

STATE OF NEW YORK

10656

IN ASSEMBLY

June 17, 2020

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Kim) -- read once and referred to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the general business law, in relation to prohibiting certain actions which negatively impact the conduct of business, trade, or commerce or furnishing of services in the state; and to amend the civil practice law and rules, in relation to prohibiting agreements that force arbitration of certain future antitrust, consumer, civil rights, and employment disputes

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

Section 1. Section 340 of the general business law is amended by adding three new subdivisions 7, 8, and 9 to read as follows:

7. Any abuse by one or more persons of a dominant position in the conduct of any business, trade, or commerce, or in the furnishing of any service in this state is hereby declared to be against public policy, illegal, and void. Such abuse may consist of, but shall not be limited to:

(a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;

(b) limiting production, markets, or technical development to the prejudice of consumers;

(c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;

(d) making the conclusion or effectiveness of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts;

(e) refusing to deal with customers or rivals as a means of suppressing competition;

(f) prohibiting distributors, suppliers, or customers from doing business with rival firms;

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

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1 (g) penalizing purchasers who do not place a large share of their
2 business with the firm;

3 (h) tying the purchase of one good or service with the purchase of a
4 separate good or service, whether done through contractual or technolog-
5 ical means; and

6 (i) pricing below average variable cost.

7 8. Subdivision seven of this section shall be construed independent of
8 existing law or judicial or administrative authority relating to mono-
9 polization under subdivision one of this section, section 2 of the
10 federal Sherman Act, or comparable provisions of federal law or the laws
11 of other states. No showing of harm to consumer welfare shall be
12 required to sustain a claim pursuant to subdivision seven of this
13 section.

14 9. Notwithstanding any other provision of law, any action under this
15 section may be maintained as a class action to the extent authorized by
16 article nine of the civil practice law and rules or by Rule 23 of the
17 Federal Rules of Civil Procedure or the class action procedures of any
18 other state.

19 § 2. The general business law is amended by adding a new section 352-
20 dd to read as follows:

21 § 352-dd. Acquisition by one corporation of stock of another. 1. No
22 person engaged in commerce or in any activity affecting commerce shall
23 acquire, directly or indirectly, the whole or any part of the stock or
24 other share capital, and no person shall acquire the whole or any part
25 of the assets of another person also engaged in commerce or in any
26 activity affecting commerce, where in any line of commerce or in any
27 activity affecting commerce in any section of the country, the effect of
28 such acquisition may substantially lessen competition or tend to create
29 a monopoly.

30 2. No person shall acquire, directly or indirectly, the whole or any
31 part of the stock or other share capital, and no person shall acquire
32 the whole or any part of the assets of one or more persons engaged in
33 commerce or in any activity affecting commerce, where in any line of
34 commerce or in any activity affecting commerce in any section of the
35 country, the effect of such acquisition of such stocks or assets, or of
36 the use of such stock by the voting or granting of proxies or otherwise,
37 may substantially lessen competition, or tend to create a monopoly.

38 3. In any action arising under this section, the burden shall be on
39 the persons seeking to undertake the transaction to prove by a prepon-
40 derance of the evidence that the pro-competitive benefits of the trans-
41 action, if any, outweigh the anticompetitive effects.

42 § 3. Section 7501 of the civil practice law and rules, as amended by
43 chapter 532 of the laws of 1963, is amended to read as follows:

44 § 7501. Effect of arbitration agreement. [A] 1. Except as set forth
45 below, a written agreement to submit any controversy thereafter arising
46 or any existing controversy to arbitration is enforceable without regard
47 to the justiciable character of the controversy and confers jurisdiction
48 on the courts of the state to enforce it and to enter judgment on an
49 award. In determining any matter arising under this article, the court
50 shall not consider whether the claim with respect to which arbitration
51 is sought is tenable, or otherwise pass upon the merits of the dispute.

52 2. Notwithstanding any other provision of law, no pre-dispute arbi-
53 tration agreement or pre-dispute joint-action waiver shall be valid or
54 enforceable with respect to an antitrust dispute, consumer dispute,
55 civil rights dispute, or employment dispute.

56 3. For the purposes of this section:

1 (a) The term "antitrust dispute" means a dispute arising from an
2 alleged violation of the antitrust laws (as defined in subsection (a) of
3 the first section of the federal Clayton Act) or state antitrust laws.

4 (b) The term "consumer dispute" means a dispute between:

5 (i) one or more individuals who seek or acquire real or personal prop-
6 erty, services (including services related to digital technology), secu-
7 rities or other investments, money, or credit for personal, family, or
8 household purposes; and

9 (ii) the seller or provider of such property, services, securities or
10 other investments, money, or credit, or a third party involved in the
11 selling, providing of, payment for, receipt or use of information about,
12 or other relationship to any such property, services, securities or
13 other investments, money, or credit.

14 (c) The term "civil rights dispute" means a dispute in which at least
15 one individual (or their authorized representatives) alleges a violation
16 of:

17 (i) the constitution of the United States or the constitution of a
18 state; or

19 (ii) any federal, state, or local law that prohibits discrimination on
20 the basis of race, sex, age, gender identity, sexual orientation, disa-
21 bility, religion, national origin, or any legally protected status in
22 education, employment, credit, housing, public accommodations and facil-
23 ities, voting, veterans or service members, health care, or a program
24 funded or conducted by the federal government or a state government,
25 including any law referred to or described in section 62(e) of the
26 Internal Revenue Code of 1986, including parts of such law not explicit-
27 ly referenced in such section but that relate to protecting individuals
28 on any such basis.

29 (d) The term "employment dispute" means a dispute between one or more
30 individuals (or their authorized representative) and a person arising
31 out of or related to the work relationship or prospective work relation-
32 ship between them, including a dispute regarding the terms of or payment
33 for, advertising of, recruiting for, referring of, arranging for, or
34 discipline or discharge in connection with, such work, regardless of
35 whether the individual is or would be classified as an employee or an
36 independent contractor with respect to such work, and including disputes
37 arising under any law referred to or described in section 62(e) of the
38 Internal Revenue Code of 1986, including parts of such law not explicit-
39 ly referenced in such section but that relate to protecting individuals
40 on any such basis.

41 (e) The term "pre-dispute arbitration agreement" means an agreement to
42 arbitrate a dispute that has not yet arisen at the time of the making of
43 the agreement.

44 (f) The term "pre-dispute joint-action waiver" means an agreement,
45 whether or not part of a pre-dispute arbitration agreement, that would
46 prohibit or waive the right of one of the parties to the agreement to
47 commence or otherwise participate in a joint, class, or collective
48 action in a judicial, arbitral, administrative, or other forum, concern-
49 ing a dispute that has not yet arisen at the time of the making of the
50 agreement.

51 4. An issue as to whether this chapter applies with respect to a
52 dispute shall be determined under the laws of the state of New York
53 without regard for choice of law principles. The applicability of this
54 section to an agreement to arbitrate, and the validity and enforceabili-
55 ty of an agreement to which this section applies, shall be determined by
56 a court, rather than an arbitrator, irrespective of whether the party

1 seeking or resisting arbitration challenges the arbitration agreement
2 specifically, or in conjunction with other terms of the contract
3 containing such agreement, and irrespective of whether the agreement
4 purports to delegate such determination to an arbitrator.

5 5. Nothing in this section shall apply to any arbitration provision in
6 a contract between an employer and a labor organization or between labor
7 organizations, except that no such arbitration provision shall have the
8 effect of waiving the right of a worker to seek judicial enforcement of
9 a right arising from:

10 (a) any provision of the constitution of the United States, the
11 constitution of the state of New York, or any other state constitution;
12 or

13 (b) any federal or state statute, or policy arising therefrom.

14 § 4. This act shall take effect immediately and shall apply to any
15 action or proceeding pending on or after such date.