

Part 31 Utah Antitrust Act

76-10-3101 Title.

This part is known as the "Utah Antitrust Act."

Renumbered and Amended by Chapter 187, 2013 General Session

76-10-3102 Legislative findings -- Purpose of act.

The Legislature finds and determines that competition is fundamental to the free market system and that the unrestrained interaction of competitive forces will yield the best allocation of our economic resources, the lowest prices, the highest quality and the greatest material progress, while at the same time providing an environment conducive to the preservation of our democratic, political and social institutions.

The purpose of this act is, therefore, to encourage free and open competition in the interest of the general welfare and economy of this state by prohibiting monopolistic and unfair trade practices, combinations and conspiracies in restraint of trade or commerce and by providing adequate penalties for the enforcement of its provisions.

Renumbered and Amended by Chapter 187, 2013 General Session

76-10-3103 Definitions.

As used in this part:

- (1) "Attempt to monopolize" means action taken without a legitimate business purpose and with a specific intent of destroying competition or controlling prices to substantially lessen competition, or creating a monopoly, where there is a dangerous probability of creating a monopoly.
- (2) "Attorney general" means the attorney general of the state or one of the attorney general's assistants.
- (3) "Commodity" includes any product of the soil, any article of merchandise or trade or commerce, and any other kind of real or personal property.
- (4) "Manufacturer" means the producer or originator of any commodity or service.
- (5) "Service" includes any activity that is performed in whole or in part for the purpose of financial gain including, but not limited to, personal service, professional service, rental, leasing or licensing for use.
- (6) "Trade or commerce" includes all economic activity involving, or relating to, any commodity, service, or business activity, including the cost of exchange or transportation.

Amended by Chapter 140, 2015 General Session

76-10-3104 Illegal anticompetitive activities.

- (1) Every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce is declared to be illegal.
- (2) It shall be unlawful for any person to monopolize, or attempt to monopolize, or combine or conspire with any other person or persons to monopolize, any part of trade or commerce.

Renumbered and Amended by Chapter 187, 2013 General Session

76-10-3105 Exempt activities.

- (1) This act may not be construed to prohibit:
 - (a) the activities of any public utility to the extent that those activities are subject to regulation by the public service commission, the state or federal department of transportation, the federal energy regulatory commission, the federal communications commission, the interstate commerce commission, or successor agencies;
 - (b) the activities of any insurer, insurance producer, independent insurance adjuster, or rating organization including, but not limited to, making or participating in joint underwriting or reinsurance arrangements, to the extent that those activities are subject to regulation by the commissioner of insurance;
 - (c) the activities of securities dealers, issuers, or agents, to the extent that those activities are subject to regulation under the laws of either this state or the United States;
 - (d) the activities of any state or national banking institution, to the extent that the activities are regulated or supervised by state government officers or agencies under the banking laws of this state or by federal government officers or agencies under the banking laws of the United States;
 - (e) the activities of any state or federal savings and loan association to the extent that those activities are regulated or supervised by state government officers or agencies under the banking laws of this state or federal government officers or agencies under the banking laws of the United States;
 - (f) the activities of a political subdivision to the extent authorized or directed by state law, consistent with the state action doctrine of federal antitrust law; or
 - (g) the activities of an emergency medical service provider licensed under Title 26, Chapter 8a, Utah Emergency Medical Services System Act, to the extent that those activities are regulated by state government officers or agencies under that act.
- (2)
 - (a) The labor of a human being is not a commodity or article of commerce.
 - (b) Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purpose of mutual help and not having capital stock or conducted for profit, or to forbid or restrain individual members of these organizations from lawfully carrying out their legitimate objects; nor may these organizations or membership in them be held to be illegal combinations or conspiracies in restraint of trade under the antitrust laws.
- (3)
 - (a) As used in this section, an entity is also a municipality if the entity was formed under Title 11, Chapter 13, Interlocal Cooperation Act, prior to January 1, 1981, and the entity is:
 - (i) a project entity as defined in Section 11-13-103;
 - (ii) an electric interlocal entity as defined in Section 11-13-103; or
 - (iii) an energy services interlocal entity as defined in Section 11-13-103.
 - (b) The activities of the entities under Subsection (3)(a) are authorized or directed by state law.

Renumbered and Amended by Chapter 187, 2013 General Session

76-10-3106 Attorney General's powers -- Investigations -- Institution of actions -- Cooperation.

- (1) The attorney general may investigate suspected violations of this act and institute appropriate actions regarding those suspected violations as provided in this act.

- (2) Any violations of this act which come to the attention of any state government officer or agency shall be reported to the attorney general. All state government officers and agencies shall cooperate with, and assist in, any prosecution for violation of this act.
- (3) The attorney general may proceed under any antitrust laws in the state or federal courts on behalf of this state, any of its political subdivisions or agencies, or as parens patriae on behalf of natural persons in this state.

Renumbered and Amended by Chapter 187, 2013 General Session

76-10-3107 Civil antitrust investigations -- Demand for production of documents and responses to written interrogatories -- Oral examination -- Judicial order for compliance -- Confidentiality -- Subpoenas precluded.

- (1) When the attorney general has reasonable cause to believe that any person may be in possession, custody, or control of any information, including any document, material, or testimony, relevant to a civil antitrust investigation, the attorney general may, prior to the commencement of a civil action, issue and cause to be served upon that person a written civil investigative demand requesting that person to:
 - (a) produce any document or material for inspection, copying, or reproduction by the state where the document or material is located or produced;
 - (b) give oral testimony under oath, concerning the subject of the investigation;
 - (c) respond to written interrogatories; or
 - (d) furnish any combination of these.
- (2)
 - (a) Each demand shall state:
 - (i) the nature of the activities under investigation, constituting the alleged antitrust violation, which may result in a violation of this part and the applicable provision of law;
 - (ii) that the recipient is entitled to counsel;
 - (iii) that the information received in response to the demand may be used in a civil or criminal proceeding;
 - (iv) that if the recipient does not comply with the demand, the attorney general may compel compliance by appearance, upon reasonable notice to the recipient, before the district court in the judicial district where the recipient resides or does business and only upon a showing before that district court that the requirements of Subsection (7) have been met;
 - (v) that the recipient has the right at any time before the return date of the demand, or within 30 days, whichever period is shorter, to seek a court order determining the validity of the demand; and
 - (vi) that at any time during the proceeding the person may assert any applicable privilege.
 - (b) If the demand is for production of any document or material, the demand shall also:
 - (i) describe the document or material to be produced with sufficient definiteness and certainty as to permit the document or material to be fairly identified;
 - (ii) prescribe return dates that provide a reasonable period of time within which the document or material demanded may be assembled and made available for inspection and reproduction; and
 - (iii) identify the individual at the Office of the Attorney General to whom the document or material shall be made available.
 - (c) If the demand is for the giving of oral testimony, the demand shall also:
 - (i) prescribe the date, time, and place at which oral testimony shall be commenced;

- (ii) state that an employee of the Office of the Attorney General shall conduct the examination; and
 - (iii) state that the recording or the transcript of the examination shall be submitted to and maintained by the Office of the Attorney General.
- (d) If the demand is for responses to written interrogatories, the demand shall also:
 - (i) state that each interrogatory shall be answered separately and fully in writing and under oath, unless the person objects to the interrogatory, in which event the reasons for objection shall be stated in lieu of an answer;
 - (ii) state that the answers are to be signed by the person making them, and the objections are to be signed by the attorney making them;
 - (iii) identify by name and address the individual at the Office of the Attorney General on whom answers and objections provided under this Subsection (2)(d) are to be served; and
 - (iv) prescribe the date on or before which these answers and objections are to be served on the identified individual.
- (3) The civil investigative demand may be served upon any person who is subject to the jurisdiction of any Utah court and shall be served upon the person in the manner provided for service of a subpoena.
- (4)
 - (a) Any document or material submitted in response to a demand served under this section shall be accompanied by an affidavit, in the form the demand designates, by the person, if a natural person, to whom the demand is directed or, if not a natural person, by a person having knowledge of the facts and circumstances relating to the production.
 - (b) The affidavit shall state that every document or material required by the demand and in the possession, custody, or control of the person to whom the demand is directed has in good faith been produced and made available to the Office of the Attorney General.
 - (c) The affidavit shall identify any demanded document or material that is not produced and state the reason why each item was not produced.
- (5)
 - (a) An examination of any person pursuant to a demand for oral testimony served under this section may only be taken before an officer authorized to administer oaths or affirmations by the laws of the United States or of the place where the examination is held. The officer before whom the testimony is to be taken shall put the witness on oath or affirmation and shall personally, or by someone acting under the officer's direction and in the officer's presence, record the testimony of the witness. If the testimony is taken stenographically, it shall be transcribed and the officer before whom the testimony is taken shall promptly transmit the transcript of the testimony to the Office of the Attorney General.
 - (b) When taking oral testimony, all persons other than personnel from the Office of the Attorney General, the witness, counsel for the witness, and the officer before whom the testimony is to be taken shall be excluded from the place where the examination is held.
 - (c) The oral testimony of any person taken pursuant to a demand served under this section shall be taken in the county where the person resides or transacts business or in any other place agreed upon by the attorney general and the person.
 - (d) When testimony is fully transcribed, the transcript shall be certified by the officer before whom the testimony was taken and submitted to the witness for examination and signing, in accordance with the Utah Rules of Civil Procedure, Rule 30(e). A copy of the deposition shall be furnished free of charge to a witness upon the witness's request.

- (e) Any change in testimony recorded by nonstenographic means shall be made in the manner provided in the Utah Rules of Civil Procedure, Rule 30, for changing deposition testimony recorded by nonstenographic means.
 - (f) Any person compelled to appear under a demand for oral testimony under this section may be accompanied, represented, and advised by counsel. Counsel may advise the person, in confidence, either upon the request of the person or upon counsel's own initiative, with respect to any question asked of the person. The person or counsel may object on the record to any question, in whole or in part, and shall briefly state for the record the reason for the objection. An objection may properly be made, received, and entered upon the record when it is claimed that the person is entitled to refuse to answer the question on grounds of any constitutional or other legal right or privilege, including the privilege against self-incrimination. If the person refuses to answer any question, the attorney general may petition the district court for an order compelling the person to answer the question.
 - (g) If any person compelled to appear under a demand for oral testimony or other information pursuant to this section refuses to answer any questions or produce information on grounds of the privilege against self-incrimination, the testimony of that person may be compelled as in criminal cases.
 - (h) Any person appearing for oral examination pursuant to a demand served under this section is entitled to the same fees and mileage which are paid to witnesses in the district courts of the state of Utah. Witness fees and expenses shall be tendered and paid as in any civil action.
- (6) The providing of any information in response to a civil investigative demand issued pursuant to the provisions of this part shall be considered part of an official proceeding as defined in Section 76-8-501.
- (7)
- (a) If a person fails to comply with the demand served upon him under this section, the attorney general may file in the district court of the county in which the person resides, is found, or does business, a petition for an order compelling compliance with the demand. Notice of hearing of the petition and a copy of the petition shall be served upon the person, who may appear in opposition to the petition. If the court finds that the demand is proper, that there is reasonable cause to believe there has been a violation of this part, and that the information sought is relevant to the violation, it shall order the person to comply with the demand, subject to modifications the court may prescribe.
 - (b)
 - (i) At any time before the return date specified in a demand or within 30 days after the demand has been served, whichever period is shorter, the person who has been served may file a petition for an order modifying or setting aside the demand. This petition shall be filed in the district court in the county of the person's residence, principal office, or place of business, or in the district court in Salt Lake County. The petition shall specify each ground upon which the petitioner relies in seeking the relief sought. The petition may be based upon any failure of the demand to comply with the provisions of this section or upon any constitutional or other legal right or privilege of the petitioner. The petitioner shall serve notice of hearing of the petition and a copy of the petition upon the attorney general. The attorney general may submit an answer to the petition within 30 days after receipt of the petition.
 - (ii) After a hearing on the petition described in Subsection (7)(b)(i), and for good cause shown, the court may make any further order in the proceedings that justice requires to protect the person from unreasonable annoyance, embarrassment, oppression, burden, or expense. At any hearing pursuant to this section it is the attorney general's burden to establish that the

demand is proper, that there is reasonable cause to believe that there has been a violation of this part, and that the information sought is relevant to the violation.

- (8)
- (a) The attorney general may enter into a confidentiality agreement in lieu of, or in addition to, issuing a civil investigative demand, when the attorney general has reasonable cause to believe that any person may be in possession, custody, or control of any information relevant to a civil antitrust investigation or civil antitrust action.
 - (b) In any civil antitrust action, the court may issue a confidentiality order, which may incorporate a confidentiality agreement.
 - (c) The confidentiality agreement or confidentiality order may address any procedure, testimony taken, or document or material produced under this section. The agreement or order may define to whom access will be given, the conditions and the restrictions to the access, and how the testimony, document, or material will be safeguarded. The agreement or order may require that documentation of testimony and any other document or material:
 - (i) be returned to the designated person; or
 - (ii) notwithstanding the provisions of Section 63A-12-105 and any retention schedule promulgated pursuant to Section 63G-2-604, be destroyed by the attorney general at a designated time, in which case this requirement is binding upon the attorney general.
- (9)
- (a) Any procedure, testimony taken, or document or material produced under this section, whether produced pursuant to a civil investigative demand, confidentiality agreement, or confidentiality order, shall be kept confidential by the attorney general unless confidentiality is waived in writing by the person who has testified, or produced a document or material.
 - (b) Any testimony taken or document or material produced under this section may be used in a civil antitrust action, provided that the use is not restricted or prohibited under a confidentiality agreement or confidentiality order, unless that restriction or prohibition is waived by the person from whom the information was obtained.
 - (c) Notwithstanding any other provision of this section, the attorney general may disclose testimony taken or a document or material obtained under this section, without either the consent of the person from whom it was received or the person being investigated, to:
 - (i) any grand jury; and
 - (ii) officers and employees of federal or state law enforcement agencies, provided the person from whom the information was obtained is notified 20 days prior to disclosure, and the federal or state law enforcement agency certifies that the information will be:
 - (A) maintained in confidence, as required by Subsection (9)(a); and
 - (B) used only for official law enforcement purposes.
- (10) Use of a civil investigative demand under this action precludes the invocation by the attorney general of Section 77-22-2.

Amended by Chapter 140, 2015 General Session

76-10-3108 Attorney general may bring action for injunctive relief, damages, or civil penalty.

- (1) The attorney general may bring an action for appropriate injunctive relief, and for damages or a civil penalty in the name of the state, any of its political subdivisions or agencies, or as *parens patriae* on behalf of natural persons in this state, for a violation of this act. Actions may be brought under this section regardless of whether the plaintiff dealt directly or indirectly with the defendant. This remedy is an additional remedy to any other remedies provided by law. It may not diminish or offset any other remedy.

- (2) Any individual who violates this act is subject to a civil penalty of not more than \$100,000 for each violation. Any person, other than an individual, who violates this act is subject to a civil penalty of not more than \$500,000 for each violation.

Renumbered and Amended by Chapter 187, 2013 General Session

76-10-3109 Person may bring action for injunctive relief and damages -- Treble damages -- Recovery of actual damages or civil penalty by state or political subdivisions -- Immunity of political subdivisions from damages, costs, or attorney fees.

- (1)
- (a) A person who is a citizen of this state or a resident of this state and who is injured or is threatened with injury in his business or property by a violation of the Utah Antitrust Act may bring an action for injunctive relief and damages, regardless of whether the person dealt directly or indirectly with the defendant. This remedy is in addition to any other remedies provided by law. It may not diminish or offset any other remedy.
 - (b) Subject to the provisions of Subsections (3), (4), and (5), the court shall award three times the amount of damages sustained, plus the cost of suit and a reasonable attorney fees, in addition to granting any appropriate temporary, preliminary, or permanent injunctive relief.
- (2)
- (a) If the court determines that a judgment in the amount of three times the damages awarded plus attorney fees and costs will directly cause the insolvency of the defendant, the court shall reduce the amount of judgment to the highest sum that would not cause the defendant's insolvency.
 - (b) The court may not reduce a judgment to an amount less than the amount of damages sustained plus the costs of suit and reasonable attorney fees.
- (3) The state or any of its political subdivisions may recover the actual damages it sustains, or the civil penalty provided by the Utah Antitrust Act, in addition to injunctive relief, costs of suit, and reasonable attorney fees.
- (4) No damages, costs, or attorney fees may be recovered under this section:
- (a) from any political subdivision;
 - (b) from the official or employee of any political subdivision acting in an official capacity; or
 - (c) against any person based on any official action directed by a political subdivision or its official or employee acting in an official capacity.
- (5) Subsection (4) does not apply to cases filed before April 27, 1987, unless the defendant establishes and the court determines that in light of all the circumstances, including the posture of litigation and the availability of alternative relief, it would be inequitable not to apply Subsection (4) to a pending case.
- (6) When a defendant has been sued in one or more actions by both direct and indirect purchasers, whether in state court or federal court, a defendant shall be entitled to prove as a partial or complete defense to a claim for damages that the damages incurred by the plaintiff or plaintiffs have been passed on to others who are entitled to recover so as to avoid duplication of recovery of damages. In an action by indirect purchasers, any damages or settlement amounts paid to direct purchasers for the same alleged antitrust violations shall constitute a defense in the amount paid on a claim by indirect purchasers under this chapter so as to avoid duplication of recovery of damages.
- (7) It shall be presumed, in the absence of proof to the contrary, that the injured persons who dealt directly with the defendant incurred at least 1/3 of the damages, and shall, therefore, recover at least 1/3 of the awarded damages. It shall also be presumed, in the absence of proof to the

contrary, that the injured persons who dealt indirectly with the defendant incurred at least 1/3 of the damages, and shall, therefore, recover at least 1/3 of the awarded damages. The final 1/3 of the damages shall be awarded by the court to those injured persons determined by the court as most likely to have absorbed the damages.

- (8) There is a presumption, in the absence of proof to the contrary and subject to Subsection (7), that each level in a product's or service's distribution chain passed on any and all increments in its cost due to an increase in the cost of an ingredient or a component product or service that was caused by a violation of this chapter. This amount will be presumed, in the absence of evidence to the contrary, to be equal to the change in the cost, in dollars and cents, of the ingredient, component product, or service to its first purchaser.
- (9) The attorney general shall be notified by the plaintiff about the filing of any class action involving antitrust violations that includes plaintiffs from this state. The attorney general shall receive a copy of each filing from each plaintiff. The attorney general may, in his or her discretion, intervene or file amicus briefs in the case, and may be heard on the question of the fairness or appropriateness of any proposed settlement agreement.
- (10) If, in a class action or parens patriae action filed under this chapter, including the settlement of any action, it is not feasible to return any part of the recovery to the injured plaintiffs, the court shall order the residual funds be applied to benefit the specific class of injured plaintiffs, to improve antitrust enforcement generally by depositing the residual funds into the Attorney General Litigation Fund created by Section 76-10-3114, or both.
- (11) In any action brought under this chapter, the court shall approve all attorney fees and arrangements for the payment of attorney fees, including contingency fee agreements.

Renumbered and Amended by Chapter 187, 2013 General Session

Amended by Chapter 278, 2013 General Session

76-10-3112 Fine for violation -- Certain vertical agreements excluded -- Nolo contendere.

- (1)
 - (a) Any person who violates Section 76-10-3104 by price fixing, bid rigging, agreeing among competitors to divide customers or territories, or by engaging in a group boycott with specific intent of eliminating competition is guilty of a third degree felony and, notwithstanding Sections 76-3-301 and 76-3-302, is subject to:
 - (i) if an individual, a fine not to exceed \$100,000; or
 - (ii) if by a person other than an individual, a fine not to exceed \$500,000.
 - (b) Subsection (1)(a) may not be construed to include vertical agreements between a manufacturer, its distributors, or their subdistributors dividing customers and territories solely involving the manufacturer's commodity or service where the manufacturer distributes its commodity or service both directly and through distributors or subdistributors in competition with itself.
- (2) A defendant may plead nolo contendere to a charge brought under this title but only with the consent of the court. The court may accept the plea only after due consideration of the views of the parties and the interest of the public in the effective administration of justice.

Renumbered and Amended by Chapter 187, 2013 General Session

Amended by Chapter 285, 2013 General Session

76-10-3113 Conviction as prima facie evidence in action for injunctive relief or damages.

In any action brought by the state, a final judgment or decree determining that a person has criminally violated this act, other than a judgment entered pursuant to a nolo contendere plea or a decree entered prior to the taking of any testimony, shall be prima facie evidence against that person in any action brought pursuant to Section 76-10-3109, as to all matters with respect to which the judgment or decree would be an estoppel between the parties thereto.

Renumbered and Amended by Chapter 187, 2013 General Session

76-10-3114 Attorney General Litigation Fund.

- (1)
 - (a) There is created an expendable special revenue fund known as the Attorney General Litigation Fund for the purpose of providing funds to pay for any costs and expenses incurred by the state attorney general in relation to actions under state or federal antitrust, criminal laws, or civil proceedings under Title 13, Chapter 44, Protection of Personal Information Act. These funds are in addition to other funds as may be appropriated by the Legislature to the attorney general for the administration and enforcement of the laws of this state.
 - (b) At the close of any fiscal year, any balance in the fund in excess of \$2,000,000 shall be transferred to the General Fund.
 - (c) The attorney general may expend money from the Attorney General Litigation Fund for the purposes in Subsection (1)(a).
- (2)
 - (a) All money received by the state or its agencies by reason of any judgment, settlement, or compromise as the result of any action commenced, investigated, or prosecuted by the attorney general, after payment of any fines, restitution, payments, costs, or fees allocated by the court, shall be deposited in the Attorney General Litigation Fund, except as provided in Subsection (2)(b).
 - (b)
 - (i) Any expenses advanced by the attorney general in any of the actions under Subsection (1)(a) shall be credited to the Attorney General Litigation Fund.
 - (ii) Any money recovered by the attorney general on behalf of any private person or public body other than the state shall be paid to those persons or bodies from funds remaining after payment of expenses under Subsection (2)(b)(i).
- (3) The Division of Finance shall transfer any money remaining in the Antitrust Revolving Account on July 1, 2002, to the Attorney General Litigation Fund created in Subsection (1).

Renumbered and Amended by Chapter 187, 2013 General Session

Amended by Chapter 400, 2013 General Session

76-10-3115 Attorney general to advocate competition.

The attorney general shall have the authority and responsibility to advocate the policy of competition before all political subdivisions of this state and all public agencies whose actions may affect the interests of persons in this state.

Renumbered and Amended by Chapter 187, 2013 General Session

76-10-3116 Venue of actions by state -- Transfer.

Any action brought by the state pursuant to this act shall be brought in any county wherein the defendant resides or does business, or at the option of the defendant, such action shall be

transferred, upon motion made within 30 days after commencement of the action, to Salt Lake County.

Renumbered and Amended by Chapter 187, 2013 General Session

76-10-3117 Statute of limitations.

- (1) Any action brought by the attorney general pursuant to this act is barred if it is not commenced within four years after the cause of action accrues.
- (2) Any other action pursuant to this act is barred if it is not commenced within four years after the cause of action accrues, or within one year after the conclusion of an action brought by the state pursuant to this act based in whole or in part on any matter complained of in the subsequent action, whichever is the latter.

Renumbered and Amended by Chapter 187, 2013 General Session

76-10-3118 Interpretation of act.

The Legislature intends that the courts, in construing this act, will be guided by interpretations given by the federal courts to comparable federal antitrust statutes and by other state courts to comparable state antitrust statutes.

Renumbered and Amended by Chapter 187, 2013 General Session