



## 96TH GENERAL ASSEMBLY

### State of Illinois

2009 and 2010

HB2246

Introduced 2/18/2009, by Rep. John A. Fritchey

#### 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.

LRB096 03554 AJ0 13579 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.)