

# STATE OF NEW YORK

8700--A

## IN SENATE

July 8, 2020

Introduced by Sens. GIANARIS, MAY -- read twice and ordered printed, and when printed to be committed to the Committee on Rules -- committee discharged and said bill committed to the Committee on Consumer Protection -- 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 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 that there is great concern for the growing accumulation of power in the  
5 hands of large corporations. While technological advances have improved  
6 society, these companies possess great and increasing power over all  
7 aspects of our lives. Over one hundred years ago, the state and federal  
8 governments identified these same problems as big businesses blossomed  
9 after decades of industrialization. Seeing those problems, the state  
10 and federal governments enacted transformative legislation to combat  
11 cartels, monopolies, and other anti-competitive business practices. It  
12 is time to update, expand and clarify our laws to ensure that these  
13 large corporations are subject to strict and appropriate oversight by  
14 the state. The legislature further finds and declares that unilateral  
15 actions which seek to create a monopoly are as harmful as contracts or  
16 agreements of multiple parties to do the same and should be treated  
17 similarly under the law. After monopolies have been established, it is  
18 typically too late to repair or mitigate the damage which has been done.  
19 Accordingly, mere attempts to create monopolies should also be treated  
20 as actions contrary to the interests of the people of the state of New  
21 York and should be penalized accordingly. The legislature further finds  
22 and declares that anti-competitive practices harm great numbers of citi-

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

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1 zens and therefore must ensure that class actions may be raised in anti-  
2 trust suits.

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

10 § 340. Contracts or agreements for monopoly or in restraint of trade  
11 illegal and void. 1. Every contract, agreement, arrangement or combina-  
12 tion thereof whereby

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

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

19 For the purpose of [~~establishing or maintaining any such monopoly or~~  
20 ~~unlawfully interfering with the free exercise of any activity in the~~  
21 ~~conduct of any business, trade or commerce or in the furnishing of any~~  
22 ~~service in this state] engaging in the conduct specified in this section  
23 any business, trade or commerce or the furnishing of any service is or  
24 may be restrained, is hereby declared to be against public policy, ille-  
25 gal and void.~~

26 2. It shall be unlawful: (a) for any person or persons to monopolize,  
27 or attempt to monopolize, or combine or conspire with any other person  
28 or persons to monopolize any business, trade or commerce or the furnish-  
29 ing of any service in this state; (b) for any person or persons with a  
30 dominant position in the conduct of any business, trade or commerce or  
31 in the furnishing of any service in this state to abuse that dominant  
32 position.

33 3. Subject to the exceptions hereinafter provided in this section, the  
34 provisions of this article shall apply to licensed insurers, licensed  
35 insurance agents, licensed insurance brokers, licensed independent  
36 adjusters and other persons and organizations subject to the provisions  
37 of the insurance law, to the extent not regulated by provisions of arti-  
38 cle twenty-three of the insurance law; and further provided, that noth-  
39 ing in this section shall apply to the marine insurances, including  
40 marine protection and indemnity insurance and marine reinsurance,  
41 exempted from the operation of article twenty-three of the insurance  
42 law.

43 [~~3-~~] 4. The provisions of this article shall not apply to cooperative  
44 associations, corporate or otherwise, of farmers, gardeners, or dairy-  
45 men, including live stock farmers and fruit growers, nor to contracts,  
46 agreements or arrangements made by such associations, nor to bona fide  
47 labor unions.

48 [~~4-~~] 5. The labor of human beings shall not be deemed or held to be a  
49 commodity or article of commerce as such terms are used in this section  
50 and nothing herein contained shall be deemed to prohibit or restrict the  
51 right of workingmen to combine in unions, organizations and associ-  
52 ations, not organized for the purpose of profit.

53 [~~5-~~] 6. An action to recover damages caused by a violation of this  
54 section must be commenced within four years after the cause of action  
55 has accrued. The state, or any political subdivision or public authority  
56 of the state, or any person who shall sustain damages by reason of any

1 violation of this section, shall recover three-fold the actual damages  
2 sustained thereby, as well as costs not exceeding ten thousand dollars,  
3 and reasonable attorneys' fees. At or before the commencement of any  
4 civil action by a party other than the attorney-general for a violation  
5 of this section, notice thereof shall be served upon the attorney-gener-  
6 al. Where the aggrieved party is a political subdivision or public  
7 authority of the state, notice of intention to commence an action under  
8 this section must be served upon the attorney-general at least ten days  
9 prior to the commencement of such action. This section shall not apply  
10 to any action commenced prior to the effective date of this act.

11 ~~[6-]~~ 7. In any action pursuant to this section, the fact that the  
12 state, or any political subdivision or public authority of the state, or  
13 any person who has sustained damages by reason of violation of this  
14 section has not dealt directly with the defendant shall not bar or  
15 otherwise limit recovery; provided, however, that in any action in which  
16 claims are asserted against a defendant by both direct and indirect  
17 purchasers, the court shall take all steps necessary to avoid duplicate  
18 liability, including but not limited to the transfer and consolidation  
19 of all related actions. In actions where both direct and indirect  
20 purchasers are involved, a defendant shall be entitled to prove as a  
21 partial or complete defense to a claim for damages that the illegal  
22 overcharge has been passed on to others who are themselves entitled to  
23 recover so as to avoid duplication of recovery of damages.

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

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

29 § 4. Section 341 of the general business law, as amended by chapter  
30 333 of the laws of 1975, is amended to read as follows:

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

46 § 5. This act shall take effect immediately.