

SB 232

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THE STATE SENATE
Monday, February 24, 2003

Senate Bill No. 232
As Amended

SENATE BILL NO. 232 - By: CAIN of the Senate and BLACKBURN of the House.

An Act relating to trusts and pools; amending 79 O.S. 2001, Section 205, which relates to the Oklahoma Antitrust Reform Act; expanding types of covered injuries; establishing requirements for obtaining relief for indirect injury; deleting Attorney General's authority for bringing action and requirement that court exclude certain items from damages; clarifying items court may award; authorizing the state to obtain relief; modifying applicability of court award; directing the court to take specified action; **stating applicability of act**; and providing an effective date.

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

SECTION 1. AMENDATORY 79 O.S. 2001, 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~~ the Oklahoma Antitrust Reform 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 residing in the state for appropriate injunctive or other equitable relief and to secure monetary damages for injury~~

1 ~~sustained by such natural persons to their business or property by~~
2 ~~reason of any violation of this act. The court shall exclude from~~
3 ~~the amount of the monetary damages awarded in such action any amount~~
4 ~~of monetary damages:~~

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

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

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

10 ~~(2) any other persons, provided that with respect to indirect~~
11 ~~injury:~~

12 **a. any such action be brought exclusively by the Attorney**
13 **General either in his or her proprietary capacity on**
14 **behalf of the state or as parens patriae on behalf of**
15 **persons residing in the state,**

16 **b. any such action may only be brought for conduct that**
17 **would be judged per se illegal pursuant to comparable**
18 **federal antitrust laws,**

19 **c. such action does not result in duplicate liability for**
20 **the defendant with respect to the same injury, and**

21 **d. damages shall be based solely on a showing of higher**
22 **prices paid by indirect purchasers as a direct result**
23 **of the defendant's conduct.**

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

19 2. In any civil action brought by the Attorney General as
20 parens patriae, the Attorney General shall, at such times, in such
21 manner, and with such content as the court may direct, cause notice
22 thereof to be given by publication. Any person on whose behalf an
23 action is brought may elect to exclude from adjudication the portion

1 of the claim for monetary damages attributable to him or her by
2 filing notice of this election with the court within the time
3 specified in the notice given pursuant to this paragraph.

4 3. In a civil action brought by the Attorney General as parens
5 patriae, the final judgment shall be res judicata as to any claim
6 under this section by any person on behalf of whom the action was
7 brought and who fails to give notice within the period specified in
8 the notice given pursuant to paragraph 2 of this subsection.

9 4. In any action pursuant to this section, in which claims are
10 asserted against a party by both direct and indirect purchasers, the
11 court shall take all steps necessary to avoid duplicate liability,
12 including but not limited to the transfer and consolidation of all
13 related actions.

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

19 C. Any action to recover damages under this section is barred
20 unless commenced within four (4) years after the claim accrued or
21 was discovered, whichever is later. **Conduct or acts occurring**
22 **before January 1, 2003 shall not give rise to a cause of action**
23 **under this act for indirect purchasers.**

1 SECTION 2. This act shall become effective November 1, 2003.
2 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 2-18-03 - DO
3 PASS, As Amended and Coauthored.