

FILED MAR 07 1991

SENATE FILE 321  
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 93)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

A BILL FOR

1 An Act relating to allowing persons indirectly injured by  
2 antitrust violations to sue for redress.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ICWA:

4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

1 Section 1. Section 553.12, unnumbered paragraph 1, Code  
2 1991, is amended to read as follows:

3 The state or a person who is directly or indirectly injured  
4 or threatened with injury by conduct prohibited under this  
5 chapter may bring suit to:

52627

6

EXPLANATION

7 This bill amends the "Iowa Competition Law" to allow  
8 persons who have been indirectly injured by a violation of the  
9 law to sue for redress.

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35

## SENATE FILE 321

S-3362

1 Amend Senate File 321 as follows:

2 1. Page 1, by inserting after line 5 the  
3 following:

4 "Sec. \_\_\_\_\_. Section 553.12, subsection 3, paragraph  
5 b, Code 1991, is amended by striking the paragraph.

6 Sec. \_\_\_\_\_. Section 553.12, subsection 4, Code 1991,  
7 is amended by striking the subsection.

8 Sec. \_\_\_\_\_. Section 553.12, Code 1991, is amended by  
9 adding the following new subsections:

10 NEW SUBSECTION. 5. The attorney general may bring  
11 a civil action to secure monetary relief as provided  
12 in this section for an indirect injury sustained by  
13 the state to its property by reason of a violation of  
14 this chapter. The court shall exclude from the amount  
15 of monetary relief awarded in the action the amount of  
16 monetary relief which duplicates amounts previously  
17 awarded for the same injury.

18 NEW SUBSECTION. 5. a. The attorney general may  
19 bring a civil action as parens patriae on behalf of  
20 persons residing in the state, to secure monetary  
21 relief as provided in this section for a direct or  
22 indirect injury sustained by those persons to their  
23 property by reason of a violation of this chapter.  
24 The court shall exclude from the amount of monetary  
25 relief awarded in the action the amount of monetary  
26 relief which duplicates amounts previously awarded for  
27 the same injury or which is properly allocable to  
28 persons who have excluded their claims pursuant to  
29 paragraph "b", subparagraph (2).

30 o. (1) In an action brought under paragraph "a",  
31 the attorney general shall, at the time, in the  
32 manner, and with the content as the court may direct,  
33 cause notice to be given by publication. If the court  
34 finds that notice given solely by publication would  
35 deny due process of law to any person, the court may  
36 direct further notice to that person according to the  
37 circumstances of the case.

38 (2) A person on whose behalf an action is brought  
39 under paragraph "a" may elect to exclude from  
40 adjudication the portion of the state claim for  
41 monetary relief attributable to the person by filing  
42 notice of such election with the court within the time  
43 specified in the notice given pursuant to subparagraph  
44 (1).

45 (3) The final judgment in an action under  
46 paragraph "a" shall be res judicata as to any claim,  
47 under section 553.5, by any person on behalf of whom  
48 the action was brought and who fails to give notice  
49 within the period specified in the notice given  
50 pursuant to subparagraph (1).

S-3362

Page 2

1 c. An action under paragraph "a" shall not be  
2 dismissed or compromised without the approval of the  
3 court, and notice of any proposed dismissal or  
4 compromise shall be given in the manner directed by  
5 the court.

6 d. In an action under paragraph "a" in which it  
7 has been determined that a defendant agreed to fix  
8 prices in violation of this chapter, damages may be  
9 proved and assessed in the aggregate by statistical or  
10 sampling methods, by the computation of illegal  
11 overcharges, or by such other reasonable system of  
12 estimating aggregate damages as the court in its  
13 discretion may permit without the necessity of  
14 separately proving the individual claim of, or amount  
15 of damages to, persons on whose behalf the suit was  
16 brought.

17 e. Monetary relief recovered in an action under  
18 paragraph "a" shall be distributed in the manner  
19 directed by the court or be deemed a civil penalty by  
20 the court and deposited in the general fund of the  
21 state.

22 The distribution procedure adopted shall afford  
23 each person a reasonable opportunity to secure the  
24 person's appropriate portion of the net monetary  
25 relief.

26 NEW SUBSECTION. 7. Recover the necessary costs of  
27 bringing suit, including a reasonable attorney fee."

28 2. By renumbering as necessary.

By AL STURGEON

S-3362 FILED APRIL 9, 1991

ADOPTED (p. 1146)

STURGEON, CH.  
SLIFE  
PATE

SSB 93  
JUDICIARY

SENATE/HOUSE FILE 321  
BY (PROPOSED ATTORNEY GENERAL  
BILL)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

A BILL FOR

1 An Act relating to allowing persons indirectly injured by  
2 antitrust violations to sue for redress.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

1 Section 1. Section 553.12, unnumbered paragraph 1, Code  
2 1991, is amended to read as follows:

3 The state or a person who is directly or indirectly injured  
4 or threatened with injury by conduct prohibited under this  
5 chapter may bring suit to:

6 EXPLANATION

7 This bill amends the "Iowa Competition Law" to allow  
8 persons who have been indirectly injured by a violation of the  
9 law to sue for redress.

10 BACKGROUND STATEMENT

11 SUBMITTED BY THE AGENCY

12 In Illinois v. Illinois Brick Co., the United States  
13 supreme court held that only persons who purchased directly  
14 from a price fixer could recover damages. Thus, if a  
15 manufacturer of a product fixes its price with his  
16 competitors, sells the product to a distributor who then  
17 resells the product to an ultimate end user, only the  
18 distributor who directly purchases the product can sue for the  
19 overcharge. The indirect purchaser has no standing to bring  
20 his or her own suit even if the distributor passes on the  
21 overcharge. As a result of this supreme court decision many  
22 states have passed legislation amending their state antitrust  
23 statutes to allow indirect purchasers the right to sue.  
24 Recently, the United States supreme court upheld the rights of  
25 states to pass this type of legislation, holding that this  
26 area was not preempted by the federal antitrust laws.

27 This bill would allow indirect purchasers, as well as  
28 direct purchasers, to sue for any overcharge caused by the  
29 manufacturer's price-fixing activity which was passed on to  
30 them by the distributor.

31  
32  
33  
34  
35