

ANTITRUST ACT AMENDMENTS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephen H. Urquhart

House Sponsor: Kevin S. Garn

LONG TITLE

General Description:

This bill amends provisions of the Antitrust Act.

Highlighted Provisions:

This bill:

- ▶ amends provisions of the Antitrust Act.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

76-10-915, as last amended by Laws of Utah 2006, Chapter 112

76-10-919, as last amended by Laws of Utah 2008, Chapter 256

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **76-10-915** is amended to read:

76-10-915. 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;

30 (b) the activities of any insurer, insurance producer, independent insurance adjuster, or
31 rating organization including, but not limited to, making or participating in joint underwriting
32 or reinsurance arrangements, to the extent that those activities are subject to regulation by the
33 commissioner of insurance;

34 (c) the activities of securities dealers, issuers, or agents, to the extent that those
35 activities are subject to regulation under the laws of either this state or the United States;

36 (d) the activities of any state or national banking institution, to the extent that the
37 activities are regulated or supervised by state government officers or agencies under the
38 banking laws of this state or by federal government officers or agencies under the banking
39 laws of the United States;

40 (e) the activities of any state or federal savings and loan association to the extent that
41 those activities are regulated or supervised by state government officers or agencies under the
42 banking laws of this state or federal government officers or agencies under the banking laws of
43 the United States;

44 (f) the activities of a [~~municipality~~] political subdivision to the extent authorized or
45 directed by state law, consistent with the state action doctrine of federal antitrust law; or

46 (g) the activities of an emergency medical service provider licensed under Title 26,
47 Chapter 8a, Utah Emergency Medical Services System Act, to the extent that those activities
48 are regulated by state government officers or agencies under that act.

49 (2) (a) The labor of a human being is not a commodity or article of commerce.

50 (b) Nothing contained in the antitrust laws shall be construed to forbid the existence
51 and operation of labor, agricultural, or horticultural organizations, instituted for the purpose of
52 mutual help and not having capital stock or conducted for profit, or to forbid or restrain
53 individual members of these organizations from lawfully carrying out their legitimate objects;
54 nor may these organizations or membership in them be held to be illegal combinations or
55 conspiracies in restraint of trade under the antitrust laws.

56 (3) (a) As used in this section, an entity is also a municipality if the entity was formed
57 under Title 11, Chapter 13, Interlocal Cooperation Act, prior to January 1, 1981, and the entity

58 is:

- 59 (i) a project entity as defined in Section 11-13-103;
- 60 (ii) an electric interlocal entity as defined in Section 11-13-103; or
- 61 (iii) an energy services interlocal entity as defined in Section 11-13-103.

62 (b) The activities of the entities under Subsection (3)(a) are authorized or directed by
63 state law.

64 Section 2. Section **76-10-919** is amended to read:

65 **76-10-919. Person may bring action for injunctive relief and damages -- Treble**
66 **damages -- Recovery of actual damages or civil penalty by state or political subdivisions**
67 **-- Immunity of political subdivisions from damages, costs, or attorney fees.**

68 (1) (a) A person who is a citizen of this state or a resident of this state and who is
69 injured or is threatened with injury in his business or property by a violation of the Utah
70 Antitrust Act may bring an action for injunctive relief and damages, regardless of whether the
71 person dealt directly or indirectly with the defendant. This remedy is in addition to any other
72 remedies provided by law. It may not diminish or offset any other remedy.

73 (b) Subject to the provisions of Subsections (3), (4), and (5), the court shall award
74 three times the amount of damages sustained, plus the cost of suit and a reasonable attorney
75 fees, in addition to granting any appropriate temporary, preliminary, or permanent injunctive
76 relief.

77 (2) (a) If the court determines that a judgment in the amount of three times the
78 damages awarded plus attorney fees and costs will directly cause the insolvency of the
79 defendant, the court shall reduce the amount of judgment to the highest sum that would not
80 cause the defendant's insolvency.

81 (b) The court may not reduce a judgment to an amount less than the amount of
82 damages sustained plus the costs of suit and a reasonable attorney fees.

83 (3) The state or any of its political subdivisions may recover the actual damages it
84 sustains, or the civil penalty provided by the Utah Antitrust Act, in addition to injunctive
85 relief, costs of suit, and reasonable attorney fees.

86 (4) No damages, costs, or attorney fees may be recovered under this section:

87 (a) from any political subdivision;

88 (b) from the official or employee of any political subdivision acting in an official
89 capacity; or

90 (c) against any person based on any official action directed by a political subdivision
91 or its official or employee acting in an official capacity.

92 (5) ~~(a)~~ Subsection (4) does not apply to cases filed before April 27, 1987, unless the
93 defendant establishes and the court determines that in light of all the circumstances, including
94 the posture of litigation and the availability of alternative relief, it would be inequitable not to
95 apply Subsection (4) to a pending case.

96 ~~[(b) In determining the application of Subsection (4), existence of a jury verdict, court
97 judgment, or any subsequent litigation is prima facie evidence that Subsection (4) is not
98 applicable.]~~

99 (6) When a defendant has been sued in one or more actions by both direct and indirect
100 purchasers, whether in state court or federal court, a defendant shall be entitled to prove as a
101 partial or complete defense to a claim for damages that the damages incurred by the plaintiff
102 or plaintiffs have been passed on to others who are entitled to recover so as to avoid
103 duplication of recovery of damages. In an action by indirect purchasers, any damages or
104 settlement amounts paid to direct purchasers for the same alleged antitrust violations shall
105 constitute a defense in the amount paid on a claim by indirect purchasers under this chapter so
106 as to avoid duplication of recovery of damages.

107 (7) It shall be presumed, in the absence of proof to the contrary, that the injured
108 persons who dealt directly with the defendant incurred at least 1/3 of the damages, and shall,
109 therefore, recover at least 1/3 of the awarded damages. It shall also be presumed, in the
110 absence of proof to the contrary, that the injured persons who dealt indirectly with the
111 defendant incurred at least 1/3 of the damages, and shall, therefore, recover at least 1/3 of the
112 awarded damages. The final 1/3 of the damages shall be awarded by the court to those injured
113 persons determined by the court as most likely to have absorbed the damages.

114 (8) There is a presumption, in the absence of proof to the contrary and subject to
115 Subsection (7), that each level in a product's or service's distribution chain passed on any and
116 all increments in its cost due to an increase in the cost of an ingredient or a component product
117 or service that was caused by a violation of this chapter. This amount will be presumed, in the
118 absence of evidence to the contrary, to be equal to the change in the cost, in dollars and cents,
119 of the ingredient, component product, or service to its first purchaser.

120 (9) The attorney general shall be notified by the plaintiff about the filing of any class
121 action involving antitrust violations that includes plaintiffs from this state. The attorney
122 general shall receive a copy of each filing from each plaintiff. The attorney general may, in his
123 or her discretion, intervene or file amicus briefs in the case, and may be heard on the question
124 of the fairness or appropriateness of any proposed settlement agreement.

125 (10) If, in a class action or parens patriae action filed under this chapter, including the
126 settlement of any action, it is not feasible to return any part of the recovery to the injured
127 plaintiffs, the court shall order the residual funds be applied to benefit the specific class of
128 injured plaintiffs, to improve antitrust enforcement generally by depositing the residual funds
129 into the Attorney General Litigation Fund created by Section 76-10-922, or both.

130 (11) In any action brought under this chapter, the court shall approve all attorney fees
131 and arrangements for the payment of attorney fees, including contingency fee agreements.