

1 AN ACT concerning antitrust.

2 Be it enacted by the People of the State of Illinois,
3 represented in the General Assembly:

4 Section 5. The Illinois Antitrust Act is amended by
5 changing Sections 3, 6, 7, 7.2, 7.5, 7.6, and 7.7 and by
6 adding Section 12 as follows:

7 (740 ILCS 10/3) (from Ch. 38, par. 60-3)

8 Sec. 3. Every person shall be deemed to have committed a
9 violation of this Act who shall:

10 (1) Make any contract with, or engage in any combination
11 or conspiracy with, any other person who is, or but for a
12 prior agreement would be, a competitor of such person:

13 a. for the purpose or with the effect of fixing,
14 controlling, or maintaining the price or rate charged for any
15 commodity sold or bought by the parties thereto, or the fee
16 charged or paid for any service performed or received by the
17 parties thereto;

18 b. fixing, controlling, maintaining, limiting, or
19 discontinuing the production, manufacture, mining, sale or
20 supply of any commodity, or the sale or supply of any
21 service, ~~for the purpose or with the effect stated in~~
22 ~~paragraph a. of subsection (1);~~

23 c. allocating or dividing customers, territories,
24 supplies, sales, or markets, functional or geographical, for
25 any commodity or service; or

26 (1.5) making any contract with, or engaging in any
27 combination or conspiracy with, any purchaser from a person
28 who purchases for resale, for the purpose of fixing,
29 controlling, or maintaining the minimum price or rate charged
30 for any commodity sold by the purchaser upon resale;

31 (2) By contract, combination, or conspiracy with one or

1 more other persons unreasonably restrain trade or commerce by
2 any means, including without limitation:~~;-er~~

3 a. entering into any lease or sale or contract for sale
4 of goods, wares, merchandise, machinery, supplies, or other
5 commodities, or services (including master antenna television
6 service), whether patented or unpatented, for use,
7 consumption, enjoyment, or resale, or fixing a price charged
8 thereof, or discount from, or rebate upon, such price, on the
9 condition, agreement, or understanding that the lessee or
10 purchaser thereof shall not use or deal in the goods, wares,
11 merchandise, machinery, supplies, or other commodity or
12 service (including cable television or cable television relay
13 service), of a competitor or competitors of the lessor or
14 seller;

15 b. participating in any act of boycott, coercion,
16 intimidation or refusal to deal;

17 c. participating in any allocation of customer or
18 geographic markets as between a seller and a purchaser who
19 purchases commodities from the seller for resale;

20 d. entering into any arrangement as between a seller and
21 a purchaser regarding the maximum price at which commodities
22 are resold by the purchaser; or

23 e. entering into any arrangement as between a seller and
24 purchaser that the seller will sell a commodity or service
25 ("tying product") only on condition that the buyer also
26 purchase a different commodity or service ("tied product"),
27 where the restraint of trade occurs or is likely to occur in
28 the market for the tied product. For purposes of this
29 subdivision (e), evidence that the seller has significant
30 economic power in the market for the tying product creates a
31 rebuttable presumption of restraint of trade in the market
32 for the tied product;

33 (3) Establish, maintain, use, or attempt to acquire
34 monopoly power in any relevant market ~~ever--any--substantial~~

1 part--of--trade--or--commerce--of--this--State for the purpose of
 2 excluding competition or of controlling, fixing, or
 3 maintaining prices in such relevant market trade--or--commerce;
 4 or

5 (4) Blank Lease--or--make--a--sale--or--contract--for--sale--of
 6 goods,--wares,--merchandise,--machinery,--supplies,--or--other
 7 commodities,--or--services--(including--master--antenna--television
 8 service),--whether--patented--or--unpatented,--for--use,--
 9 consumption,--enjoyment,--or--resale,--or--fix--a--price--charged
 10 thereof,--or--discount--from,--or--rebate--upon,--such--price,--on--the
 11 condition,--agreement,--or--understanding--that--the--lessee--or
 12 purchaser--thereof--shall--not--use--or--deal--in--the--goods,--wares,
 13 merchandise,--machinery,--supplies,--or--other--commodity--or
 14 service--(including--cable--television--service--or--cable
 15 television--relay--service),--of--a--competitor--or--competitors--of
 16 the--lessor--or--seller,--where--the--effect--of--such--lease,--sale--or
 17 contract--for--such--sale--or--such--condition,--agreement,--or
 18 understanding--may--be--to--substantially--lessen--competition--or
 19 tend--to--create--a--monopoly--in--any--line--of--commerce; or

20 (5) Being an employee, officer or agent of any foreign
 21 government, or an employee, officer or agent of a corporation
 22 or other entity which does business with or seeks to do
 23 business with any foreign government or instrumentality
 24 thereof; enforce, attempt to enforce, agree to or take action
 25 to forward the aims of, any discriminatory practice by the
 26 foreign government which is based on race, color, creed,
 27 national ancestry or sex or on ethnic or religious grounds,
 28 where such conduct, course of conduct, or agreement takes
 29 place in whole or in part within the United States and
 30 affects business in this State.

31 (Source: P.A. 82-219.)

32 (740 ILCS 10/6) (from Ch. 38, par. 60-6)

33 Sec. 6. Every person who shall knowingly do any of the

1 acts prohibited by subsection ~~subsections~~ (1) and item (a) of
2 subsection (2) ~~(4)~~ of Section 3 of this Act commits a Class 4
3 felony and shall be punished by a fine not to exceed
4 \$1,000,000 if a corporation, or, if any other person,
5 \$100,000.

6 (1) The Attorney General, with such assistance as he may
7 from time to time require of the State's Attorneys in the
8 several counties shall investigate suspected criminal
9 violations of this Act and shall commence and try all
10 prosecutions under this Act. Prosecutions under this Act may
11 be commenced by complaint, information, or indictment. With
12 respect to the commencement and trial of such prosecutions,
13 the Attorney General shall have all of the powers and duties
14 vested by law in State's Attorneys with respect to criminal
15 prosecutions generally.

16 (2) A prosecution for any offense in violation of
17 Section 6 of this Act must be commenced within 4 years after
18 the commission thereof, provided, however, that the running
19 of the foregoing statute of limitations shall be suspended
20 during the pendency of any pending complaint, information, or
21 indictment filed by the United States as set forth in
22 subsection (3) of this Section, and for one year thereafter.

23 (3) The Attorney General shall not commence prosecutions
24 under this Act against any defendant who, at the time, is a
25 defendant with regard to any current pending complaint,
26 information or indictment filed by the United States for
27 violation, or alleged violation, of the Federal Anti-Trust
28 Statutes (including but not being limited, Act of July 2,
29 1890, Ch. 647, 26 U.S.Stat. 209, 15 U.S.C.A., Secs. 1-7; Act
30 of Oct. 15, 1914, Ch. 323, 38 U.S.Stat. 730, 15 U.S.C.A.
31 Secs. 12-27, 44; Act of August 17, 1937, Ch. 690, Title VIII,
32 50 U.S.Stat. 693, 15 U.S.C.A. Sec. 1; Act of July 7, 1955,
33 Ch. 281, 69 U.S.Stat. 282, 15 U.S.C.A. Secs. 1-3; Act of May
34 26, 1938, Ch. 283, 52 U.S.Stat. 446, 15 U.S.C.A. Sec. 13-C;

1 and any similar Acts passed in the future) involving
2 substantially the same subject matter.

3 (Source: P.A. 83-238.)

4 (740 ILCS 10/7) (from Ch. 38, par. 60-7)

5 Sec. 7. The following civil actions and remedies are
6 authorized under this Act:

7 (1) The Attorney General, with such assistance as he may
8 from time to time require of the State's Attorneys in the
9 several counties, shall bring suit in the Circuit Court to
10 prevent and restrain violations of Section 3 of this Act. In
11 such a proceeding, the court shall determine whether a
12 violation has been committed, and shall enter such judgment
13 as it considers necessary to remove the effects of any
14 violation which it finds, and to prevent such violation from
15 continuing or from being renewed in the future. The court,
16 in its discretion, may exercise all powers necessary for this
17 purpose, including, but not limited to, injunction,
18 divestiture of property, divorcement of business units,
19 dissolution of domestic corporations or associations, and
20 suspension or termination of the right of foreign
21 corporations or associations to do business in the State of
22 Illinois.

23 (2) Any person who has been injured in his business or
24 property, or is threatened with such injury, by a violation
25 of Section 3 of this Act may maintain an action in the
26 Circuit Court for damages, or for an injunction, or both,
27 against any person who has committed such violation. If, in
28 an action for an injunction, the court issues an injunction,
29 the plaintiff shall be awarded costs and reasonable
30 attorney's fees. In an action for damages, if injury is
31 found to be due to a violation of subsections (1) or (4) of
32 Section 3 of this Act, the person injured shall be awarded 3
33 times the amount of actual damages resulting from that

1 violation, together with costs and reasonable attorney's
2 fees. If injury is found to be due to a violation of
3 subsections (2) or (3) of Section 3 of this Act, the person
4 injured shall recover the actual damages caused by the
5 violation, together with costs and reasonable attorney's
6 fees, and if it is shown that such violation was willful, the
7 court may, in its discretion, increase the amount recovered
8 as damages up to a total of 3 times the amount of actual
9 damages. This State, counties, municipalities, townships and
10 any political subdivision organized under the authority of
11 this State, and the United States, are considered a person
12 having standing to bring an action under this subsection.
13 The Attorney General may bring an action on behalf of this
14 State, counties, municipalities, townships and other
15 political subdivisions organized under the authority of this
16 State to recover the damages under this subsection or by any
17 comparable Federal law.

18 No provision of this Act shall deny any person who is an
19 indirect purchaser the right to sue for damages. Provided,
20 however, that in any case in which claims are asserted
21 against a defendant by both direct and indirect purchasers,
22 the court shall take all steps necessary to avoid duplicate
23 liability for the same injury including transfer and
24 consolidation of all actions. Provided further that no
25 person other than the Attorney General of this State shall be
26 authorized to maintain a class action in any court of this
27 State for indirect purchasers asserting claims under this
28 Act.

29 Beginning January 1, 1970, a file setting out the names
30 of all special assistant attorneys general retained to
31 prosecute antitrust matters and containing all terms and
32 conditions of any arrangement or agreement regarding fees or
33 compensation made between any such special assistant attorney
34 general and the office of the Attorney General shall be

1 maintained in the office of the Attorney General, open during
2 all business hours to public inspection.

3 Any action for damages under this subsection is forever
4 barred unless commenced within 4 years after the cause of
5 action accrued, except that, whenever any action is brought
6 by the Attorney General for a violation of this Act, the
7 running of the foregoing statute of limitations, with respect
8 to every private right of action for damages under the
9 subsection which is based in whole or in part on any matter
10 complained of in the action by the Attorney General, shall be
11 suspended during the pendency thereof, and for one year
12 thereafter. No cause of action barred under existing law on
13 July 21, 1965 shall be revived by this Act. In any action
14 for damages under this subsection the court may, in its
15 discretion, award reasonable fees to the prevailing defendant
16 upon a finding that the plaintiff acted in bad faith,
17 vexatiously, wantonly or for oppressive reasons.

18 (3) Upon a finding that any domestic or foreign
19 corporation organized or operating under the laws of this
20 State has been engaged in conduct prohibited by Section 3 of
21 this Act, or the terms of any injunction issued under this
22 Act, a circuit court may, upon petition of the Attorney
23 General, order the revocation, forfeiture or suspension of
24 the charter, franchise, certificate of authority or
25 privileges of any corporation operating under the laws of
26 this State, or the dissolution of any such corporation.

27 (4) In lieu of any criminal penalty otherwise prescribed
28 for a violation of this Act, and in addition to any action
29 under this Act or any Federal antitrust law, the Attorney
30 General may bring an action in the name and on behalf of the
31 people of the State against any person, trustee, director,
32 manager or other officer or agent of a corporation, or
33 against a corporation, domestic or foreign, to recover a
34 penalty not to exceed \$1,000,000 ~~\$100,000~~ from every

1 corporation or \$100,000 ~~\$50,000~~ from every other person for
 2 any act herein declared illegal. The action must be brought
 3 within 4 years after the commission of the act upon which it
 4 is based. Nothing in this subsection shall impair the right
 5 of any person to bring an action under subsection (2) of this
 6 Section.

7 (5) In any action by the Attorney General under this
 8 Act:

9 (a) All amounts recovered in the form of statutory
 10 penalties, expenses, costs, attorneys fees or any other
 11 monetary recovery not designated as damages or
 12 restitution shall be paid into the Attorney General's
 13 Court Ordered and Voluntary Compliance Payment Projects
 14 Fund.

15 (b) If the Attorney General obtains a recovery of
 16 damages of restitution, an amount equal to the Attorney
 17 General's costs, expenses and attorneys fees incurred in
 18 connection with such action, to the extent not separately
 19 provided for as part of the recovery, shall be paid from
 20 the recovery into the Attorney General Court Ordered and
 21 Voluntary Compliance Payment Projects Fund. The amount
 22 of costs and expenses to be paid into the Fund shall be
 23 the actual amounts expended by the Attorney General. The
 24 amount for attorneys fees to be paid into the Fund shall
 25 be an amount reasonably estimated by the Attorney
 26 General.

27 (Source: P.A. 83-1362.)

28 (740 ILCS 10/7.2) (from Ch. 38, par. 60-7.2)

29 Sec. 7.2. Whenever it appears to the Attorney General
 30 that any person has engaged in, is engaging in, or is about
 31 to engage in any act or practice prohibited by this Act, or
 32 that any person has assisted or participated in any agreement
 33 or combination of the nature described herein, he may, in his

1 discretion, conduct an investigation as he deems necessary in
2 connection with the matter and has the authority prior to or
3 after the commencement of any civil or criminal action as
4 provided for in the Act to subpoena witnesses, and pursuant
5 to a subpoena (i) compel their attendance for the purpose of
6 examining, ~~examine~~ them under oath, or (ii) require the
7 production of any books, documents, records, writings or
8 tangible things hereafter referred to as "documentary
9 material" which the Attorney General deems relevant or
10 material to his investigation, for inspection, reproducing or
11 copying under such terms and conditions as hereafter set
12 forth, (iii) require written answers under oath to written
13 interrogatories, or (iv) require compliance with a
14 combination of the foregoing. Any subpoena issued by the
15 Attorney General shall contain the following information:

16 (a) The statute and section thereof, the alleged
17 violation of which is under investigation and the general
18 subject matter of the investigation.

19 (b) The date and place at which time the person is
20 required to appear or produce documentary material in his
21 possession, custody or control or submit answers to
22 interrogatories in the office of the Attorney General located
23 in Springfield or Chicago. Said date shall not be less than
24 10 days from date of service of the subpoena.

25 (c) Where documentary material is required to be
26 produced, the same shall be described by class so as to
27 clearly indicate the material demanded.

28 The Attorney General is hereby authorized, and may so
29 elect, to require the production, pursuant to this section,
30 of documentary material or interrogatory answers prior to the
31 taking of any testimony of the person subpoenaed, ~~in which~~
32 ~~event~~, Said documentary material shall be made available for
33 inspection and copying during normal business hours at the
34 principal place of business of the person served, or at such

1 other time and place, as may be agreed upon by the person
2 served and the Attorney General. When documentary material is
3 demanded by subpoena, said subpoena shall not:

4 (i) Contain any requirement which would be unreasonable
5 or improper if contained in a subpoena duces tecum issued by
6 a court of this State; or

7 (ii) Require the disclosure of any documentary material
8 which would be privileged, or which for any other reason
9 would not be required by a subpoena duces tecum issued by a
10 court of this State.

11 (d) The production of documentary material in response
12 to a subpoena served pursuant to this Section shall be made
13 under a sworn certificate, in such form as the subpoena
14 designates, by the person, if a natural person, to whom the
15 demand is directed or, if not a natural person, by a person
16 or persons having knowledge of the facts and circumstances
17 relating to such production, to the effect that all of the
18 documentary material required by the demand and in the
19 possession, custody, or control of the person to whom the
20 demand is directed has been produced and made available to
21 the custodian. Answers to interrogatories shall be
22 accompanied by a statement under oath attesting to the
23 accuracy of the answers.

24 While in the possession of the Attorney General and under
25 such reasonable terms and conditions as the Attorney General
26 shall prescribe: (A) documentary material shall be available
27 for examination by the person who produced such material or
28 by any duly authorized representative of such person, and (B)
29 transcript of oral testimony shall be available for
30 examination by the person who produced such testimony, or his
31 or her counsel and (c) answers to interrogatories shall be
32 available for examination by the person who swore to their
33 accuracy.

34 Except as otherwise provided in this Section, no

1 documentary material or transcripts of oral testimony, or
2 copies thereof, in the possession of the Attorney General
3 shall be available for examination by any individual other
4 than an authorized employee of the Attorney General or other
5 law enforcement officials, federal or local, without the
6 consent of the person who produced such material or
7 transcripts.

8 (e) No person shall, with intent to avoid, evade,
9 prevent, or obstruct compliance in whole or in part by any
10 person with any duly served subpoena of the Attorney General
11 under this Act, knowingly remove from any place, conceal,
12 withhold, destroy, mutilate, alter, or by any other means
13 falsify any documentary material that is the subject of such
14 subpoena. A violation of this subsection is a Class A
15 misdemeanor. The Attorney General, with such assistance as
16 he may from time to time require of the State's Attorneys in
17 the several counties, shall investigate suspected violations
18 of this subsection and shall commence and try all
19 prosecutions under this subsection.

20 (Source: P.A. 81-1051.)

21 (740 ILCS 10/7.5) (from Ch. 38, par. 60-7.5)

22 Sec. 7.5. Fees for witnesses; document production.

23 (1) All persons served with a subpoena by the Attorney
24 General under this Act shall be paid the same fees and
25 mileage as paid witnesses in the courts of this State,
26 provided, however, that the obligation to pay fees does not
27 apply to any officer, director, or person in the employ of
28 any person, partnership, company, corporation, trust, or
29 association whose conduct or practices are being
30 investigated.

31 (2) Where a subpoena requires the production of
32 documentary material, the respondent shall produce the
33 original of such documentary material, provided, however,

1 that the Attorney General may agree that copies may be
2 substituted, in which case the respondent shall have copies
3 made and produced at the respondent' expense.

4 (Source: P.A. 76-208.)

5 (740 ILCS 10/7.6) (from Ch. 38, par. 60-7.6)

6 Sec. 7.6. In the event a witness served with a subpoena
7 by the Attorney General under this Act fails or refuses to
8 obey same or produce documentary material or interrogatory
9 answers as provided herein, or to give testimony, relevant or
10 material, to the investigation being conducted, the Attorney
11 General may petition the Circuit Court of Sangamon or Cook
12 County, or the county wherein the witness resides for an
13 order requiring said witness to attend and testify or produce
14 the documentary material or interrogatory answers demanded;
15 ~~thereafter, any failure or refusal on the part of the witness~~
16 ~~to obey such order of court may be punishable by the court as~~
17 ~~a contempt thereof.~~ The court's order shall require the
18 witness to attend and testify or produce the documentary
19 material or interrogatory answers, or a combination thereof,
20 by a specified date, and shall further provide a date
21 thereafter on which the witness shall show cause in court why
22 he or she should not be held in contempt of court if he or
23 she fails to comply. The Attorney General shall cause the
24 order to be served upon the witness in the manner provided
25 for service of subpoenas in Section 7.3 of this Act. Service
26 of the order shall constitute service of process, and no
27 other form of process is necessary to submit the witness to
28 the jurisdiction of the court and to require compliance with
29 the court order.

30 (Source: P.A. 76-208.)

31 (740 ILCS 10/7.7) (from Ch. 38, par. 60-7.7)

32 Sec. 7.7. In any investigation brought by the Attorney

1 General pursuant to this Act, no individual shall be excused
2 from attending, testifying or producing documentary material,
3 objects or tangible things in obedience to a subpoena or
4 under order of the court on the ground that the testimony or
5 evidence required of him or her may tend to incriminate him
6 or subject him to any penalty. No individual shall be
7 criminally prosecuted or subjected to any criminal penalty
8 for or on account of (a) any testimony or interrogatory
9 answers given by him or her, or (b) any documentary material
10 produced by him or her, as to which he or she would otherwise
11 have a right not to give or produce by virtue of his or her
12 right against self-incrimination, in any investigation
13 brought by the Attorney General pursuant to this Act;
14 provided no individual so giving testimony or answers or so
15 producing documentary material testifying shall be exempt
16 from prosecution or punishment for perjury committed in so
17 testifying, answering, or producing.

18 (Source: P.A. 81-1051.)

19 (740 ILCS 10/12 new)

20 Sec. 12. Jury Trial. In the trial of all actions
21 brought under this Act for the imposition of criminal
22 sanctions or the recovery of civil penalties or damages, any
23 party, upon timely demand, shall be entitled to a trial by
24 jury.

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