party shall be entitled to assert as a partial or complete defense to a claim for damages that the illegal overcharge has been passed on to others who are themselves entitled to recover so as to avoid duplication of recovery of damages.

B. Any person or governmental entity who or which obtains a judgment for damages under 15 U.S.C., Section 15 or any other provision of federal law comparable to this section may not recover damages in a suit under this section based on substantially the same conduct that was the subject of the federal suit.

C. Any action to recover damages under this section is barred unless commenced within four (4) years after the claim accrued or was discovered, whichever is later.

SECTION 2. This act shall become effective November 1, 2001.

48-1-390

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