

House Bill 5214
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SECTION 1. Section 15.21, Business & Commerce Code, is amended by adding Subsections (d) and (e) to read as follows:

(d) The attorney general may bring a civil action against a person on behalf of an individual or governmental entity for injury to that individual's or entity's business or property caused, directly or indirectly, by the person's violation of Section 15.05(a), (b), or (c).

An action under this subsection may be brought in district court in Travis County, or in any county in this state in which a named defendant resides, does business, or maintains a principal office, or in which the individual or governmental entity on whose behalf the action is brought resides at the time of the cause of action or any part of the cause of action accrues. If the attorney general prevails in an action under this subsection, the attorney general shall recover actual damages sustained by the individual or governmental entity, interest on actual damages for the period beginning on the date of service of the attorney general's pleading setting forth a claim under the antitrust laws and ending on the date of judgment (the rate of such interest to be in accordance with Texas law regarding postjudgment interest rates and the amount of interest to be adjusted by the court if it finds that the award of all or part of such interest is unjust in the circumstances), and the cost of suit, including a reasonable attorney's fee, and if applicable, expert witness fees; provided,

SENATE VERSION (IE)

SECTION 1. Section 15.21, Business & Commerce Code, is amended by adding Subsections (d) and (e) to read as follows:

(d) The attorney general may bring a civil action against a person on behalf of an individual or governmental entity for injury to that individual's or entity's business or property caused, directly or indirectly, by the person's violation of Section 15.05(a), (b), or (c), provided that the attorney general shall notify in writing any governmental entity of the attorney general's intention to bring any such action on the governmental entity's behalf, and at any time within 30 days after receiving the notice, the governmental entity may, by formal resolution of its governing body or as otherwise specifically provided by applicable law, withdraw the authority of the attorney general to bring the intended action.

An action under this subsection may be brought in district court in Travis County, or in any county in this state in which a named defendant resides, does business, or maintains a principal office, or in which the individual or governmental entity on whose behalf the action is brought resides at the time of the cause of action or any part of the cause of action accrues. If the attorney general prevails in an action under this subsection, the attorney general shall recover actual damages sustained by the individual or governmental entity, interest on actual damages for the period beginning on the date of service of the attorney general's pleading setting forth a claim under the antitrust laws and ending on the date of judgment (the rate of such interest to be in accordance with Texas law regarding postjudgment interest rates and the amount of interest to be adjusted by the court if it finds that the award of all or part of such interest is unjust in the circumstances), and the cost of suit, including a reasonable attorney's fee, and if applicable, expert witness fees; provided,

CONFERENCE

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however, that if the trier of fact finds that the unlawful conduct was willful or flagrant, the court shall increase the recovery to threefold the damages sustained and the cost of suit, including a reasonable attorney's fee and, if applicable, expert witness fees; provided that interest on actual damages as specified above may not be recovered when recovered damages are increased threefold. In an action under this subsection in which a claim is asserted against a defendant relating to injury to both direct and indirect purchasers, the court shall take all steps necessary to avoid duplicative recovery from that defendant.

SENATE VERSION (IE)

however, that if the trier of fact finds that the unlawful conduct was willful or flagrant, the court shall increase the recovery to threefold the damages sustained and the cost of suit, including a reasonable attorney's fee and, if applicable, expert witness fees; provided that interest on actual damages as specified above may not be recovered when recovered damages are increased threefold. In an action under this subsection in which a claim is asserted against a defendant relating to injury to both direct and indirect purchasers, the court shall take all steps necessary to avoid duplicative recovery from that defendant. In any action brought under this section on behalf of any governmental entity, the state shall retain for deposit in the general revenue fund of the State Treasury, out of the proceeds, if any, resulting from such action, an amount equal to the expense incurred by the state in the investigation and prosecution of such action. [FA1(1)-(2)]

CONFERENCE

(e) For purposes of this section, "governmental entity" means:
(1) this state, including each department, board, agency, instrumentality, authority, or commission of this state;
(2) a political subdivision of this state, including a county, city, municipality, school district, local improvement district, law enforcement authority, or special district, including a water, sanitation, fire protection, metropolitan, irrigation,

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(1) this state, including each department, board, agency, instrumentality, authority, or commission of this state;
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drainage, or other special district;
(3) a municipal, quasi-municipal, or public corporation
organized under the Texas Constitution or other law; and
(4) a department, board, agency, instrumentality, authority, or
commission of an entity described by Subdivision (2) or (3).

SECTION 2. Sections 15.21(d) and (e), Business & Commerce Code, as added by this Act, apply only to a cause of action that accrues on or after the effective date of this Act.

SECTION 3. This Act takes effect September 1, 2023.

SENATE VERSION (IE)

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commission of an entity described by Subdivision (2) or (3).

SECTION 2. Same as House version.

SECTION 3. Same as House version.

CONFERENCE