

JAN 19 2007

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# A BILL FOR AN ACT

RELATING TO UNFAIR TRADE PRACTICES.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. Section 480-13, Hawaii Revised Statutes, is  
2 amended by amending subsections (a), (b), and (c) to read as  
3 follows:

4           "(a) Except as provided in subsections (b) and (c), any  
5 person who is injured in the person's business or property by  
6 reason of anything forbidden or declared unlawful by this  
7 chapter:

8           (1) May sue for damages sustained by the person, and, if  
9 the judgment is for the plaintiff, the plaintiff shall  
10 be awarded the greater of a sum not less than \$1,000  
11 or threefold damages sustained by the plaintiff  
12 [~~sustained, whichever sum is the greater, and~~],  
13 reasonable attorney's fees together with the costs of  
14 [~~suit~~] the lawsuit, and reasonable expert witness'  
15 fees and costs of travel for the witness; provided  
16 that indirect purchasers injured by an illegal  
17 overcharge shall recover only compensatory damages,



1 and reasonable attorney's fees together with the costs  
2 of ~~[suit]~~ the lawsuit, and reasonable expert witness'  
3 fees and costs of travel for the witness in actions  
4 not brought under section 480-14(c); and

5 (2) May bring proceedings to enjoin the unlawful  
6 practices, and if the decree is for the plaintiff, the  
7 plaintiff shall be awarded reasonable attorney's fees  
8 together with the costs of ~~[suit.]~~ the lawsuit and  
9 reasonable expert witness' fees and costs of travel of  
10 the witness.

11 (b) Any consumer who is injured by any unfair or deceptive  
12 act or practice forbidden or declared unlawful by section 480-2:

13 (1) May sue for damages sustained by the consumer, and, if  
14 the judgment is for the plaintiff, the plaintiff shall  
15 be awarded the greater of a sum not less than \$1,000  
16 or threefold damages sustained by the plaintiff  
17 ~~[sustained, whichever sum is the greater, and],~~  
18 reasonable attorney's fees together with the costs of  
19 ~~[suit]~~ the lawsuit, and reasonable expert witness'  
20 fees and costs of travel for the witness; provided  
21 that where the plaintiff is an elder, the plaintiff,  
22 in the alternative, may be awarded the greater of a



1           sum not less than \$5,000 or threefold any damages  
2           sustained by the plaintiff [~~whichever sum is the~~  
3           ~~greater, and~~], reasonable attorney's fees together  
4           with the costs of [~~suit.~~] the lawsuit, and reasonable  
5           expert witness' fees and costs of travel for the  
6           witness. In determining whether to adopt the \$5,000  
7           alternative amount in an award to an elder, the court  
8           shall consider the factors set forth in section 480-  
9           13.5; and

10           (2) May bring proceedings to enjoin the unlawful  
11           practices, and if the decree is for the plaintiff, the  
12           plaintiff shall be awarded reasonable attorney's fees  
13           together with the costs of [~~suit.~~] the lawsuit and  
14           reasonable expert witness' fees and costs of travel  
15           for the witness.

16           (c) The remedies provided in subsections (a) and (b) shall  
17           be applied in class action and de facto class action lawsuits or  
18           proceedings, including actions brought on behalf of direct or  
19           indirect purchasers; provided that:

20           (1) The minimum \$1,000 recovery provided in subsections  
21           (a) and (b) shall not apply in a class action or a de  
22           facto class action lawsuit;



- 1           (2) In class actions or de facto class actions where both  
2           direct and indirect purchasers are involved, or where  
3           more than one class of indirect purchasers are  
4           involved, a defendant shall be entitled to prove as a  
5           partial or complete defense to a claim for  
6           compensatory damages that the illegal overcharge has  
7           been passed on or passed back to others who are  
8           themselves entitled to recover so as to avoid the  
9           duplication of recovery of compensatory damages;
- 10          (3) That portion of threefold damages in excess of  
11          compensatory damages shall be apportioned and  
12          allocated by the court in its [~~exercise of~~] discretion  
13          [~~so as~~] to promote effective enforcement of this  
14          chapter and deterrence from violation of its  
15          provisions;
- 16          (4) In no event shall an indirect purchaser be awarded  
17          less than the full measure of compensatory damages  
18          attributable to the indirect purchaser;
- 19          (5) In any lawsuit or lawsuits in which claims are  
20          asserted by both direct purchasers and indirect  
21          purchasers, the court is authorized to exercise its  
22          discretion in the apportionment of damages, and in the



1 transfer and consolidation of cases to avoid the  
2 duplication of the recovery of damages and the  
3 multiplicity of suits, and in other respects to obtain  
4 substantial fairness;

5 (6) In any case in which claims are being asserted by a  
6 part of the claimants in a court of this State and  
7 another part of the claimants in a court other than of  
8 this State, where the claims arise out of same or  
9 overlapping transactions, the court is authorized to  
10 take all steps reasonable and necessary to avoid  
11 duplication of recovery of damages and multiplicity of  
12 suits, and in other respects, to obtain substantial  
13 fairness;

14 (7) In instances where indirect purchasers file an action  
15 and obtain a judgment or settlement prior to the  
16 completion of a direct purchaser's action in courts  
17 other than this State, the court shall delay  
18 disbursement of the damages until such time as the  
19 direct purchaser's suits are resolved to either final  
20 judgment, consent decree or settlement, or in the  
21 absence of a direct purchaser's lawsuit in the courts  
22 other than this State by direct purchasers, the



1 expiration of the statute of limitations, or in [such]  
 2 a manner that will minimize duplication of damages to  
 3 the extent reasonable and practicable, avoid  
 4 multiplicity of suit, and obtain substantial fairness;  
 5 and

6 (8) In the event damages in a class action or de facto  
 7 class action remain unclaimed by the direct or  
 8 indirect purchasers, the class representative or the  
 9 attorney general shall apply to the court and such  
 10 funds shall escheat to the State upon showing that  
 11 reasonable efforts made by the State to distribute the  
 12 funds have been unsuccessful."

13 SECTION 2. This Act does not affect rights and duties that  
 14 matured, penalties that were incurred, and proceedings that were  
 15 begun, before its effective date.

16 SECTION 3. Statutory material to be repealed is bracketed  
 17 and stricken. New statutory material is underscored.

18 SECTION 4. This Act shall take effect upon its approval.

19 INTRODUCED BY: *R. C. J. [Signature]*  
*by request*

**Report Title:**

Unfair Trade Practices; Expert Witness' Fees

**Description:**

Provides for recovery of expert witness' fees by prevailing plaintiff in consumer protection cases.

