

## **BILL ANALYSIS**

Senate Research Center  
79R5908 HLT-F

S.B. 542  
By: West, Royce  
Business & Commerce  
3/1/2005  
As Filed

### **AUTHOR'S/SPONSOR'S STATEMENT OF INTENT**

The Texas attorney general has requested an amendment to the Texas Free Enterprise and Antitrust Act to permit indirect purchasers to recover damages in antitrust actions, and vesting exclusive authority to bring such actions to the Office of the Attorney General (OAG). Failure to enact such an amendment will result in the OAG continuing to recover less for Texas consumers than is recovered by attorneys general in similarly situated and less populous states that have adopted such legislation. As proposed, S.B. 542 permits indirect purchasers to recover for violations of state antitrust law.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subchapter C, Chapter 15, Business & Commerce Code, by adding Section 15.211, as follows:

Sec. 15.211. ATTORNEY GENERAL MAY BRING SUIT ON BEHALF OF INJURED PERSONS. (a) Authorizes the attorney general, subject to this section, to bring suit under Section 15.21 (Suits by Injured Persons or Governmental Entities) of this Act on behalf of a governmental entity and, as *parens patriae*, on behalf of an individual residing in this state for damages incurred directly or indirectly because of a violation of Subsection (a), (b), or (c), of Section 15.05 (Unlawful Practices) of this Act.

(b) Requires the attorney general to take certain actions in any suit brought under Subsection (a).

(c) Authorizes an individual on whose behalf the attorney general brings suit to elect to exclude from adjudication the portion of damages attributable to the individual by filing notice of the individual's election with the court not later than the date specified in the notice provided under Subsection (b).

(d) Prohibits an individual who does not comply with Subsection (c) from filing suit in the individual's own name for the injury alleged in the suit filed by the attorney general while that suit is pending.

(e) Provides that the final judgment in a suit filed by the attorney general on behalf of an individual who does not comply with Subsection (c) is *res judicata* as to any claim that could be brought by the individual based on the facts alleged or proven in the suit.

(f) Requires the damages awarded in a suit brought by the attorney general on behalf of an individual to be distributed to ensure that each individual has a reasonable opportunity to secure a fair share of the damages.

(g) Requires the court, on the defendant's motion, to take all necessary steps to avoid duplicate liability for the same injury in any suit in which claims are

asserted against a defendant by both the attorney general on behalf of indirect purchasers and by direct purchasers.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: upon passage or September 1, 2005.