

MAINE STATE LEGISLATURE

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(New Title)
New Draft of: H. P. 1077, L. D. 1330
SECOND REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

Legislative Document

No. 2014

H. P. 1975

House of Representatives, March 18, 1980

Reported by the Majority from the Committee on Business Legislation and printed under Joint Rules No. 2.

EDWIN H. PERT, Clerk of the House

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY

AN ACT to Improve Governmental Remedies for Violations of the Antitrust Laws.

Be it enacted by the People of the State of Maine, as follows:

10 MRSA § 1104, as repealed and replaced by PL 1977, c. 175, § 3 is amended to read:

§ 1104. Right of action and damages

Any person, including the State or any political or administrative subdivision thereof, including, without limitation, counties, districts, towns, villages, plantations, unorganized territories, boards, commissions, agencies, departments, bureaus, authorities, school administrative units, school districts, quasi-municipal corporations, the University of Maine and the Maine Maritime Academy, injured in its business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by ~~sections~~ **section 1101 and or 1102**, may sue therefor in a civil action and shall recover threefold the damages sustained and costs of suit, including necessary and reasonable investigative costs, reasonable expert's fees and a reasonable attorney fee.

The Attorney General may sue in a civil action on behalf of the State or any political or administrative subdivision thereof, including, without limitation, those enumerated in the first paragraph, indirectly injured in its business or property by any other person or corporation by reason of anything forbidden or

declared to be unlawful by section 1101 or 1102 and the Attorney General shall recover threefold the damages sustained and costs of suit, including necessary and reasonable investigative costs, reasonable expert's fees and a reasonable attorney fee.

In any action brought under this section, the defendant shall be entitled to prove, as a partial or complete defense to a damage claim, in order to avoid duplicative liability to it, that the defendant has already paid pursuant to court order some or all of what would otherwise constitute plaintiff's damage.

STATEMENT OF FACT

In Illinois Brick Co. v. Illinois, the United States Supreme Court ruled that a person or corporation may be sued for federal antitrust violations only by the direct buyer. Anyone who buys indirectly through a middleman is barred from recovering damages.

The state's antitrust law is closely modelled after the federal law. The **Illinois Brick** decision makes it doubtful that anyone who is only an indirect buyer can recover damages for state antitrust violations. This is especially significant to the State, which makes almost all of its purchases through middlemen.

This bill reverses any effect that the **Illinois Brick** decision may have on state antitrust law insofar as public purchasers are concerned. The bill makes clear that under state antitrust law the Attorney General may bring suit on behalf of the State, or any public entity run with public money, to recover damages whether or not it buys through a middleman.

Title 10, section 1104, first paragraph enumerates the kinds of political or administrative subdivisions on whose behalf the Attorney General may sue. The 2nd paragraph makes clear that only the Attorney General has legal standing to sue on behalf of the State or its subdivision. However, the violator will be permitted to prove as a partial or complete defense that he or she has already paid a damage claim for the same injury.