WEST VIRGINIA CODE CHAPTER 47 ARTICLE 18

WV Legislature

§47-18-1. Short title.

This article shall be known and may be cited as the "West Virginia Antitrust Act."

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§47-18-2. Definitions.

As used in this article, unless the context otherwise requires:

(a) "Person" shall mean any natural person or persons, or any corporation, partnership, company, trust or association of persons.

(b) "Trade or commerce" shall include all economic activity involving or relating to any commodity or service.

(c) "Commodity" shall mean any kind of real or personal property.

(d) "Service" shall mean any activity which is performed in whole or in part for the purpose of financial gain, including but not limited to sale, rental, leasing or licensing for use.

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§47-18-3. Contracts and combinations in restraint of trade.

(a) Every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce in this state shall be unlawful.

(b) Without limiting the effect of subsection (a) of this section, the following shall be deemed to restrain trade or commerce unreasonably and are unlawful:

(1) A contract, combination or conspiracy between two or more persons:

(A) for the purpose or with the effect of fixing, controlling, or maintaining the market price, rate or fee of any commodity or service; or

(B) fixing, controlling, maintaining, limiting or discontinuing the production, manufacture, mining, sale or supply of any commodity, or the sale or supply of any service, for the purpose or with the effect of fixing, controlling or maintaining the market price, rate or fee of the commodity or service; or

(C) allocating or dividing customers or markets, functional or geographic, for any commodity or service.

(2) A contract, combination or conspiracy between two or more persons whereby, in the letting of any public or private contract:

(A) the price quotation of any bid is fixed or controlled; or

(B) one or more persons submits a bid intending it to be higher than another bid and thus complementary thereto, submits a bid intending it to be substantially identical to another bid, or refrains from the submission of a bid.

(3) A contract, combination or conspiracy between two or more persons refusing to deal with any other person or persons for the purpose of effecting any of the acts described in subdivisions (1) and (2) of this subsection.

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§47-18-4. Establishment, maintenance or use of monopoly.

The establishment, maintenance or use of a monopoly or an attempt to establish a monopoly of trade or commerce, any part of which is within this state, by any persons for the purpose of excluding competition or controlling, fixing or maintaining prices is unlawful.

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§47-18-4a.

Repealed.

Acts, 1996 Reg. Sess., Ch. 72.

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§47-18-5. Exemptions.

(a) Labor of a human being is not a commodity or an article of commerce.

(b) Nothing in this article shall be construed to forbid the existence and operation of any labor, agricultural or horticultural organization instituted for the purpose of mutual help, while lawfully carrying out its legitimate objects; or the existence or operation of any person whose activities or operations are regulated, to the extent of such regulation, pursuant to the laws of this state or of the United States, by a regulatory agency of this state or of the United States; or the bona fide religious and charitable activities of any nonprofit corporation, trust or organization established exclusively for religious or charitable purposes or both.

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§47-18-6. General powers and duties of Attorney General.

The Attorney General shall investigate suspected violations of, and institute such proceedings as are hereinafter provided for violation of the provisions of this article. The Attorney General may direct the county prosecutor of any county in which such proceedings may be brought to aid and assist him in the conduct of such investigation and proceedings.

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§47-18-7. Investigations; powers and duties of Attorney General.

(a) If the Attorney General has probable cause to believe that a person has engaged in an act which is subject to action by the Attorney General under any of the provisions of this article, he may make an investigation to determine if the act has been committed and, to the extent necessary for this purpose, may administer oaths or affirmations, and may subpoena witnesses, compel their attendance, adduce evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition and location of any books, records, documents or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of admissible evidence.

(b) If the person's records are located outside this state, the person at his option shall either make them available to the Attorney General at a convenient location within this state or pay the reasonable and necessary expenses for the Attorney General or his representative to examine them at the place where they are maintained. The Attorney General may designate representatives, including comparable officials of the state in which the records are located, to inspect them on his behalf.

(c) Upon failure of a person without lawful excuse to obey a subpoena or to give testimony and upon reasonable notice to all persons affected thereby, the Attorney General may apply to the circuit court of the county in which the hearing is to be held for an order compelling compliance.

(d) The Attorney General shall not make public the name or identity of a person whose acts or conduct he investigates pursuant to this section or the facts disclosed in the investigation, but this subsection does not apply to disclosures in actions or enforcement proceedings pursuant to this article.

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§47-18-8. Injunctions and other relief; violations; jurisdiction.

The Attorney General may institute proceedings to prevent and restrain violations of the provisions of this article. In addition to granting such temporary, interlocutory, or permanent relief as is necessary to prevent and restrain a violation, the courts of this state may grant injunctions reasonably necessary to restore and preserve competition in the trade or commerce affected by a violation of this article.

If a permanent injunction is issued in such proceedings, reasonable costs of the action may be awarded the state, including but not limited to expenses of discovery and document reproduction.

In addition to injunctive relief authorized, any person who violates the provisions of this article shall be liable to a penalty of not more than the greater of a total of $100,000 or $500 per day for each and every day of said violation.

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§47-18-9. Damages; treble damage suits.

Any person who shall be injured in his business or property by reason of a violation of the provisions of this article may bring an action therefor and shall recover threefold the damages sustained by him together with reasonable attorneys' fees, filing fees and reasonable costs of the action. Reasonable costs of the action may include, but shall not be limited to the expenses of discovery and document reproduction.

The state and any of its political subdivisions and public agencies shall be deemed a person within the meaning of this section. The Attorney General may bring an action on behalf of this state, or any of its public agencies, counties, municipalities or other political subdivisions to recover the damages provided for by this section or provision of federal law: Provided, That this shall not impair the authority of any such county, municipality or other political subdivision to bring such action on its own behalf.

WV Legislature

§47-18-10. Final judgment in civil proceeding as prima facie evidence.

A final judgment rendered in any civil proceeding brought by the state for violation of this article to the effect that a defendant has violated said article shall be prima facie evidence against such defendant in any proceeding brought by any other party against such defendant pursuant to section eight of this article, as to all matters with respect to which said judgment or decree would be an estoppel as between the parties thereto: Provided, That this section shall not apply to consent judgments or decrees entered before any testimony has been taken.

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§47-18-11. Limitation of actions.

Any action brought to enforce the provisions of this article shall be barred unless commenced within four years after the cause of action arose, or if the cause of action is based upon a conspiracy in violation of this article, within four years after the plaintiff discovered, or by the exercise of reasonable diligence should have discovered the facts relied upon for proof of the conspiracy. For the purpose of this section, a cause of action for a continuing violation is deemed to arise at any time during the period of such violation.

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§47-18-12. Suspension of limitation period.

Whenever any civil proceeding shall be commenced by the state to prevent, restrain or punish a violation of this article, the running of the statute of limitations in respect of every private right of action arising under this article and based in whole or in part on any matter complained of in said proceeding shall be suspended during the pendency thereof and for one year thereafter: Provided, That whenever the running of the statute of limitations in respect of a cause of action arising under section eight shall be suspended hereunder, any action to enforce such cause of action shall be forever barred unless commenced either within the period of suspension or within four years after the cause of action accrued, whichever is later.

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§47-18-13. Cumulative remedies.

The remedies provided in this article shall be cumulative.

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§47-18-14. Cooperation with federal government and other states.

The Attorney General may cooperate with officials of the federal government and the several states in the enforcement of this article.

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§47-18-15. Venue.

Actions or proceedings under this article may be brought in the circuit court of any county in which an act on which the action or proceeding is based occurred, or in any county in which the respondent or defendant resides or transacts business.

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§47-18-16. Judicial construction.

This article shall be construed liberally and in harmony with ruling judicial interpretations of comparable federal antitrust statutes.

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§47-18-17. Attorney general to bring actions on behalf of state residents; procedures used in such actions; damages.

(a) The Attorney General shall be permitted to bring an action as parens patriae of natural persons who are citizens and residents of this state, under this article, and in proper federal court for violations of the federal antitrust laws or of both this article and the federal antitrust laws, to secure relief as provided under this article and other lawful relief as appropriate.

(b) In any action brought under this section, the Attorney General shall, at such times, in such manner, and with such content as the court may direct, cause notice to be given by publication. If the court finds that notice given solely by publication would deny due process of law to any person or persons, the court may direct further notice to such person or persons according to the circumstances of the case.

(c) Any person on whose behalf an action is brought under this section may elect to exclude from adjudication the portion of the state claim for monetary relief attributable to him by filing notice of such election with the court within such time as specified in the notice given pursuant to this subsection.

(d) The final judgment in an action under this section shall be res judicata as to any claim under this article by any person on behalf of whom such action was brought and who fails to give such notice within the period specified in the notice given pursuant to subsection (c).

(e) An action under subsection (a) shall not be dismissed or compromised without approval of the court, and notice of any proposed dismissal or compromise shall be given in such manner as the court directs.

(f) In any action brought under this section, damages may be proved and assessed in the aggregate by statistical or sampling methods, by the computation of illegal overcharges, or by such other reasonable system of estimating aggregate damages as the court in its discretion may permit without the necessity of separately proving the individual claim of, or amount of damage to, persons on whose behalf the suit was brought. The court shall exclude from the amount of monetary relief awarded in such action any amount of monetary relief which:

(1) duplicate amounts which have been awarded for the same injury; or

(2) are properly allocable to natural persons who have excluded their claims pursuant to subsection (c).

(g) In any action brought under this section, the court shall award to the state for payment into the state Treasury for the use of the antitrust enforcement fund:

(1) an amount attributable to the recovery of the state and its public agencies; and

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(2) the greater of:

(A) any amount assessed as reasonable attorney fees, filing fees, and reasonable costs of the action; or

(B) an amount equal to the expenses and costs of investigation, litigation and fund administration attributable to the case.

(h) The court shall afford the citizens and residents and the public bodies of this state other than the state and its public agencies a reasonable opportunity individually to secure appropriate portions of the remainder of the monetary relief assessed under this section and thereafter shall award the undistributed portion of said remainder to the state for payment into the General Fund of the state Treasury for the overall benefit of the citizens, residents and public bodies of this state.

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§47-18-18. Disposition of funds.

All civil penalties exacted pursuant to this article, unless otherwise specifically provided for, shall be paid into the state Treasury for the use of the antitrust enforcement fund.

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§47-18-19. Antitrust enforcement fund.

All money received by the state as a result of actions by the Attorney General pursuant to this article or to the federal antitrust laws shall be placed in a separate fund by the state Treasurer, to be known as the antitrust enforcement fund, and shall be used solely for the payment of fees, costs and expenses incurred by the Attorney General in connection with antitrust enforcement activities and the first $300,000 in this fund shall not expire at the end of each fiscal year but shall, by operation of law, be automatically reappropriated from year to year and all sums in excess of $300,000 remaining in such fund shall expire at the end of each fiscal year and shall revert to the General Revenue Fund.

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§47-18-20. Rules and regulations.

The Attorney General may make and adopt such rules and regulations as may be necessary for the enforcement and administration of this article.

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§47-18-21. Cooperation by public agencies, officials and employees.

It shall be the duty of all public officers, their deputies, assistants, clerks, subordinates and employees, to render and furnish to the Attorney General, his deputy or other designated representative, when so requested, all information and assistance in their possession and within their power for the enforcement of the provisions of this article.

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§47-18-22. Assurances of voluntary compliance.

In the administration of this article, the Attorney General may accept an assurance of voluntary compliance with respect to any method, act or practice deemed to be a violation of this article from any person who has engaged or was about to engage in such method, act or practice. Such assurance may include a stipulation for voluntary payment by the alleged violator of damages sustained by any person or public body. Any such assurance shall be in writing and be filed with the circuit court in which the alleged violator resides, has his principal place of business, or is doing business. Such assurance of voluntary compliance shall not be considered an admission of violation for any purpose. Matters thus closed may at any time be reopened by the Attorney General for further proceedings in the public interest.

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§47-18-23. Severability.

If, for any reason, any section, sentence, clause, phrase or provision of this article or the application thereof to any person or circumstance is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect other sections, sentences, clauses, phrases or provisions or their application to any other person or circumstance, and to this end, each and every section, sentence, clause, phrase or provision of this article is hereby declared to be severable.

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