

SB 356

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THE STATE SENATE
Monday, February 23, 2009

Senate Bill No. 356
As Amended

SENATE BILL NO. 356 - By: Adelson of the Senate and Sherrer of the House.

[Oklahoma Antitrust Reform Act - actions - recovery - 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 injured either directly or indirectly residing in the state for appropriate injunctive or other equitable relief and to secure monetary damages for injury sustained by such natural persons to their business or property by reason of any violation of ~~this act~~ the Oklahoma Antitrust Reform Act. ~~The court shall exclude~~

1 ~~from the amount of the monetary damages awarded in such action any~~
2 ~~amount of monetary damages:~~

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

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

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

8 (2) ~~any other persons.~~

9 The court shall award the state as parens patriae threefold the
10 total damages sustained and the cost of suit, including a reasonable
11 attorney fee. Whenever the state is hereafter injured either
12 directly or indirectly in its business or property by anything
13 forbidden in ~~this act~~ the Oklahoma Antitrust Reform Act, it may
14 obtain appropriate injunctive or other equitable relief and monetary
15 damages therefor and shall recover actual damages by it sustained
16 and the cost of suit including a reasonable attorney fee. The court
17 may award under this section, pursuant to a motion by such person or
18 the state, simple interest on actual damages for the period
19 beginning on the date of service of such person's or the state's
20 pleading setting forth a claim under ~~this act~~ the Oklahoma Antitrust
21 Reform Act and ending on the date of judgment, or for any shorter
22 period therein, if the court finds that the award of such interest
23 for such period is just in the circumstances. The Attorney General

1 may bring an action on behalf of either the state or a political
2 subdivision of the state when either is injured either directly or
3 indirectly in its business or property by anything forbidden by the
4 provisions of ~~this act~~ the Oklahoma Antitrust Reform Act.

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

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

18 4. In an action brought pursuant to the provisions of this
19 section in which claims are asserted against a party by both direct
20 and indirect purchasers, the court shall take all steps necessary to
21 avoid duplicate liability including, but not limited to, the
22 transfer and consolidation of all related actions. In actions
23 involving both direct and indirect purchasers, a party shall be

1 entitled to prove as a partial or complete defense to a claim for
2 damages that the illegal overcharge has been passed on to others who
3 are themselves entitled to recover so as to avoid duplication of
4 recovery of damages.

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

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

13 SECTION 2. This act shall become effective November 1, 2009.

14 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 2-17-09 - DO
15 PASS, As Amended and Coauthored.