

AN ACT concerning antitrust.

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

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

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

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

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

(2) Any person who has been injured in his business or property, or is threatened with such injury, by a violation of Section 3 of this Act may maintain an action in the Circuit Court for damages, or for an injunction, or both, against any person who has committed such violation. If, in an action for an injunction, the court issues an injunction,

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

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

Beginning January 1, 1970, a file setting out the names

of all special assistant attorneys general retained to prosecute antitrust matters and containing all terms and conditions of any arrangement or agreement regarding fees or compensation made between any such special assistant attorney general and the office of the Attorney General shall be maintained in the office of the Attorney General, open during all business hours to public inspection.

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

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

(4) In lieu of any criminal penalty otherwise prescribed for a violation of this Act, and in addition to any action under this Act or any Federal antitrust law, the Attorney

General may bring an action in the name and on behalf of the people of the State against any person, trustee, director, manager or other officer or agent of a corporation, or against a corporation, domestic or foreign, to recover a penalty not to exceed \$1,000,000 ~~\$100,000~~ from every corporation or \$100,000 ~~\$50,000~~ from every other person for any act herein declared illegal. The action must be brought within 4 years after the commission of the act upon which it is based. Nothing in this subsection shall impair the right of any person to bring an action under subsection (2) of this Section.

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

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

Sec. 7.2. Whenever it appears to the Attorney General that any person has engaged in, is engaging in, or is about to engage in any act or practice prohibited by this Act, or that any person has assisted or participated in any agreement or combination of the nature described herein, he may, in his discretion, conduct an investigation as he deems necessary in connection with the matter and has the authority prior to the commencement of any civil or criminal action as provided for in the Act to subpoena witnesses, and pursuant to a subpoena (i) compel their attendance for the purpose of examining, ~~examine~~ them under oath, ~~or~~ (ii) require the production of any books, documents, records, writings or tangible things hereafter referred to as "documentary material" which the Attorney General deems relevant or material to his investigation, for inspection, reproducing or copying under such terms and conditions as hereafter set forth, (iii) require written answers under oath to written interrogatories, or (iv) require compliance with a combination of the foregoing. Any subpoena issued by the Attorney General shall contain the following information:

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

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

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

The Attorney General is hereby authorized, and may so elect, to require the production, pursuant to this section, of documentary material or interrogatory answers prior to the taking of any testimony of the person subpoenaed, ~~in which event,~~ Said documentary material shall be made available for inspection and copying during normal business hours at the principal place of business of the person served, or at such other time and place, as may be agreed upon by the person served and the Attorney General. When documentary material is demanded by subpoena, said subpoena shall not:

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

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

(d) The production of documentary material in response to a subpoena served pursuant to this Section shall be made under a sworn certificate, in such form as the subpoena designates, by the person, if a natural person, to whom the demand is directed or, if not a natural person, by a person

or persons having knowledge of the facts and circumstances relating to such production, to the effect that all of the documentary material required by the demand and in the possession, custody, or control of the person to whom the demand is directed has been produced and made available to the custodian. Answers to interrogatories shall be accompanied by a statement under oath attesting to the accuracy of the answers.

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

Except as otherwise provided in this Section, no documentary material or transcripts of oral testimony, or copies thereof, in the possession of the Attorney General shall be available for examination by any individual other than an authorized employee of the Attorney General or other law enforcement officials, federal or local, without the consent of the person who produced such material or transcripts.

(e) No person shall, with intent to avoid, evade, prevent, or obstruct compliance in whole or in part by any person with any duly served subpoena of the Attorney General under this Act, knowingly remove from any place, conceal, withhold, destroy, mutilate, alter, or by any other means falsify any documentary material that is the subject of such subpoena. A violation of this subsection is a Class A misdemeanor. The Attorney General, with such assistance as

he may from time to time require of the State's Attorneys in the several counties, shall investigate suspected violations of this subsection and shall commence and try all prosecutions under this subsection.

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

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

Sec. 7.5. Fees for witnesses; document production.

(1) All persons served with a subpoena by the Attorney General under this Act shall be paid the same fees and mileage as paid witnesses in the courts of this State.

(2) Where a subpoena requires the production of documentary material, the respondent shall produce the original of such documentary material, provided, however, that the Attorney General may agree that copies may be substituted, in which case the respondent shall have copies made and produced at the respondent's expense.

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

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

Sec. 7.6. In the event a witness served with a subpoena by the Attorney General under this Act fails or refuses to obey same or produce documentary material or interrogatory answers as provided herein, or to give testimony, relevant or material, to the investigation being conducted, the Attorney General may petition the Circuit Court of Sangamon or Cook County, or the county wherein the witness resides for an order requiring said witness to attend and testify or produce the documentary material or interrogatory answers demanded; ~~thereafter, any failure or refusal on the part of the witness to obey such order of court may be punishable by the court as a contempt thereof.~~ The court's order shall require the witness to attend and testify or produce the documentary material or interrogatory answers, or a combination thereof,

by a specified date, and shall further provide a date thereafter on which the witness shall show cause in court why he or she should not be held in contempt of court if he or she fails to comply. The Attorney General shall cause the order to be served upon the witness in the manner provided for service of subpoenas in Section 7.3 of this Act. Service of the order shall constitute service of process, and no other form of process is necessary to submit the witness to the jurisdiction of the court and to require compliance with the court order.

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

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

Sec. 7.7. In any investigation brought by the Attorney General pursuant to this Act, no individual shall be excused from attending, testifying or producing documentary material, objects or tangible things in obedience to a subpoena or under order of the court on the ground that the testimony or evidence required of him or her may tend to incriminate him or subject him to any penalty. No individual shall be criminally prosecuted or subjected to any criminal penalty for or on account of (a) any testimony or interrogatory answers given by him or her, or (b) any documentary material produced by him or her, as to which he or she would otherwise have a right not to give or produce by virtue of his or her right against self-incrimination, in any investigation brought by the Attorney General pursuant to this Act; provided no individual so giving testimony or answers or so producing documentary material testifying shall be exempt from prosecution or punishment for perjury committed in so testifying, answering, or producing.

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

(740 ILCS 10/12 new)

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