



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

SB2872

Introduced 2/15/2008, by Sen. John J. Cullerton

SYNOPSIS AS INTRODUCED:

740 ILCS 10/7
740 ILCS 10/7.2

from Ch. 38, par. 60-7
from Ch. 38, par. 60-7.2

Amends the Illinois Antitrust Act. Provides that the Attorney General may bring an action in the name of the State, as *parens patriae* (protector of all those unable to protect themselves) on behalf of Illinois residents, to recover damages under the Illinois Antitrust Act or any comparable federal law. Provides that these granted powers are in addition to the Attorney General's *parens patriae* common law powers. Provides that no documentary material, transcripts of oral testimony, or answers to interrogatories (instead of no documentary material or transcripts of oral testimony) in the Attorney General's possession are available for inspection other than by an employee of the Attorney General or law enforcement officials at the federal, State, or local levels (instead of federal or local levels) without the consent of the person who furnished those materials. Provides that all documentary materials, transcripts, or answers to interrogatories shall be treated as if produced pursuant to a subpoena.

LRB095 19876 AJO 46275 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning civil law.

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 7 and 7.2 as follows:

6 (740 ILCS 10/7) (from Ch. 38, par. 60-7)

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

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

1 (2) Any person who has been injured in his business or
2 property, or is threatened with such injury, by a violation of
3 Section 3 of this Act may maintain an action in the Circuit
4 Court for damages, or for an injunction, or both, against any
5 person who has committed such violation. If, in an action for
6 an injunction, the court issues an injunction, the plaintiff
7 shall be awarded costs and reasonable attorney's fees. In an
8 action for damages, if injury is found to be due to a violation
9 of subsections (1) or (4) of Section 3 of this Act, the person
10 injured shall be awarded 3 times the amount of actual damages
11 resulting from that violation, together with costs and
12 reasonable attorney's fees. If injury is found to be due to a
13 violation of subsections (2) or (3) of Section 3 of this Act,
14 the person injured shall recover the actual damages caused by
15 the violation, together with costs and reasonable attorney's
16 fees, and if it is shown that such violation was willful, the
17 court may, in its discretion, increase the amount recovered as
18 damages up to a total of 3 times the amount of actual damages.
19 This State, counties, municipalities, townships and any
20 political subdivision organized under the authority of this
21 State, and the United States, are considered a person having
22 standing to bring an action under this subsection. The Attorney
23 General may bring an action on behalf of this State, counties,
24 municipalities, townships and other political subdivisions
25 organized under the authority of this State to recover the
26 damages under this subsection or by any comparable Federal law.

1 The Attorney General may also bring an action in the name
2 of this State, as parens patriae on behalf of persons residing
3 in this State, to recover the damages under this subsection or
4 any comparable federal law. The powers granted in this Section
5 are in addition to and not in derogation of the common law
6 powers of the Attorney General to act as parens patriae.

7 No provision of this Act shall deny any person who is an
8 indirect purchaser the right to sue for damages. Provided,
9 however, that in any case in which claims are asserted against
10 a defendant by both direct and indirect purchasers, the court
11 shall take all steps necessary to avoid duplicate liability for
12 the same injury including transfer and consolidation of all
13 actions. Provided further that no person ~~other than the~~
14 ~~Attorney General of this State~~ shall be authorized to maintain
15 a class action in any court of this State for indirect
16 purchasers asserting claims under this Act, with the sole
17 exception of this State's Attorney General, who may maintain an
18 action parens patriae as provided in this subsection.

19 Beginning January 1, 1970, a file setting out the names of
20 all special assistant attorneys general retained to prosecute
21 antitrust matters and containing all terms and conditions of
22 any arrangement or agreement regarding fees or compensation
23 made between any such special assistant attorney general and
24 the office of the Attorney General shall be maintained in the
25 office of the Attorney General, open during all business hours
26 to public inspection.

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

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

25 (4) In lieu of any criminal penalty otherwise prescribed
26 for a violation of this Act, and in addition to any action

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

12 (Source: P.A. 93-351, eff. 1-1-04.)

13 (740 ILCS 10/7.2) (from Ch. 38, par. 60-7.2)

14 Sec. 7.2. Whenever it appears to the Attorney General that
15 any person has engaged in, is engaging in, or is about to
16 engage in any act or practice prohibited by this Act, or that
17 any person has assisted or participated in any agreement or
18 combination of the nature described herein, he may, in his
19 discretion, conduct an investigation as he deems necessary in
20 connection with the matter and has the authority prior to the
21 commencement of any civil or criminal action as provided for in
22 the Act to subpoena witnesses, and pursuant to a subpoena (i)
23 compel their attendance for the purpose of examining them under
24 oath, (ii) require the production of any books, documents,
25 records, writings or tangible things hereafter referred to as

1 "documentary material" which the Attorney General deems
2 relevant or material to his investigation, for inspection,
3 reproducing or copying under such terms and conditions as
4 hereafter set forth, (iii) require written answers under oath
5 to written interrogatories, or (iv) require compliance with a
6 combination of the foregoing. Any subpoena issued by the
7 Attorney General shall contain the following information:

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

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

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

20 The Attorney General is hereby authorized, and may so
21 elect, to require the production, pursuant to this section, of
22 documentary material or interrogatory answers prior to the
23 taking of any testimony of the person subpoenaed. Said
24 documentary material shall be made available for inspection and
25 copying during normal business hours at the principal place of
26 business of the person served, or at such other time and place,

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

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

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

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

23 While in the possession of the Attorney General and under
24 such reasonable terms and conditions as the Attorney General
25 shall prescribe: (A) documentary material shall be available
26 for examination by the person who produced such material or by

1 any duly authorized representative of such person, (B)
2 transcript of oral testimony shall be available for examination
3 by the person who produced such testimony, or his or her
4 counsel and (C) answers to interrogatories shall be available
5 for examination by the person who swore to their accuracy.

6 Except as otherwise provided in this Section, no
7 documentary material, ~~or~~ transcripts of oral testimony, or
8 answers to interrogatories, or copies thereof, in the
9 possession of the Attorney General shall be available for
10 examination by any individual other than an authorized employee
11 of the Attorney General or other law enforcement officials,
12 federal, State, or local, without the consent of the person who
13 produced such material, ~~or~~ transcripts, or interrogatory
14 answers.

15 For purposes of this Section, all documentary materials,
16 transcripts of oral testimony, or answers to interrogatories
17 obtained by the Attorney General from other law enforcement
18 officials shall be treated as if produced pursuant to a
19 subpoena served pursuant to this Section.

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

1 Attorney General, with such assistance as he may from time to
2 time require of the State's Attorneys in the several counties,
3 shall investigate suspected violations of this subsection and
4 shall commence and try all prosecutions under this subsection.
5 (Source: P.A. 93-351, eff. 1-1-04.)