

# SENATE BILL REPORT

## SB 5228

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As Reported By Senate Committee On:  
Judiciary, February 20, 2007

**Title:** An act relating to actions under chapter 19.86, the consumer protection act.

**Brief Description:** Protecting indirect purchasers for injuries arising from state antitrust law violations.

**Sponsors:** Senators Kline, McCaslin and Weinstein; by request of Attorney General.

**Brief History:**

**Committee Activity:** Judiciary: 1/31/07, 2/20/07 [DPS, DNP].

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### SENATE COMMITTEE ON JUDICIARY

**Majority Report:** That Substitute Senate Bill No. 5228 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kline, Chair; Tom, Vice Chair; McCaslin, Ranking Minority Member; Murray and Weinstein.

**Minority Report:** Do not pass.

Signed by Senator Carrell.

**Staff:** Dawn Noel (786-7472)

**Background:** Under the state's Unfair Business Practices - Consumer Protection Act (CPA), various business practices are declared unlawful. These practices include engaging in monopoly, and the restraint of trade or competition.

The Attorney General may bring an action to restrain a person from violating the CPA. An action by the Attorney General may seek to prevent violations of the act and may seek relief for persons injured by violation of the CPA. As a result of a federal court ruling, a question has arisen as to whether the Attorney General is authorized to bring an action for a CPA violation on behalf of persons who are "indirect purchasers" of goods or services. An example of an indirect purchaser might be the ultimate consumer of a product that was bought from a retailer who bought from a producer who violated the act. The retailer would be the direct purchaser, and the consumer would be the indirect purchaser of the product.

Many states have enacted laws that allow an indirect purchaser to bring a suit directly, while others allow such suits only when brought by the Attorney General on behalf of the indirect purchasers. Washington has not enacted either type of law. However, based in part on the

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state court of appeals decision in *Blewett v. Abbott Laboratories*, 86 Wn. App 782 (1997), the state Attorney General has brought suits on behalf of indirect purchasers under the common law doctrine of *parens patriae*, which permits the state (literally as "parent of the country") to bring legal actions on behalf of individuals in order to protect them from harm. The Attorney General reports, however, that in at least one multi-state case, a federal judge has rejected the Attorney General's attempts to sue on behalf of indirect purchasers.

**Summary of Bill:** The bill as referred to committee not considered.

**EFFECT OF CHANGES MADE BY RECOMMENDED SUBSTITUTE AS PASSED COMMITTEE (Judiciary):** The Attorney General is given explicit authority to bring *parens patriae* actions under the CPA on behalf of persons residing in the state. In cases in which the Attorney General has brought an action under the CPA for antitrust violations, the court is authorized to order restoration for an injured party regardless of whether the injury was the result of a direct or indirect purchase of goods or services. The ability of the state itself to sue for damages under the CPA is expressly made applicable to cases in which the state is indirectly injured by a violation of the act's antitrust provisions.

Courts are required to (1) exclude from the amount of monetary relief awarded in antitrust actions brought by the Attorney General any amount already awarded for the same violation; and (2) consider consolidating or coordinating related actions to avoid duplicate recovery. The title is broadened to account for the generally applicable *parens patriae* authority conferred upon the Attorney General, which is intended to extend to actions brought based on any violation of the CPA (including consumer protection violations for unfair and deceptive trade practices), not just of its antitrust provisions.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.

**Staff Summary of Public Testimony:** PRO: This bill would allow the state Attorney General (AG) to bring an action as *parens patriae*, and would allow a court to make additional orders or judgments that are typically ancillary to the usual damages. Based on a federal ruling, the AG now runs the risk of a federal judge disagreeing with a longstanding interpretation which this bill would codify. The AG has brought in \$48 million on behalf of consumers based on this interpretation. Washington is in the small minority of states which has not clarified the availability of indirect purchaser remedies. It is important to restore integrity to the AG to protect citizens and small businesses in Washington.

**Persons Testifying:** PRO: Senator Kline, prime sponsor; Mark Brevard, Attorney General's Office; Larry Shannon, Washington State Trial Lawyers Association.