

By Senator Campbell

33-370-98

1 A bill to be entitled
 2 An act relating to antitrust claims; creating
 3 s. 542.195, F.S.; providing that an indirect
 4 purchaser may claim an injury under ch. 542,
 5 F.S., or part II, ch. 501, F.S., for an
 6 unlawful overcharge for goods or services;
 7 providing that passing an unlawful overcharge
 8 to others is a partial or complete defense;
 9 authorizing the court to consolidate cases,
 10 apportion damages, and delay disbursement of
 11 damages; providing for the defendant to receive
 12 a setoff against damages under certain
 13 circumstances; providing for proving and
 14 apportioning damages in a class action;
 15 providing an effective date.

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 17 Be It Enacted by the Legislature of the State of Florida:

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 19 Section 1. Section 542.195, Florida Statutes, is
 20 created to read:

21 542.195 Indirect purchasers; authorization to pursue
 22 antitrust claims.--

23 (1) Any indirect purchaser in the chain of
 24 manufacture, production, or distribution of goods or services,
 25 upon proof of payment of all or any part of an unlawful
 26 overcharge for such goods or services, shall be deemed to be
 27 injured under this chapter and part II of chapter 501, the
 28 Florida Deceptive and Unfair Trade Practices Act.

29 (2) In an action under this chapter or part I of
 30 chapter 501 which involves both direct and indirect purchasers
 31 or multiple classes of indirect purchasers, the defendant may

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

5 (3) If an antitrust claim is asserted by a direct
6 purchaser and an indirect purchaser in the same court or in
7 different courts or jurisdictions, the court may stay or
8 consolidate the cases, apportion damages, or delay
9 disbursement of damages to avoid multiplicity of suits, avoid
10 duplication of recovery of damages, and obtain substantial
11 fairness to all concerned parties.

12 (4) In any action where a indirect purchaser seeks
13 recovery of damages under this chapter or part II of chapter
14 501, the defendant is entitled to a partial or complete
15 setoff, in the interest of justice, upon proof that the
16 defendant has previously paid some or all of such damages to a
17 direct purchaser based on the same unlawful conduct, whether
18 through settlement or judgment. Any setoff provided under this
19 subsection shall be ordered by the court in a postverdict
20 proceeding, and the existence or possibility of such setoff
21 may not be disclosed to the jury during trial.

22 (5) In any class action brought under this section by
23 a purchaser or seller, the fact of injury and the amount of
24 damages sustained by the members of the class may be proven on
25 a class-wide basis without requiring proof of such matters by
26 each individual member of the class. Such damages may be
27 proved and assessed in the manner prescribed in s.
28 542.22(3)(e). The percentage of total damages attributable to
29 a member of such class shall be the same as the ratio of such
30 member's purchases or sales to the purchases or sales of the
31 class as a whole.

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Section 2. This act shall take effect July 1, 1998.

SENATE SUMMARY

Provides that an indirect purchaser may claim damages under the Florida Antitrust Act of 1980 and the Florida Deceptive and Unfair Trade Practices Act for an unlawful overcharge for goods or services. Provides that proof that the claimant passed the overcharge to others is a partial or complete defense to a claim for damages. Provides for the defendant to claim a setoff for damages paid to a direct purchaser based on the same unlawful conduct. Provides that in a class action, the damages sustained may be proven on a class-wide basis. Provides for apportioning the damages attributable to members of the class.