

# STATE OF NEW YORK

6748--A

2023-2024 Regular Sessions

## IN SENATE

May 8, 2023

Introduced by Sens. GIANARIS, SALAZAR, HOYLMAN-SIGAL, JACKSON, KAVANAGH, MAY, SEPULVEDA -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection -- recommitted to the Committee on Consumer Protection in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general business law, in relation to actions or practices that establish or maintain a monopoly, monopsony or restraint of trade, and in relation to authorizing a class action lawsuit in the state anti-trust law

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. This act shall be known and may be cited as the "Twenty-  
2 First Century Anti-Trust Act".  
3 § 2. Legislative findings. The legislature hereby finds and declares  
4 New York's great concern with the growing accumulation of power in the  
5 hands of dominant corporations that harms our marketplace, our democra-  
6 cy, and that undermines the power of workers, consumers, and small busi-  
7 nesses. It is time to update, expand, and clarify our laws, consistent  
8 with the purposes of the anti-trust reforms of the early Twentieth  
9 Century, to police abuses of power by dominant firms. The legislature  
10 further finds and declares that unilateral actions which seek to create  
11 a monopoly or monopsony are as harmful as contracts or agreements of  
12 multiple parties to do the same and should be treated similarly under  
13 the law. Firms with monopoly or monopsony power are contrary to the  
14 public interest. The legislature further finds and declares that laws  
15 governing multi-firm conduct should be updated, consistent with the  
16 purposes of anti-trust law, to adequately address abuses of power by  
17 dominant firms embodied in coercive vertical restraints on small busi-  
18 nesses, workers, and consumers. The legislature further finds and  
19 declares that effective enforcement against unfair competition, espe-

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

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1 cially on the part of dominant firms, has been impeded by courts, for  
2 example, applying narrow definitions of monopolies and monopolization,  
3 limiting the scope of unilateral conduct, making it excessively diffi-  
4 cult to challenge unfair competition and unreasonably heightening the  
5 legal standards that plaintiffs and government enforcers must overcome  
6 to establish violations of those laws. The legislature further finds and  
7 declares that one of the purposes of the state's anti-trust laws is to  
8 ensure that our labor markets are open and fair. The legislature further  
9 finds and declares that anti-competitive practices harm great numbers of  
10 citizens and therefore must ensure that those harmed by monopolies or  
11 monopsonies may seek redress through private enforcement.

12 § 3. Section 340 of the general business law, as amended by chapter 12  
13 of the laws of 1935, subdivision 1 as amended by chapter 893 of the laws  
14 of 1957, subdivision 2 as amended by chapter 805 of the laws of 1984,  
15 subdivisions 3 and 4 as renumbered by chapter 502 of the laws of 1948,  
16 subdivision 5 as amended by chapter 333 of the laws of 1975 and subdivi-  
17 sion 6 as amended by chapter 31 of the laws of 1999, is amended to read  
18 as follows:

19 § 340. Contracts or agreements for monopoly, monopsony, or in  
20 restraint of trade illegal and void. 1. Every contract, agreement,  
21 arrangement or combination whereby

22 A monopoly or monopsony in the conduct of any business, trade or  
23 commerce or in the furnishing of any service in this state, is or may be  
24 established or maintained, or whereby

25 Competition or the free exercise of any activity in the conduct of any  
26 business, trade or commerce or in the furnishing of any service in this  
27 state is or may be restrained or whereby

28 For the purpose of establishing or maintaining any such monopoly,  
29 monopsony, or unlawfully interfering with the free exercise of any  
30 activity in the conduct of any business, trade or commerce or in the  
31 furnishing of any service in this state any business, trade or commerce  
32 or the furnishing of any service is or may be restrained, is hereby  
33 declared to be against public policy, illegal and void.

34 2. (a) It shall be unlawful for any person or persons to monopolize or  
35 monopsonize, or attempt to monopolize or monopsonize, or combine or  
36 conspire with any other person or persons to monopolize or monopsonize  
37 any business, trade or commerce or the furnishing of any service in this  
38 state.

39 (b) It shall be unlawful for any person or persons with a dominant  
40 position in the conduct of any business, trade or commerce, in any labor  
41 market, or in the furnishing of any service in this state to abuse that  
42 dominant position. This paragraph shall not apply to a person or  
43 persons that are independently owned and operated and employ one hundred  
44 or fewer persons.

45 (i) In any action brought under this paragraph, a person's dominant  
46 position may be established by direct evidence, indirect evidence, or a  
47 combination of the two.

48 (1) Examples of direct evidence include, but are not limited to,  
49 reduction in output or in quality of goods or services, the imposition  
50 of supracompetitive prices, or the ability to force, induce, or other-  
51 wise coerce a supplier to offer a lower price, discount, advertising  
52 allowance, or other service than what the supplier offers others. In  
53 labor markets, examples of direct evidence of a dominant position  
54 include, but are not limited to, the imposition of subcompetitive wages  
55 or working conditions; the repeated violation of laws protecting workers  
56 such as labor laws, wage-and-hour laws, and workplace health and safety

1 laws; or the interference with, restraint of, or coercion of workers in  
2 the exercise of their full freedom of association to obtain acceptable  
3 terms and conditions of employment, including through self-organization,  
4 designation of workplace representatives, and engagement in concerted  
5 activities for the purposes of collective bargaining or other mutual aid  
6 or protection. Direct evidence of dominant position includes conduct  
7 that is carried out directly or indirectly through another entity or  
8 person such as an independent contractor or other intermediary.

9 (2) A person's dominant position may also be established by indirect  
10 evidence such as the person's share of a relevant market. A person who  
11 has a share of forty percent or greater of a relevant market as a seller  
12 shall be presumed to have a dominant position in that market under this  
13 paragraph. A person who has a share of thirty percent or greater of a  
14 relevant market as a buyer shall be presumed to have a dominant position  
15 in that market under this paragraph. When determining a relevant market,  
16 courts shall examine factors including, but not limited to, industry or  
17 public recognition of the market as separate and distinct, the product's  
18 peculiar characteristics and uses, unique protection facilities,  
19 distinct customers, distinct prices, sensitivity to price changes, and  
20 specialized vendors.

21 (3) If direct evidence is sufficient to demonstrate that a person has  
22 a dominant position or has abused such a dominant position, no court  
23 shall require definition of a relevant market in order to evaluate the  
24 evidence, find liability, or find that a claim has been stated under  
25 this paragraph.

26 (ii) In any action brought under this paragraph, abuse of a dominant  
27 position may include, but is not limited to, conduct that tends to fore-  
28 close or limit the ability or incentive of one or more actual or poten-  
29 tial competitors to compete, such as leveraging a dominant position in  
30 one market to limit competition in a separate market; refusing to deal  
31 with another person with the effect of unnecessarily excluding or handi-  
32 capping actual or potential competitors; coercing the purchaser of one  
33 product, service, or contract into purchasing or obtaining a separate  
34 and distinct product, service, or contract; or engaging in, or coercing  
35 a third party into, an exclusive agreement or contract that serves to  
36 foreclose or increase costs for a competitor. In labor markets, abuse  
37 may include, but is not limited to, imposing restraints, direct or indi-  
38 rect, on the mobility of workers between employers, the ability of work-  
39 ers to seek employment from multiple employers by restricting the free-  
40 dom of workers and independent contractors to disclose wage and benefit  
41 information, or wage discrimination based on any undisclosed or hidden  
42 considerations.

43 (c) (i) Except as provided in subparagraph (ii) of this paragraph, the  
44 following restraints are presumed to be illegal when engaged in by domi-  
45 nant firms:

46 (1) Any restraint that requires another person to deal exclusively or  
47 primarily with the firm imposing the restraint or another person speci-  
48 fied by that firm or any restraint that has the necessary effect of  
49 requiring another person to deal exclusively or primarily with the firm  
50 imposing the restraint or another person specified by that firm;

51 (2) Any restraint that conditions the sale or purchase of any product  
52 or services on an agreement to sell or purchase another product or  
53 service;

54 (3) Any restraint on a person's ability to engage in a profession,  
55 trade, or business of any kind, including any restraint on a person's  
56 ability to employ another person;

1 (4) Any restraint on the prices or wages offered by another firm;

2 (5) Any restraint on another firm's right to independently decide  
3 whether to recognize a union of its employees or to otherwise agree to  
4 negotiate with its employees collectively over terms and conditions of  
5 employment;

6 (6) Any restraint that the attorney general, through rulemaking,  
7 determines poses a substantial risk of harming competition that is not  
8 already presumed illegal;

9 (7) Any additional restraint that the attorney general determines,  
10 through rulemaking, generally serves no legitimate business purpose that  
11 cannot be achieved in some less restrictive way.

12 (ii) Subparagraph (i) of this paragraph shall not apply if the defend-  
13 ant establishes, by clear and convincing evidence, that the pro-competi-  
14 tive benefits of the challenged conduct (1) are achievable only through  
15 that conduct and (2) outweigh that conduct's harm to competition. The  
16 harm to competition in one market from the challenged conduct may not be  
17 offset by purported benefits in a separate market; and the harm to a  
18 person or persons from the challenged conduct may not be offset by  
19 purported benefits to another person or persons.

20 (d) (i) The attorney general is hereby empowered to adopt, promulgate,  
21 amend, and repeal rules, as such term is defined in paragraph (a) of  
22 subdivision two of section one hundred two of the state administrative  
23 procedure act, to carry out the purposes of paragraph (b) of this subdivi-  
24 sion, including those considerations specified in the findings and  
25 declarations of the legislature for this act.

26 (ii) Before any such rule shall take effect, at such time that the  
27 attorney general is prepared to file a notice of adoption pursuant to  
28 subdivision five of section two hundred two of the state administrative  
29 procedure act, the attorney general shall transmit a copy of the rule in  
30 its final form to the temporary president of the senate and the speaker  
31 of the assembly and, in addition, shall provide any relevant information  
32 regarding the need for such rule. Such proposed rule, or proposed repeal  
33 of a rule, is subject to the denial by both houses of the legislature  
34 and shall take the form of a resolution. Each house of the legislature  
35 shall have sixty days following the transmission of such rule to issue  
36 denial by resolution or take no action. Such rule shall not take effect  
37 if both houses pass a resolution denying such proposed rule within the  
38 time prescribed by this subparagraph.

39 (iii) The attorney general shall issue guidance on how it will achieve  
40 the purposes of paragraph (b) of this subdivision. The attorney general  
41 may issue other guidance with respect to paragraph (b) of this subdivi-  
42 sion.

43 (iv) Nothing in this section shall be deemed to diminish the jurisdic-  
44 tion of the public service commission.

45 3. Subject to the exceptions hereinafter provided in this section, the  
46 provisions of this article shall apply to licensed insurers, licensed  
47 insurance agents, licensed insurance brokers, licensed independent  
48 adjusters and other persons and organizations subject to the provisions  
49 of the insurance law, to the extent not regulated by provisions of arti-  
50 cle twenty-three of the insurance law; and further provided, that noth-  
51 ing in this section shall apply to the marine insurances, including  
52 marine protection and indemnity insurance and marine reinsurance,  
53 exempted from the operation of article twenty-three of the insurance  
54 law.

55 [~~3~~] 4. The provisions of this article shall not apply to cooperative  
56 associations, corporate or otherwise, of farmers, gardeners, or dairy-

1 men, including live stock farmers and fruit growers, nor to contracts,  
2 agreements or arrangements made by such associations, nor to bona fide  
3 labor unions, nor to the creation, production, and dissemination of a  
4 single expressive work that is copyrighted, including but not limited  
5 to, a streaming series, television programs and/or motion pictures.

6 [~~4~~] 5. The labor of human beings shall not be deemed or held to be a  
7 commodity or article of commerce as such terms are used in this section  
8 and nothing herein contained shall be deemed to prohibit or restrict the  
9 right of workingmen, including employees and independent contractors, to  
10 combine in unions, organizations and associations, not organized for the  
11 purpose of profit, to establish or maintain union apprenticeship or  
12 training programs that may lead to any government-issued trade license,  
13 or to bargain collectively concerning their wages and the terms and  
14 conditions of their employment. Nothing in this section shall be deemed  
15 to prevent or create liability with respect to any actions to comply  
16 with article eight or nine of the labor law. A bona fide collective  
17 bargaining agreement, project labor agreement or any other agreement  
18 lawful under 29 U.S.C. 158(f), as amended, or any term therein, shall  
19 not be considered evidence of a violation or dominance under this  
20 section. Project labor agreement shall have the meaning specified in  
21 section two hundred twenty-two of the labor law.

22 [~~5~~] 6. An action to recover damages caused by a violation of this  
23 section must be commenced within four years after the cause of action  
24 has accrued. The state, or any political subdivision or public authority  
25 of the state, or any person who shall sustain damages by reason of any  
26 violation of this section, shall recover three-fold the actual damages  
27 sustained thereby, as well as costs not exceeding ten thousand dollars,  
28 and reasonable attorneys' fees. At or before the commencement of any  
29 civil action by a party other than the attorney-general for a violation  
30 of this section, notice thereof shall be served upon the attorney-gener-  
31 al. Where the aggrieved party is a political subdivision or public  
32 authority of the state, notice of intention to commence an action under  
33 this section must be served upon the attorney-general at least ten days  
34 prior to the commencement of such action. This section shall not apply  
35 to any action commenced prior to the effective date of this act.

36 [~~6~~] 7. In any action pursuant to this section, the fact that the  
37 state, or any political subdivision or public authority of the state, or  
38 any person who has sustained damages by reason of violation of this  
39 section has not dealt directly with the defendant shall not bar or  
40 otherwise limit recovery; provided, however, that in any action in which  
41 claims are asserted against a defendant by both direct and indirect  
42 purchasers, the court shall take all steps necessary to avoid duplicate  
43 liability, including but not limited to the transfer and consolidation  
44 of all related actions. In actions where both direct and indirect  
45 purchasers are involved, a defendant shall be entitled to prove as a  
46 partial or complete defense to a claim for damages that the illegal  
47 overcharge has been passed on to others who are themselves entitled to  
48 recover so as to avoid duplication of recovery of damages.

49 8. Any person harmed by this section, whether harmed directly or  
50 indirectly by the purported violation, shall be entitled to bring suit.

51 9. Any damages recoverable pursuant to this section may be recovered  
52 in any action which a court may authorize to be brought as a class  
53 action pursuant to article nine of the civil practice law and rules.

54 10. An arrangement, as this term is used in this article, includes,  
55 but is not limited to, a contract, combination, agreement or conspiracy.

1 11. (a) Any person conducting business in the state which is required  
2 to file the Notification and Report Form for Certain Mergers and Acqui-  
3 sitions pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of  
4 1976, 15 U.S.C. s. 18a (a), shall provide the same notice and documenta-  
5 tion in its entirety to the attorney general at the same time that  
6 notice is filed with the Federal Trade Commission and the assistant  
7 attorney general in charge of the Antitrust Division of the Department  
8 of Justice.

9 (b) The following classes of transactions are exempt from the  
10 requirements of this section:

11 (i) acquisitions of goods or realty transferred in the ordinary course  
12 of business;

13 (ii) the creation, production, and dissemination of a single expres-  
14 sive work that is copyrighted, including but not limited to, a streaming  
15 series, television programs and/or motion pictures;

16 (iii) acquisitions of bonds, mortgages, deeds of trust, or other obli-  
17 gations which are not voting securities;

18 (iv) transfers to or from a federal agency or a state or political  
19 subdivision thereof;

20 (v) transactions specifically exempted from the provisions of this  
21 article;

22 (vi) transactions by, between, or among manufacturing, importing, or  
23 wholesale businesses that are directly regulated by the New York state  
24 liquor authority; and

25 (vii) such other acquisitions, transfers, or transactions, as may be  
26 exempted under paragraph (f) of this subdivision hereunder.

27 (c) Any information or documentary material filed with the attorney  
28 general pursuant to this subdivision shall be exempt from disclosure  
29 under article six of the public officers law, and no such information or  
30 documentary material may be made public, except as may be relevant to  
31 any administrative or judicial action or proceeding.

32 (d) Any person, or any officer, director, or partner thereof, who  
33 fails to comply with any provision of this subdivision shall be liable  
34 to the state for a civil penalty of not more than ten thousand dollars  
35 for each day during which such person is in violation of this section.  
36 Such penalty may be recovered in a civil action brought by the attorney  
37 general.

38 (e) In considering any transaction under this subdivision, the attor-  
39 ney general shall consider such transaction's effects on labor markets,  
40 including but not limited to effects on workers' countervailing lever-  
41 age, by establishing a process for affected workers or representatives  
42 designated by affected workers to meaningfully comment on such trans-  
43 actions within ten days following the filing of the transacting parties'  
44 notice and documentation of their intended transaction pursuant to para-  
45 graph (a) of subdivision eleven of this section. The attorney general  
46 shall establish this new process within ninety days following the effec-  
47 tive date of the chapter of the laws of two thousand twenty-four that  
48 amended this section.

49 (f) The attorney general is hereby empowered to:

50 (i) define the terms used in this subdivision;

51 (ii) exempt, from the requirements of this subdivision, classes of  
52 persons, acquisitions, transfers, or transactions which are not likely  
53 to violate the provisions of this article; and

54 (iii) adopt, promulgate, amend, and rescind other rules and regu-  
55 lations to carry out the purposes of this subdivision.

1 § 4. Section 341 of the general business law, as amended by chapter  
2 333 of the laws of 1975, is amended to read as follows:

3 § 341. Penalty. Every person or corporation, or any officer or agent  
4 thereof, who shall [~~make or attempt to make or enter into any such~~  
5 ~~contract, agreement, arrangement or combination or who within this state~~  
6 ~~shall~~] do or attempt to do, within this state, any act [~~pursuant there-~~  
7 ~~to~~] declared unlawful under subdivision one and paragraph (a) of subdivi-  
8 vision two of section three hundred forty of this article, or in, toward  
9 or for the consummation thereof [~~, wherever the same may have been made~~],  
10 is guilty of a class [~~E~~] D felony, and on conviction thereof shall, if a  
11 natural person, be punished by a fine not exceeding one [~~hundred thou-~~  
12 ~~sand~~] million dollars, or by imprisonment for not longer than four  
13 years, or by both such fine and imprisonment; and if a corporation, by a  
14 fine of not exceeding one hundred million dollars. An indictment or  
15 information based on a violation of any of the provisions of this  
16 section must be found within [~~three~~] five years after its commission. No  
17 criminal proceeding barred by prior limitation shall be revived by this  
18 act.

19 § 5. Section 342-a of the general business law, as amended by chapter  
20 275 of the laws of 1962, is amended to read as follows:

21 § 342-a. Recovery of civil penalty by attorney-general. In lieu of any  
22 penalty otherwise prescribed for a violation of a provision of this  
23 article and in addition to an action pursuant to section three hundred  
24 forty-two of this article, the attorney-general may bring an action in  
25 the name and in behalf of the people of the state against any person,  
26 trustee, director, manager or other officer or agent of a corporation,  
27 or against a corporation, foreign or domestic, to recover a penalty in  
28 the sum specified in section three hundred forty-one of this article for  
29 the doing in this state of any act [~~herein~~] declared to be illegal in  
30 this article, or any act in, toward or for the making or consummation of  
31 any contract, agreement, arrangement or combination [~~herein~~] prohibited  
32 by this article, wherever the same may have been made. The action must  
33 be brought within [~~three~~] five years after the commission of the act  
34 upon which it is based.

35 § 6. Section 342-b of the general business law, as amended by chapter  
36 420 of the laws of 1975, is amended to read as follows:

37 § 342-b. Recovery of damages by attorney general. In addition to  
38 existing statutory and common law authority to bring such actions on  
39 behalf of the state, [~~and~~] public authorities, and resident persons and  
40 entities, the attorney general may also bring action on behalf of any  
41 political subdivision or public authority of the state upon the request  
42 of such political subdivision or public authority, or in the name of the  
43 state, as parens patriae, on behalf of persons and other entities resid-  
44 ing in the state of New York, to recover damages for violations of  
45 section three hundred forty of this article, or to recover damages  
46 provided for by federal law for violations of the federal antitrust  
47 laws. In any class action the attorney general may bring on behalf of  
48 [~~these or other subordinate~~] governmental entities, any governmental  
49 entity that does not affirmatively exclude itself from the action, upon  
50 due notice thereof, shall be deemed to have requested to be treated as a  
51 member of the class represented in that action. The attorney general,  
52 on behalf of the state of New York, shall be entitled to retain from any  
53 moneys recovered in such actions the costs and expenses of such  
54 services.

55 § 7. The general business law is amended by adding a new section 342-d  
56 to read as follows:

1 § 342-d. Recovery of expert witnesses' fees and costs by attorney  
2 general and private litigants. In any action alleging a violation of a  
3 provision of this article, including actions brought under subdivision  
4 twelve of section sixty-three of the executive law, the attorney general  
5 and private litigants shall recover reasonable fees and costs for its  
6 expert witnesses and consultants if the attorney general or private  
7 litigants prevail in such action.

8 § 8. Non-compete clauses.

9 1. Definitions. For purposes of this section:

10 (a) (1) "Non-compete clause" means a contractual term between an  
11 employer and a worker that prevents the worker from seeking or accepting  
12 employment with a person, or operating a business, after the conclusion  
13 of the worker's employment with the employer.

14 (2) The term "non-compete clause" includes a contractual term that is  
15 a de facto non-compete clause because it has the effect of prohibiting  
16 the worker from seeking or accepting employment with a person or operat-  
17 ing a business after the conclusion of the worker's employment with the  
18 employer. The following types of contractual terms, among others, may be  
19 de facto non-compete clauses:

20 i. A non-disclosure agreement between an employer and a worker that is  
21 written so broadly that it effectively precludes the worker from working  
22 in the same field after the conclusion of the worker's employment with  
23 the employer.

24 ii. A contractual term between an employer and a worker that requires  
25 the worker to pay the employer or a third-party entity for training  
26 costs if the worker's employment terminates within a specified time  
27 period, where the required payment is not reasonably related to the  
28 costs the employer incurred for training the worker.

29 (b) "Employer" means a person, as defined in 15 U.S.C. 57b-1(a)(6),  
30 that hires or contracts with a worker to work for the person.

31 (c) "Employment" means work for an employer, as the term employer is  
32 defined in paragraph (b) of this subdivision.

33 (d) "Substantial owner, substantial member, and substantial partner"  
34 mean an owner, member, or partner holding at least a 25 percent owner-  
35 ship interest in a business entity.

36 (e) "Worker" means a natural person who works, whether paid or unpaid,  
37 for an employer. The term includes, without limitation, an employee,  
38 individual classified as an independent contractor, extern, intern,  
39 volunteer, apprentice, or sole proprietor who provides a service to a  
40 client or customer. The term worker does not include a franchisee in the  
41 context of a franchisee-franchisor relationship; however, the term work-  
42 er includes a natural person who works for the franchisee or franchisor.  
43 Non-compete clauses between franchisors and franchisees would remain  
44 subject to federal antitrust law as well as all other applicable law.

45 2. Unfair method of competition. It is an unfair method of competition  
46 for an employer to enter into or attempt to enter into a non-compete  
47 clause with a worker; maintain with a worker a non-compete clause; or  
48 represent to a worker that the worker is subject to a non-compete clause  
49 where the employer has no good faith basis to believe that the worker is  
50 subject to an enforceable non-compete clause.

51 3. Existing non-compete clauses. (a) To comply with subdivision 2 of  
52 this section, which states that it is an unfair method of competition  
53 for an employer to maintain with a worker a non-compete clause, an  
54 employer that entered into a non-compete clause with a worker prior to  
55 the compliance date must rescind the non-compete clause no later than  
56 the compliance date.

1 (b) (1) An employer that rescinds a non-compete clause pursuant to  
2 paragraph (a) of this subdivision must provide notice to the worker that  
3 the worker's non-compete clause is no longer in effect and may not be  
4 enforced against the worker. The employer must provide the notice to  
5 the worker in an individualized communication. The employer must provide  
6 the notice on paper or in a digital format such as, for example, an  
7 email or text message. The employer must provide the notice to the work-  
8 er within 45 days of rescinding the non-compete clause.

9 (2) The employer must provide the notice to a worker who currently  
10 works for the employer. The employer must also provide the notice to a  
11 worker who formerly worked for the employer, provided that the employer  
12 has the worker's contact information readily available.

13 (3) The following model language constitutes notice to the worker that  
14 the worker's non-compete clause is no longer in effect and may not be  
15 enforced against the worker, for purposes of subparagraph one of this  
16 paragraph. An employer may also use different language, provided that  
17 the notice communicates to the worker that the worker's non-compete  
18 clause is no longer in effect and may not be enforced against the work-  
19 er. "A new state law makes it unlawful for us to maintain a non-compete  
20 clause in your employment contract. As of {DATE 180 DAYS AFTER ENACTMENT  
21 OF THIS LAW}, the non-compete clause in your contract is no longer in  
22 effect. This means that once you stop working for {EMPLOYER NAME}:

23 You may seek or accept a job with any company or any person-even if  
24 they compete with {EMPLOYER NAME}.

25 You may run your own business-even if it competes with {EMPLOYER  
26 NAME}.

27 You may compete with {EMPLOYER NAME} at any time following your  
28 employment with {EMPLOYER NAME}.

29 This law does not affect any other terms of your employment contract."

30 (c) An employer complies with the rescission requirement in paragraph  
31 (a) of this subdivision where it provides notice to a worker pursuant to  
32 paragraph (b) of this subdivision.

33 4. Applicability. The requirements of this section shall not apply to  
34 a non-compete clause that is entered into by a person who is selling a  
35 business entity or otherwise disposing of all of the person's ownership  
36 interest in the business entity, or by a person who is selling all or  
37 substantially all of a business entity's operating assets, when the  
38 person restricted by the non-compete clause is a substantial owner of,  
39 or substantial member or substantial partner in, the business entity at  
40 the time the person enters into the non-compete clause. Non-compete  
41 clauses covered by this exception would remain subject to federal anti-  
42 trust law as well as all other applicable law.

43 § 9. The general business law is amended by adding a new section 348  
44 to read as follows:

45 § 348. Prohibition on unfair methods of competition. 1. Unfair methods  
46 of competition are hereby declared unlawful. As used in this section,  
47 "unfair methods of competition" shall mean and include any act or prac-  
48 tice that threatens an incipient violation of an anti-trust law, or  
49 violates the policy or spirit of an anti-trust law because its effects  
50 are comparable to or the same as a violation of the law, or otherwise  
51 significantly threatens or harms competition.

52 2. The attorney general shall have the authority through rulemaking to  
53 declare certain conduct or practices as unfair methods of competition.

54 § 10. Severability. If any provision of this act, or the application  
55 thereof to any person or circumstances, is held invalid or unconstitu-  
56 tional, that invalidity or unconstitutionality shall not affect other

1 provisions or applications of this act that can be given effect without  
2 the invalid or unconstitutional provision or application, and to this  
3 end the provisions of this act are severable.  
4 § 11. This act shall take effect immediately.