

STATE OF NEW YORK

3399

2021-2022 Regular Sessions

IN ASSEMBLY

January 26, 2021

Introduced by 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:

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

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

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

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

12 (c) applying dissimilar conditions to equivalent transactions with
13 other trading parties, thereby placing them at a competitive disadvan-
14 tage;

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

19 (e) refusing to deal with customers or rivals as a means of suppress-
20 ing competition;

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

LBD06075-01-1

1 (f) prohibiting distributors, suppliers, or customers from doing busi-
2 ness with rival firms;

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

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

8 (i) pricing below average variable cost.

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

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

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

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

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

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

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

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

54 2. Notwithstanding any other provision of law, no pre-dispute arbi-
55 tration agreement or pre-dispute joint-action waiver shall be valid or

1 enforceable with respect to an antitrust dispute, consumer dispute,
2 civil rights dispute, or employment dispute.

3 3. For the purposes of this section:

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

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

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

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

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

20 (i) the constitution of the United States or the constitution of a
21 state; or

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

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

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

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

54 4. An issue as to whether this chapter applies with respect to a
55 dispute shall be determined under the laws of the state of New York
56 without regard for choice of law principles. The applicability of this

1 section to an agreement to arbitrate, and the validity and enforceabili-
2 ty of an agreement to which this section applies, shall be determined by
3 a court, rather than an arbitrator, irrespective of whether the party
4 seeking or resisting arbitration challenges the arbitration agreement
5 specifically, or in conjunction with other terms of the contract
6 containing such agreement, and irrespective of whether the agreement
7 purports to delegate such determination to an arbitrator.

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

13 (a) any provision of the constitution of the United States, the
14 constitution of the state of New York, or any other state constitution;
15 or

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

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