STATE OF NEW YORK

10870

IN ASSEMBLY

July 24, 2020

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Dinowitz) -- read once and referred to the Committee on Economic Development

AN ACT to amend the general business law, in relation to actions or practices that establish or maintain a monopoly 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:

Section 1. This act shall be known and may be cited as the "Twenty-First Century Anti-Trust Act".

§ 2. Legislative findings. The legislature hereby finds and declares that there is great concern for the growing accumulation of power in the hands of large corporations. While technological advances have improved society, these companies possess great and increasing power over all aspects of our lives. Over one hundred years ago, the state and federal governments identified these same problems as big businesses blossomed after decades of industrialization. Seeing those problems, the state and federal governments enacted transformative legislation to combat cartels, monopolies, and other anti-competitive business practices. It is time to update, expand and clarify our laws to ensure that these large corporations are subject to strict and appropriate oversight by the state. The legislature further finds and declares that unilateral actions which seek to create a monopoly are as harmful as contracts or agreements of multiple parties to do the same and should be treated similarly under the law. After monopolies have been established, it is typically too late to repair or mitigate the damage which has been done. Accordingly, mere attempts to create monopolies should also be treated as actions contrary to the interests of the people of the state of New York and should be penalized accordingly. The legislature further finds and declares that anti-competitive practices harm great numbers of citizens and therefore must ensure that class actions may be raised in anti-trust suits.

§ 3. Section 340 of the general business law, as amended by chapter 12 of the laws of 1935, subdivision 1 as amended by chapter 893 of the laws

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

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of 1957, subdivision 2 as amended by chapter 805 of the laws of 1984, subdivisions 3 and 4 as renumbered by chapter 502 of the laws of 1948, subdivision 5 as amended by chapter 333 of the laws of 1975 and subdivision 6 as amended by chapter 31 of the laws of 1999, is amended to read as follows:

§ 340. Contracts or agreements for monopoly or in restraint of trade illegal and void. 1. Every contract, agreement, arrangement or combination **thereof** whereby

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

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

For the purpose of [~~establishing or maintaining any such monopoly or unlawfully interfering with the free exercise of any activity in the conduct of any business, trade or commerce or in the furnishing of any service in this state~~] **engaging in the conduct specified in this section** any business, trade or commerce or the furnishing of any service is or may be restrained, is hereby declared to be against public policy, illegal and void.

2. **It shall be unlawful: (a) for any person or persons to monopolize, or attempt to monopolize, or combine or conspire with any other person or persons to monopolize any business, trade or commerce or the furnishing of any service in this state; (b) for any person or persons with a dominant position in the conduct of any business, trade or commerce or in the furnishing of any service in this state to abuse that dominant position.**

3. Subject to the exceptions hereinafter provided in this section, the provisions of this article shall apply to licensed insurers, licensed insurance agents, licensed insurance brokers, licensed independent adjusters and other persons and organizations subject to the provisions of the insurance law, to the extent not regulated by provisions of article twenty-three of the insurance law; and further provided, that nothing in this section shall apply to the marine insurances, including marine protection and indemnity insurance and marine reinsurance, exempted from the operation of article twenty-three of the insurance law.

[~~3.~~] **4.** The provisions of this article shall not apply to cooperative associations, corporate or otherwise, of farmers, gardeners, or dairymen, including live stock farmers and fruit growers, nor to contracts, agreements or arrangements made by such associations, nor to bona fide labor unions.

[~~4.~~] **5.** The labor of human beings shall not be deemed or held to be a commodity or article of commerce as such terms are used in this section and nothing herein contained shall be deemed to prohibit or restrict the right of workingmen to combine in unions, organizations and associations, not organized for the purpose of profit.

[~~5.~~] **6.** An action to recover damages caused by a violation of this section must be commenced within four years after the cause of action has accrued. The state, or any political subdivision or public authority of the state, or any person who shall sustain damages by reason of any violation of this section, shall recover three-fold the actual damages sustained thereby, as well as costs not exceeding ten thousand dollars, and reasonable attorneys' fees. At or before the commencement of any civil action by a party other than the attorney-general for a violation

of this section, notice thereof shall be served upon the attorney-general. Where the aggrieved party is a political subdivision or public authority of the state, notice of intention to commence an action under this section must be served upon the attorney-general at least ten days prior to the commencement of such action. This section shall not apply to any action commenced prior to the effective date of this act.

[~~6.~~] **7.** In any action pursuant to this section, the fact that the state, or any political subdivision or public authority of the state, or any person who has sustained damages by reason of violation of this section has not dealt directly with the defendant shall not bar or otherwise limit recovery; provided, however, that in any action 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, including but not limited to the transfer and consolidation of all related actions. In actions where both direct and indirect purchasers are involved, a defendant shall be entitled to prove as a partial or complete defense to a claim for damages that the illegal overcharge has been passed on to others who are themselves entitled to recover so as to avoid duplication of recovery of damages.

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

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

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

§ 341. Penalty. Every person or corporation, or any officer or agent thereof, who shall [~~make or attempt to make or enter into any such contract, agreement, arrangement or combination or who within this state shall~~] do **or attempt to do, within this state,** any act [~~pursuant thereto~~] **declared unlawful under this article**, or in, toward or for the consummation thereof[~~, wherever the same may have been made~~], is guilty of a class [~~E~~] **C** felony, and on conviction thereof shall, if a natural person, be punished by a fine not exceeding one [~~hundred thousand~~] **million** dollars, or by imprisonment for not longer than [~~four~~] **fifteen** years, or by both such fine and imprisonment; and if a corporation, by a fine of not exceeding one **hundred** million dollars. An indictment or information based on a violation of any of the provisions of this section must be found within [~~three~~] **five** years after its commission. No criminal proceeding barred by prior limitation shall be revived by this act.

§ 5. This act shall take effect immediately.