

**Department of Legislative Services**

Maryland General Assembly

2001 Session

**FISCAL NOTE**

Senate Bill 484

(Senator Green, *et al.*)

Judicial Proceedings

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**Commercial Law - Antitrust - Civil Actions**

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This bill authorizes any person who has been injured or threatened with injury by a violation of the State's antitrust provisions to bring an action for damages, an injunction, or both, against the person who has committed the violation, regardless of whether the person bringing the action dealt directly with the defendant. The bill authorizes a defendant, in order to avoid duplicative liability, to show that all or part of the alleged overcharge was passed on to a later purchaser or ultimate end-user who is also maintaining an action for damages against the defendant. The bill also authorizes the Attorney General to sue as *parens patriae* on behalf of natural persons residing in the State to recover damages provided under State or federal antitrust provisions. A *parens patriae* action is superior to any class action brought on behalf of the same natural persons.

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**Fiscal Summary**

**State Effect:** The bill's changes could be handled with existing budgeted resources of the Antitrust Division of the Office of the Attorney General.

**Local Effect:** None.

**Small Business Effect:** Meaningful.

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**Analysis**

**Current Law:** A person whose business or property has been injured or threatened with injury by a violation of the State's antitrust provisions may maintain an action for

damages, an injunction, or both against any person who committed the violation. The United States, the State, or any of the State's political subdivisions may bring an action, regardless of whether it dealt directly or indirectly with the person who violated the State's antitrust provisions. In an action for damages, the defendant may, in order to avoid duplicative liability, prove that all or part of the alleged overcharge was passed on to the plaintiff by an intermediate purchaser or seller who paid an alleged overcharge. The Attorney General may sue on behalf of the State or any of its political subdivisions to recover damages provided under State or federal antitrust provisions.

If the court in a State antitrust suit issues an injunction, the plaintiff is entitled to reasonable attorney's fees. If damages are awarded, the plaintiff is entitled to triple damages, plus costs and attorney's fees.

**Background:** In *Illinois Brick Co. v. Illinois*, 431 U.S. 720 (1977), the U.S. Supreme Court held that indirect purchasers may not recover from the antitrust violator under federal antitrust laws. Further, in *Hanover Shoe, Inc. v. United Shoe Machinery Corp.*, 392 U.S. 481 (1968), the court rejected the defense that indirect rather than direct purchasers were the parties injured by the antitrust violation. In response to the "indirect purchaser doctrine" of *Illinois Brick*, many states authorized indirect purchasers to sue violators of state antitrust laws. Two states, Maryland and Colorado, have authorized only governmental entities to recover as indirect purchasers. Various other states allow indirect purchasers to recover damages caused by overcharging under other legal theories.

A *parens patriae* action is one in which a state, as sovereign and guardian of persons who cannot protect their own legal interests, has standing to sue on their behalves. While the federal antitrust provisions allow state attorneys general to bring *parens patriae* actions, the Court of Appeals, in *State v. Jonathan Logan, Inc.*, 301 Md. 63 (1984), found that no *parens patriae* cause of action exists under Maryland's antitrust provisions.

**Small Business Effect:** Small businesses could bring actions as indirect purchasers and recover triple damages under the State's antitrust laws.

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### Additional Information

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Judiciary (Administrative Office of the Courts), Office of the Attorney General, Department of Legislative Services

**Fiscal Note History:** First Reader – February 28, 2001  
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