

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

State of Arkansas

As Engrossed: H3/7/01 H3/20/01 H3/29/01

83rd General Assembly

A Bill

Regular Session, 2001

HOUSE BILL 1841

By: Representative Napper

For An Act To Be Entitled

ARKANSAS FAIR COMPETITION ACT; AND FOR OTHER
PURPOSES.

Subtitle

ARKANSAS FAIR COMPETITION ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Short title.

This act shall be known as the "Arkansas Fair Competition Act".

SECTION 2. Legislative findings – Purpose, interpretation, and scope.

(a) The General Assembly finds that fair competition is fundamental to the free market system. The unrestrained interaction of competitive forces will yield the best allocation of Arkansas's 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 and social institutions.

(b) The purpose of this act is to maintain and promote economic competition in Arkansas commerce, to provide the benefits of that competition to consumers and businesses in the state, and to establish efficient and economical procedures to accomplish these purposes and policies.

(c) This act applies to conduct proscribed that affects Arkansas commerce.

(d) Where not otherwise inconsistent and to the extent constitutionally permissible, this act shall be construed in conjunction with rulings and judicial interpretations of comparable federal antitrust laws.

1
2 SECTION 3. Definitions.3 For purposes of this act:4 (1) "Arkansas commerce" means any economic activity occurring wholly or
5 partly within the State of Arkansas, or which affects economic activity within
6 the State of Arkansas;7 (2) "Person" means any natural person, corporation, firm, partnership,
8 limited partnership, trust, association, or any other legal or commercial
9 entity.10
11 SECTION 2. Unreasonable restraint of trade or commerce.12 A contract, combination, or conspiracy between two (2) or more persons
13 in unreasonable restraint of Arkansas commerce is unlawful.14
15 SECTION 5. Monopolies.16 It is unlawful to monopolize, attempt to monopolize, or combine or
17 conspire to monopolize any line of Arkansas commerce.18
19 SECTION 6. Acquisitions that substantially lessen competition.20 (a) It is unlawful for a person to acquire, directly or indirectly, the
21 whole or any part of the stock, share capital, or other equity interest, or
22 the whole or any part of the assets of, another person engaged in Arkansas
23 commerce, if the effect of the acquisition may be substantially to lessen
24 competition or to tend to create a monopoly of any line of Arkansas commerce.25 (b)(1) This section shall not apply to persons purchasing the stock or
26 other equity interest of another person solely for investment and who does not
27 use those assets by voting or otherwise to bring about, or attempt to bring
28 about, the substantial lessening of competition.29 (2) This section shall not prevent a person engaged in Arkansas
30 commerce from causing the formation of subsidiary corporations or other
31 business organizations, or from owning and holding all or a part of the stock
32 or equity interest of the subsidiary corporations or other business
33 organizations, where the effect of the transaction is not to lessen
34 competition substantially.35
36 SECTION 7. Exempt activities.

1 This act shall not be construed to prohibit:

2 (1) Activities that are exempt from the operation of the federal
3 anti trust laws, as exists on January 1, 2002;

4 (2) Activities required or affirmatively approved by any law of this
5 state, of the United States, or by a regulatory agency of this state or of the
6 United States acting under any constitutional or statutory authority vesting
7 the agency with this power, as exists on January 1, 2001;

8 (3) Activities of a municipality, its officers, or employees acting in
9 an official capacity, to the extent that those activities are authorized or
10 directed by state law; and

11 (4) The existence and operation of any labor, agricultural, or
12 horticultural organization instituted for the purpose of mutual help, while
13 lawfully carrying out its legitimate objectives.

14
15 SECTION 8. Act of officers, directors, representatives, or agents
16 acting within the scope of their authority.

17 (a)(1) A corporation, firm, partnership, limited partnership, trust,
18 association, or other legal or commercial entity is liable for the acts of its
19 officers, directors, representatives, or agents acting within the scope of
20 their authority, whether they are acting on their own behalf and for their own
21 benefit, or acting for the corporation, firm, partnership, limited
22 partnership, trust, association, or other legal or commercial entity in their
23 representative capacity.

24 (2) Proof of the acts of any officer, director, representative,
25 or agent shall be received as prima facie proof of the acts of the
26 corporation, firm, partnership, limited partnership, trust, association, or
27 other legal or commercial entity itself.

28 (b)(1) When a person violates any of the provisions of this act, the
29 violation is that of the individual directors, members, officers, managers,
30 employees or agents of the corporation, firm, partnership, limited
31 partnership, trust, association, or other legal or commercial entity who
32 knowingly authorized, ordered, aided, abetted, or advised in the commission of
33 any of the acts constituting in whole or in part the violation, whether the
34 individuals acted on their own behalf and for their own benefit, or for the
35 corporation, firm, partnership, limited partnership, trust, association, or
36 other legal or commercial entity in their representative capacity.

1 (2) The individuals in their capacity as individuals are subject
2 to the provisions of this act, and may be joined as additional defendants in
3 the proceedings against the corporation, firm, partnership, limited
4 partnership, trust, association, or other legal or commercial entity.

5
6 SECTION 9. Civil actions and settlements by the Attorney General.

7 (a) If the Attorney General has reason to believe that any person is
8 engaging, has engaged, or is about to engage in any act or practice declared
9 unlawful by this act, the Attorney General may bring an action in the name of
10 the state against that person to:

11 (1) Obtain declaratory judgment that the act or practice violates
12 the provisions of this act;

13 (2) Enjoin any act or practice that violates the provisions of
14 this act by issuance of a temporary restraining order or preliminary or
15 permanent injunction, without bond, upon providing appropriate notice;

16 (3) Recover on behalf of the state and its agencies actual
17 damages or restitution for loss incurred either directly or indirectly;

18 (4) Recover:

19 (A) Civil penalties of up to fifty thousand dollars
20 (\$50,000) per violation of sections 4 or 5 of this act, or any injunction,
21 judgment or consent order issued or entered into pursuant to this act; and

22 (B) Reasonable expenses, investigative costs, and attorney
23 fees; and

24 (5) Obtain an order requiring divestiture of any assets:

25 (A) Acquired in violation of section 6 of this act, to the
26 extent determined necessary by the circuit court in order to avoid the
27 creation of a monopoly or any likely substantial lessening of competition
28 resulting from the transaction found violative of section 6 of this act; or

29 (B) To restore competition in any line of Arkansas commerce
30 which has been eliminated by a violation of this act.

31 (b) The Attorney General may also bring a civil action in the name of
32 the state, as parens patriae on behalf of natural persons residing in this
33 state, to secure monetary relief as provided under this act for injury
34 directly or indirectly sustained by those persons because of any violation of
35 sections 4 or 5 of this act, in accordance with the following provisions:

36 (1)(A) The circuit court shall award the Attorney General as

1 monetary relief three (3) times the actual damages sustained for violations of
2 sections 4 and 5 of this act, and the cost of suit, including reasonable
3 attorney's fee.

4 (B) The court shall exclude from the amount of monetary
5 relief awarded in the action any amount which duplicates amounts which have
6 been awarded for the same injury already or which are allocable to persons who
7 have excluded their claims pursuant to subdivision (b)(3) of this section.

8 (2)(A) In any action brought under this act, the Attorney General
9 shall, at these times, in a manner, and with the content as the court of
10 competent jurisdiction may direct, cause notice of the parens patriae action
11 to be given by publication.

12 (B) If the court finds that the notice given solely by
13 publication would deny due process of law to any person, the court shall
14 direct the Attorney General to give the notice as may be required by due
15 process of law.

16 (3)(A) Any person on whose behalf an action is brought under this
17 act may elect to exclude from the adjudication the portion of the Attorney
18 General's claim for monetary relief attributable to the person by filing
19 notice of the election with the court within the time period specified in the
20 notice of the action given to the persons to be benefited by the action.

21 (B) Any person failing to give the notice shall be barred
22 during the pendency of the action from commencing an action in the person's
23 own names for the injury alleged in the action and the final judgment in the
24 action shall be res judicata as to any claim which could be brought by the
25 person under this act based on the facts alleged or proven in the action.

26 (4) All damages shall be distributed in a manner that will afford
27 each person a reasonable opportunity to secure the person's appropriate
28 portion of the net monetary relief.

29 (c)(1) In lieu of instigating or continuing an action or proceeding, or
30 to conclude an investigation commenced or contemplated under section 10 of
31 this act, the Attorney General may accept a consent decree with respect to any
32 act or practice alleged to be a violation of this act.

33 (2) The consent decree may include a stipulation for the payment
34 of civil penalties, the Attorney General's reasonable expenses, investigative
35 costs and attorney's fees, an agreement to pay damages, or to allow for
36 restitution of money, property, or other things received in connection with a

1 violation of this act, and agreed to injunctive provisions.

2 (3) Before any consent decree entered into pursuant to this
3 section is effective, it shall be approved by the circuit court or if an
4 action has already been commenced, the court in which the action is pending
5 and entry made in that court in the manner required for making an entry of
6 judgment.

7 (4) If the consent decree submitted to the court is to settle an
8 action brought under subdivision (b) of this section, notice of the proposed
9 settlement shall be given in the manner as the court directs.

10 (5) Once court approval is received, any breach of the conditions
11 of the consent decree shall be treated as a violation of a court order, and
12 shall be subject to all penalties provided by law for violation of court
13 orders, including the penalties set forth in section 17 of this act.

14 (d) In addition to actions under state law, the Attorney General may
15 proceed under any antitrust laws in the federal courts on behalf of this state
16 or any of its agencies, or as parens patriae on behalf of natural persons in
17 this state.

18
19 SECTION 10. Civil investigations.

20 (a) If the Attorney General has reason to believe that a person is
21 engaging or has engaged in any act or practice declared unlawful by this act,
22 the person may, prior to the institution of a civil proceeding, execute in
23 writing and cause to be served upon any person who is believed to have
24 information, documentary material, or physical evidence relevant to a civil
25 investigation, a written civil investigative demand requiring that person to
26 appear and give oral testimony, under oath, concerning documentary material or
27 information, or to produce relevant documentary material or physical evidence
28 for examination, at a reasonable time and place as may be stated in the
29 investigative demand, or to furnish any combination thereof, concerning the
30 conduct of any Arkansas commerce that is the subject matter of the
31 investigation.

32 (b) To accomplish the objectives and to carry out the duties prescribed
33 by this act, the Attorney General may also issue subpoenas to any person and
34 conduct interviews in aid of any investigation or inquiry.

35 (c) The scope of any civil investigative demand or subpoena shall be
36 consistent with the scope of discovery as provided for by the Arkansas Rules

1 of Civil Procedure, as exists on January 1, 2001.

2 (d) At any time before the return date specified in a civil
3 investigative demand, a petition to extend the return date, or to modify or
4 set aside the demand, stating good cause, may be filed in the circuit court of
5 the county in Arkansas where the person served with the demand resides or has
6 a principal place of business, or if the person is not an Arkansas resident or
7 the principal place of business is not located in Arkansas, in the circuit
8 court in Pulaski County.

9 (e) Except as provided in subsection (f) of this section, any
10 procedure, testimony taken, or material produced under this section shall be
11 kept confidential by the Attorney General before bringing an action against a
12 person under this act for the violation under investigation unless
13 confidentiality is waived by the person whose testimony is disclosed, or is
14 waived by the person who produced to the Attorney General or his designee the
15 material being disclosed, or the disclosure is authorized by court order.

16 (f) The Attorney General or a designee may disclose the testimony or
17 material to a person who has a need to know the information and is employed by
18 this state, the United States, or any other state, if, before disclosure, the
19 receiving official agrees in writing to comply with the confidentiality
20 provisions of this section and the Attorney General or a designee has
21 determined prior to making the disclosure that disclosure to the receiving
22 person is reasonably necessary to permit proper enforcement of the antitrust
23 laws of the United States or any state.

24 (g) The Attorney General or the Attorney General's designee may exclude
25 from the place of any examination any person, except the person being examined
26 and that person's counsel under this section.

27
28 SECTION 11. Failure to obey civil investigative demand or subpoena.

29 (a) If any person fails or refuses to obey any subpoena or civil
30 investigative demand issued by the Attorney General, the Attorney General may,
31 after notice, apply to the circuit court and, after a hearing, request an
32 order ordering the person to comply with the subpoena or civil investigative
33 demand issued by the Attorney General, along with reasonable costs and
34 attorneys' fees incurred.

35 (b) Disobedience of any order entered under the provisions of this
36 section shall be treated as a violation of a court order, and subject the

1 offending person to all penalties provided by law for violations of court
2 orders.

3
4 SECTION 12. Violation of court orders and consent decrees – penalties.
5 Any person who violates the terms of a consent order entered into
6 pursuant to section 9 of this act, or any other judgment or final order
7 entered into under the provisions of this act, shall forfeit and pay a civil
8 penalty of not more than fifty thousand dollars (\$50,000) for each violation,
9 the amount of the penalty to be determined by the district court issuing the
10 judgment or order, or approving the consent decree.

11
12 SECTION 13. Additional relief of circuit court authorized.

13 (a) When the state prevails in any action brought under section 9 of
14 this act, the court shall award reasonable costs and attorney's fees to the
15 Attorney General.

16 (b) In addition, the court may:

17 (1) Make orders or judgments as necessary to prevent the use or
18 employment by a person of any act or practice declared unlawful by this act;

19 (2) Make orders or judgments as necessary to compensate persons
20 for damages sustained or to provide for restitution to persons of money,
21 property or other things received from persons in connection with a violation
22 of this act:

23 (3) Appoint a receiver to oversee assets or order sequestration
24 of assets whenever it appears that the defendant threatens or is about to
25 remove, conceal or dispose of property to the damage of persons to whom
26 restoration would be made under this subsection and assess the expenses of a
27 master, receiver or escrow agent against the defendant; and

28 (4) Grant other appropriate relief.

29
30 SECTION 14. Private causes of action.

31 (a) Any person injured directly or indirectly, or threatened with
32 direct or indirect injury by reason of anything prohibited by this act, may
33 bring an action in the circuit court in the county in which the defendant
34 resides or has his principal place of business and shall recover three (3)
35 times their actual damages sustained, and, as determined by the court,
36 reasonable costs and attorney's fees.

1 **(b) The court may award injunctive relief.**

2 **(c) If the defendant does not reside in or have a principal place of**
3 **business in this state, the action may be brought in any circuit court in this**
4 **state.**

5 **(d) The court shall take all steps necessary to avoid duplicate**
6 **recovery, including but not limited to the transfer and consolidation of all**
7 **related actions.**

8
9 **SECTION 15. Awards to the Attorney General – Use of moneys.**

10 **(a) There shall be established within the Office of Attorney General an**
11 **Anti-trust Enforcement Account into which all costs and fees recovered by the**
12 **Attorney General under the terms of this act or the federal anti-trust laws**
13 **shall be remitted.**

14 **(b) The costs and fees deposited into the Anti-trust Enforcement Account**
15 **of the Attorney General's Office shall be used for the furtherance of the**
16 **Attorney General's duties and activities under this act.**

17
18 **SECTION 16. Statute of limitations.**

19 **(a) Any action brought by the Attorney General pursuant to this act is**
20 **barred if it is not commenced within five (5) years after the cause of action**
21 **accrues.**

22 **(b) Any other action brought pursuant to this act is barred if it is**
23 **not commenced within five (5) years after the cause of action accrues, or**
24 **within one (1) year after the conclusion of an action brought by the state**
25 **pursuant to this act based in whole or in part on any matter complained of in**
26 **the subsequent action, whichever is the later.**

27 **(c) The foregoing statute of limitations shall be tolled during any**
28 **period when the defendant in any action fraudulently concealed the events upon**
29 **which the cause of action is based.**

30
31 **SECTION 17. Action affecting interstate or foreign commerce.**

32 **No action under this act shall be barred on the ground that the activity**
33 **or conduct complained of in any way affects or involves interstate or foreign**
34 **commerce.**

35
36 **SECTION 18. Service of civil investigative demands or pre-litigation**

1 subpoenas.

2 Service of a civil investigative demand or pre-litigation subpoena under
3 this act may be made personally within this state or by mailing service by
4 registered or certified mail to the last known place of business, residence,
5 or abode of the person within or without this state.

6
7 SECTION 19. Venue.

8 (a) Any action, application, or motion brought by the Attorney General
9 against a person under this act may be filed in the circuit court of the
10 county in which the person resides or has his principal place of business, or
11 in the circuit court of Pulaski County.

12 (b) If the person does not reside in or have a principal place of
13 business in this state, the pleading may be brought in any circuit court in
14 this state.

15
16 SECTION 20. Arkansas Code 4-75-201 through 4-75-211 is repealed.

17 ~~4-75-201. Title.~~

18 ~~This subchapter shall be known and designated as the "Unfair Practices~~
19 ~~Act".~~

20
21 ~~4-75-202. Purpose.~~

22 ~~The General Assembly declares that the purpose of this subchapter is to~~
23 ~~safeguard the public against the creation or perpetuation of monopolies and to~~
24 ~~foster and encourage competition by prohibiting unfair and discriminatory~~
25 ~~practices by which fair and honest competition is destroyed or prevented.~~

26
27 ~~4-75-203. Construction.~~

28 ~~This subchapter shall be literally construed so that its beneficial purposes~~
29 ~~may be subserved.~~

30
31 ~~4-75-204. Penalties.~~

32 ~~Any person, firm, or corporation, whether as principal, agent, officer, or~~
33 ~~director, for himself, or itself, or for another person, or for any firm or~~
34 ~~corporation, or any corporation who or which shall violate any of the~~
35 ~~provisions of this subchapter is guilty of a misdemeanor for each single~~
36 ~~violation and upon conviction shall be punished by a fine of not less than one~~

~~hundred dollars (\$100) nor more than one thousand dollars (\$1,000) or by imprisonment not exceeding six (6) months, or by both a fine and imprisonment in the discretion of the court.~~

~~4-75-205. Forfeiture of charter, rights, etc.—Proceedings.~~

~~(a) Upon the third violation of any of the provisions of this subchapter by any corporation, it shall be the duty of the Attorney General to institute proper suits or quo warranto proceedings in any court of competent jurisdiction for the forfeiture of its charter, rights, franchises, or privileges and powers exercised by the corporation, and to permanently enjoin it from transacting business in this state.~~

~~(b) If in such action the court finds that the corporation is violating or has violated any of the provisions of this subchapter, it must enjoin the corporation from doing business in this state permanently or for such time as the court shall order, or must annul the charter or revoke the franchise of the corporation.~~

~~4-75-206. Contracts violating subchapter illegal.~~

~~Any contract, express or implied, made by any person, firm, or corporation in violation of any of the provisions of this subchapter is declared to be an illegal contract and no recovery thereon shall be had.~~

~~4-75-207. Destruction of competition by price discrimination prohibited.~~

~~(a) It shall be unlawful for any person, firm, or corporation doing business in the State of Arkansas and engaged in the production, manufacture, distribution, or sale of any commodity or product or of service or output of a service trade of general use or consumption or of the product or service of any public utility with the intent to destroy the competition of any regular established dealer in the commodity, product, or service, or to prevent the competition of any person, firm, private corporation, or municipal or other public corporation who or which in good faith intends and attempts to become a dealer to discriminate between different sections, communities, or cities or portions thereof, or between different locations in the sections, communities, cities, or portions thereof in this state, by selling or furnishing the commodity, product, or service at a lower rate in one (1) section, community, or city or any portion thereof, or in one (1) location in the section,~~

1 ~~community, or city or any portion thereof, than in another, after making~~
2 ~~allowance for difference, if any, in the grade, quality, or quantity and in~~
3 ~~the actual cost of transportation from the point of production, if a raw~~
4 ~~product or commodity, or from the point of manufacture, if a manufactured~~
5 ~~product or commodity.~~

6 ~~(b) The inhibition of this section against locality discrimination~~
7 ~~shall include any scheme of special rebates, collateral contracts, or any~~
8 ~~device of any nature whereby such discrimination is, in substance or fact,~~
9 ~~effected in violation of the spirit and intent of this subchapter.~~

10 ~~(c) This subchapter shall not be construed to prohibit the meeting in~~
11 ~~good faith of a competitive rate, or to prevent a reasonable classification of~~
12 ~~service by public utilities for the purpose of establishing rates.~~

13
14 ~~4-75-208. Secret payments or allowance of rebates, refunds, etc.—~~
15 ~~Penalty.~~

16 ~~(a) The secret payment or allowance of rebates, refunds, commissions,~~
17 ~~or unearned discounts, whether in the form of money or otherwise, or secretly~~
18 ~~extending to certain purchasers special services or privileges not extended to~~
19 ~~all purchasers purchasing upon like terms and conditions, to the injury of a~~
20 ~~competitor and where the payment or allowance tends to destroy competition, is~~
21 ~~an unfair trade practice.~~

22 ~~(b) Any person, firm, partnership, corporation, or association~~
23 ~~resorting to such trade practice shall be deemed guilty of a misdemeanor and~~
24 ~~on conviction shall be subject to the penalties set out in § 4-75-204.~~

25
26 ~~4-75-209. Sale at less than cost or with intent to injure competitors.~~

27 ~~(a)(1) It shall be unlawful for any person, partnership, firm,~~
28 ~~corporation, joint stock company, or other association engaged in business~~
29 ~~within this state, to sell, offer for sale, or advertise for sale any article~~
30 ~~or product, or service or output of a service trade, at less than the cost~~
31 ~~thereof to the vendor, or to give, offer to give, or advertise the intent to~~
32 ~~give away any article or product, or service or output of a service trade, for~~
33 ~~the purpose of injuring competitors and destroying competition.~~

34 ~~(2) Any person or entity so doing shall be guilty of a~~
35 ~~misdemeanor, and on conviction shall be subject to the penalties set out in §~~
36 ~~4-75-204 for any such act.~~

~~(b)(1) The term "cost" as applied to production is defined as including the cost of raw materials, labor, and all overhead expenses of the producer; and, as applied to the distribution, "cost" shall mean the invoice or replacement cost, whichever is lower, of the article or product to the distributor and vendor plus the cost of doing business by the distributor and vendor.~~

~~(2) The "cost of doing business" or "overhead expense" is defined as all costs of doing business incurred in the conduct of the business and must include without limitation the following items of expense: labor, which includes salaries of executives and officers, rent, interest on borrowed capital, depreciation, selling cost, maintenance of equipment, delivery cost, credit losses, all types of licenses, taxes, insurance, and advertising.~~

~~(c) In establishing the cost of a given article or product to the distributor and vendor, the invoice cost of the article or product purchased at a forced, bankrupt, closeout sale, or other sale outside of the ordinary channels of trade may not be used as a basis for justifying a price lower than one based upon the replacement cost as of date of the sale of the article or product replaced through the ordinary channels of trade, unless:~~

~~(1) The article or product is kept separate from goods purchased in the ordinary channels of trade; and~~

~~(2) The article or product is advertised and sold as merchandise purchased at a forced, bankrupt, or closeout sale, or by means other than through the ordinary channels of trade, and the advertising states the conditions under which the goods were so purchased, and the quantity of the merchandise to be sold or offered for sale.~~

~~(d) In any injunction proceeding or in the prosecution of any person as officer, director, or agent, it shall be sufficient to allege and prove the unlawful intent of the person, firm, or corporation for whom or which he acts.~~

~~(e) Where a particular trade or industry of which the person, firm, or corporation complained against is a member has an established cost survey for the locality and vicinity in which the offense is committed, the cost survey shall be deemed competent evidence to be used in proving the costs of the person, firm, or corporation complained against within the provisions of this subchapter.~~

~~(f) The provisions of this section shall not apply to any sale made:~~

~~(1) In closing out in good faith the owner's stock or any part~~

1 ~~thereof for the purpose of discontinuing his trade in the stock or commodity,~~
2 ~~and, in the case of the sale of seasonal goods or to the bona fide sale of~~
3 ~~perishable goods, to prevent loss to the vendor by spoilage or depreciation,~~
4 ~~if notice is given to the public thereof;~~

5 ~~(2) When the goods are damaged or deteriorated in quality, and~~
6 ~~notice is given to the public thereof;~~

7 ~~(3) By an officer acting under the orders of any court;~~

8 ~~(4) In an endeavor made in good faith to meet the legal prices of~~
9 ~~a competitor as herein defined selling the same article or product, or service~~
10 ~~or output of a service trade, in the same locality or trade area.~~

11 ~~(g) Any person, firm, or corporation who performs work upon, renovates,~~
12 ~~alters, or improves any personal property belonging to another person, firm,~~
13 ~~or corporation shall be construed to be a vendor within the meaning of this~~
14 ~~subchapter.~~

15
16 ~~4-75-210. Liability of directors, officers, agents, etc. Proof of~~
17 ~~unlawful intent.~~

18 ~~(a) Any person who, either as director, officer, or agent of any firm~~
19 ~~or corporation or as agent of any person violating the provisions of this~~
20 ~~subchapter, assists or aids, directly or indirectly, in the violation shall be~~
21 ~~responsible therefor equally with the person, firm, or corporation for whom or~~
22 ~~which he acts.~~

23 ~~(b) In the prosecution of any person as officer, director, or agent, it~~
24 ~~shall be sufficient to allege and prove the unlawful intent of the person,~~
25 ~~firm, or corporation for whom or which he acts.~~

26
27 ~~4-75-211. Remedies Witnesses and documents Immunity.~~

28 ~~(a) Any person, firm, private corporation, or municipal or other public~~
29 ~~corporation, or trade association, may maintain an action to enjoin a~~
30 ~~continuance of any act or acts in violation of this subchapter and, if injured~~
31 ~~thereby, for the recovery of damages.~~

32 ~~(b)(1) If, in such action, the court shall find that the defendant is~~
33 ~~violating or has violated any of the provisions of this subchapter, it shall~~
34 ~~enjoin the defendant from a continuance thereof.~~

35 ~~(2) It shall not be necessary that actual damages to the~~
36 ~~plaintiff be alleged or proved.~~

1 ~~(3) In addition to injunctive relief, the plaintiff in the action~~
2 ~~shall be entitled to recover from the defendant three (3) times the amount of~~
3 ~~the actual damages, if any, sustained.~~

4 ~~(c)(1) Any defendant in an action brought under the provisions of this~~
5 ~~section or any witness desired by the state may be required to testify under~~
6 ~~the provisions of §§ 16-43-211 and 16-43-701.~~

7 ~~(2) In addition, the books and records of any such defendant may~~
8 ~~be brought into court and introduced, by reference, into evidence.~~

9 ~~(3) However, no information so obtained may be used against the~~
10 ~~defendant as a basis for a misdemeanor prosecution under the provisions of §§~~
11 ~~4-75-204 and 4-75-207 — 4-75-210.~~

12 ~~(d) The remedies prescribed in this subchapter are cumulative and in addition~~
13 ~~to the remedies prescribed in the Public Utilities Act, § 23-1-101 et seq.,~~
14 ~~for discrimination by public utilities. If any conflict shall arise between~~
15 ~~this subchapter and the Public Utilities Act, § 23-1-101 et seq., the latter~~
16 ~~shall prevail.~~

17
18 SECTION 21. Arkansas Code 4-75-301 through 4-75-314 is repealed.

19 ~~4-75-301. Definition.~~

20 ~~As used in this subchapter, unless the context otherwise requires,~~
21 ~~"monopoly" means any union or combination or consolidation or affiliation of~~
22 ~~capital, credit, property, assets, trade, customs, skill, or acts of any other~~
23 ~~valuable thing or possession, by or between persons, firms, or corporations,~~
24 ~~or association of persons, firms, or corporations, whereby any one (1) of the~~
25 ~~purposes or objects mentioned in this subchapter is accomplished or sought to~~
26 ~~be accomplished, or whereby any one (1) or more of the purposes are promoted~~
27 ~~or attempted to be executed or carried out, or whereby the several results~~
28 ~~described herein are reasonably calculated to be produced. A monopoly, as thus~~
29 ~~defined and contemplated, includes not merely a combination by and between two~~
30 ~~(2) or more persons, firms, and corporations, acting for themselves, but is~~
31 ~~especially defined and intended to include all aggregations, amalgamations,~~
32 ~~affiliations, consolidations, or incorporations of capital, skill, credit,~~
33 ~~assets, property, custom, trade, or other valuable things or possessions,~~
34 ~~whether effected by the ordinary methods of partnership or by actual union~~
35 ~~under the legal form of a corporation or any incorporated body resulting from~~
36 ~~the union of one (1) or more distinct firms or corporations, or by the~~

~~purchase, acquisition, or control of shares or certificates of stock or bonds or other corporate property or franchises; and all partnerships and corporations that have been or may be created by the consolidation or amalgamation of the separate capital, stock, bonds, assets, credit, property, customs, trade, corporate, or firm belongings of two (2) or more firms or corporations or companies are especially declared to constitute monopolies within the meaning of this subchapter, if so created or entered into for any one (1) or more of the purposes named in this subchapter.~~

~~4-75-302. Monopolies unlawful.~~

~~A monopoly, as defined in § 4-75-301, is declared to be unlawful and against public policy, and any and all persons, firms, corporations, or association of persons engaged therein shall be deemed and adjudged to be guilty of a conspiracy to defraud and shall be subject to the penalties prescribed in this subchapter.~~

~~4-75-303. Lawful commerce excepted.~~

~~The purchase, sale, delivery, or disposition of any article of commerce in a lawful manner within this state shall not be deemed an act done in pursuance of, or for the purpose of carrying into effect, any conspiracy prohibited by this subchapter.~~

~~4-75-304. Monetary penalties—Actions to recover—Disposition of funds.~~

~~(a)(1) Any person, partnership, firm, or association, or any representative or agent thereof, or any corporation or company, or any officer, representative, or agent thereof, violating any of the provisions of this subchapter shall forfeit not less than two hundred dollars (\$200) nor more than five thousand dollars (\$5,000) for every such offense.~~

~~(2) Each day the person, corporation, partnership, or association shall continue to violate the provisions of this subchapter shall be a separate offense.~~

~~(b) The penalty provided for in this subchapter is to be recovered by an action in the name of the state at the relation of the Attorney General.~~

~~(c) The moneys thus collected are to go into the State Treasury for the benefit of the Public School Fund of this state, except as otherwise provided~~

1 ~~in this subchapter.~~

2
3 ~~4-75-305. Forfeiture of corporate rights for violations—Proceedings.~~

4 ~~(a)(1) Any corporation created or organized by or under the laws of~~
5 ~~this state which violates any of the provisions of this subchapter shall~~
6 ~~forfeit its corporate rights and franchises, and its corporate existence~~
7 ~~shall, upon proper proof being made in any court of competent jurisdiction in~~
8 ~~this state, be by the court declared forfeited, void, and of no effect, and~~
9 ~~shall thereupon cease and determine.~~

10 ~~(2)(A) Any corporation created or organized by or under the laws~~
11 ~~of any other state or country, which violates any provisions of this~~
12 ~~subchapter, shall thereby forfeit its right and privilege to do any business~~
13 ~~in this state, and, upon proper proof being made in any court of competent~~
14 ~~jurisdiction in this state, its right and privilege to do business in this~~
15 ~~state shall be declared forfeited.~~

16 ~~(B) In all proceedings to have such forfeiture declared,~~
17 ~~proof that any person who has been acting as the agent of the foreign~~
18 ~~corporation in transacting business in this state, has been, while acting as~~
19 ~~the agent, and in the name, behalf, or interest of the foreign corporation,~~
20 ~~violating any provisions of this subchapter, shall be received as prima facie~~
21 ~~proof of the act of the corporation itself.~~

22 ~~(b) It shall be the duty of the clerk of the court to certify the~~
23 ~~decree thereof to the Secretary of State, and, if it is an insurance company,~~
24 ~~also to the Insurance Commissioner, who shall take notice and be governed~~
25 ~~thereby as to the corporate powers and rights of the corporation.~~

26 ~~(c) In all suits instituted under this subchapter to forfeit the~~
27 ~~charter of corporations, or to forfeit the right of a corporation to do~~
28 ~~business in this state, where a judgment of forfeiture is obtained and the~~
29 ~~cause is not appealed to the Supreme Court, the circuit court rendering the~~
30 ~~judgment shall allow the Attorney General his actual expenses, to be paid out~~
31 ~~of the assets of the corporation.~~

32
33 ~~4-75-306. Overt act necessary to incur penalty.~~

34 ~~No individual, company, or corporation shall be subject to any of the~~
35 ~~penalties of this subchapter unless the individual, company, or corporation~~
36 ~~shall do within this state some act directly tending to carry into effect a~~

1 ~~conspiracy prohibited by this subchapter.~~

2
3 ~~4-75-307. Enforcement by Attorney General—Compensation.~~

4 ~~(a) It is the duty of the Attorney General to enforce the provisions of~~
5 ~~this subchapter.~~

6 ~~(b) As compensation for his services in this behalf, the Attorney~~
7 ~~General shall be entitled to his actual expenses incurred in the prosecution~~
8 ~~of suits, to be paid by the defendant when judgment is rendered for the state,~~
9 ~~to be taxed as costs by the court hearing the cause.~~

10
11 ~~4-75-308. Precedence of actions under subchapter.~~

12 ~~All actions authorized and brought under this subchapter shall have~~
13 ~~precedence on motion of the Attorney General, of all other business, civil and~~
14 ~~criminal, except criminal cases where the defendants are in jail.~~

15
16 ~~4-75-309. Fixing prices or quantities of products.~~

17 ~~Any corporation organized under the laws of this or any other state or~~
18 ~~country and transacting or conducting any kind of business in this state, or~~
19 ~~any partnership or individual, or other association or persons whatsoever, who~~
20 ~~is, or creates, enters into, or becomes a member of, or a party to, any pool,~~
21 ~~trust, agreement, combination, confederation, or understanding, whether it is~~
22 ~~made in this state or elsewhere, with any other corporation, partnership,~~
23 ~~individual, or any other person or association of persons, to regulate or fix,~~
24 ~~either in this state or elsewhere, the price of any article of manufacture,~~
25 ~~mechanism, merchandise, commodity, convenience, repair, any product of mining,~~
26 ~~or any article or thing whatsoever, or the price or premium to be paid for~~
27 ~~insuring property against loss or damage by fire, lightning, or tornado, or to~~
28 ~~maintain the price when so regulated or fixed, or who is, or enters into, or~~
29 ~~becomes a member of, or a party to any pool, agreement, contract, combination,~~
30 ~~association, or confederation, whether made in this state or elsewhere, to fix~~
31 ~~or limit in this state or elsewhere, the amount or quantity of any article of~~
32 ~~manufacture, mechanism, merchandise, commodity, convenience, repair, any~~
33 ~~product of mining, or any article or thing whatsoever, or the price or premium~~
34 ~~to be paid for insuring property against loss or damage by fire, lightning,~~
35 ~~storm, cyclone, or tornado or any other kind of policy issued by any~~
36 ~~corporation, partnership, individual, or association of persons aforesaid,~~

1 ~~shall be deemed and adjudged guilty of a conspiracy to defraud and be subject~~
2 ~~to the penalties as provided by this subchapter.~~

3
4 ~~4-75-310. Driving out or financially injuring competition.~~

5 ~~If any person, company, partnership, association, corporation, or agent~~
6 ~~engaged in the manufacture or sale of any article of commerce or consumption~~
7 ~~produced, manufactured, or mined in this state or elsewhere shall, with the~~
8 ~~intent and purpose of driving out competition or for the purpose of~~
9 ~~financially injuring competitors, sell within this state at less than cost of~~
10 ~~manufacture or production or sell in such a way, or give away, in this state~~
11 ~~their productions for the purpose of driving out competition or financially~~
12 ~~injuring competitors engaged in similar business, then the person, or persons,~~
13 ~~company, partnership, association, corporation, or agent resorting to this~~
14 ~~method of securing a monopoly within this state in such business shall be~~
15 ~~deemed guilty of a conspiracy to form or secure a trust or monopoly in~~
16 ~~restraint of trade and on conviction shall be subjected to the penalties of~~
17 ~~this subchapter.~~

18
19 ~~4-75-311, 4-75-312. [Repealed.]~~

20
21 ~~4-75-313. Proceedings to dissolve or restrain monopolies or to recover~~
22 ~~penalties—Depositions and production of documents.~~

23 ~~(a) Whenever any proceedings are commenced in any court of competent~~
24 ~~jurisdiction in this state by the Attorney General against any corporation,~~
25 ~~individual, or association of individuals, or joint stock association or~~
26 ~~copartnership under the law against the formation and maintenance of pools,~~
27 ~~trusts of any kind, monopolies or confederations, combinations or~~
28 ~~organizations in restraint of trade, to dissolve them or to restrain their~~
29 ~~formation or maintenance in this state, or to recover the penalties provided~~
30 ~~for in this subchapter; and if the Attorney General desires to take the~~
31 ~~testimony of any officer, director, agent, or employee of any corporation, or~~
32 ~~joint stock association proceeded against, or in case of a copartnership, any~~
33 ~~of the members of the partnership, or any employee thereof, in any court in~~
34 ~~which the action may be pending; and if the individual or individuals whose~~
35 ~~testimony is desired are outside the jurisdiction of this state or reside~~
36 ~~without the State of Arkansas, the Attorney General may file in the court in~~

1 ~~term time, or with the judge thereof in vacation, a statement, in writing,~~
2 ~~setting forth the names of the persons or individuals whose testimony he~~
3 ~~desires to take, and the time when and the place where he desires the persons~~
4 ~~to appear.~~

5 ~~(b) Thereupon, the court or judge thereof shall make an order for the~~
6 ~~taking of the testimony of such person or persons and for the production of~~
7 ~~any books, papers, and documents in his possession or under his control~~
8 ~~relating to the merits of any suit, or to any evidence therein; and the court~~
9 ~~shall appoint a commissioner for that purpose, who shall be an officer~~
10 ~~authorized by law to take depositions in this state.~~

11 ~~(c) The commissioner shall issue immediately a notice, in writing,~~
12 ~~directed to the attorney or attorneys of record in the cause, or agent, or~~
13 ~~officer, or other employee, that the testimony of the person named in the~~
14 ~~application of the Attorney General is desired, and requesting the attorney of~~
15 ~~record, or the officer, agent, or employee to whom the notice is delivered,~~
16 ~~and upon whom the notice is served, to have the officer, agent, employee,~~
17 ~~representative of the copartnership, or agent thereof, whose evidence is~~
18 ~~desired to be taken, together with such books, papers, and documents, at the~~
19 ~~place named in the application, shall then and there testify.~~

20 ~~(d) However, the application shall always allow in fixing the time the~~
21 ~~same number of days' travel to reach the designated place in Arkansas that~~
22 ~~would be allowed by law in case of taking depositions. In addition to the~~
23 ~~above named time, six (6) days shall be allowed for the attorney of record, or~~
24 ~~the agent, officer, or employee on whom notice is served, to notify the~~
25 ~~persons whose testimony is to be taken.~~

26 ~~(e) Service of the notice as returned in writing may be made by anyone~~
27 ~~authorized by law to serve a subpoena.~~

28
29 ~~4-75-314. Proceedings to dissolve or restrain monopolies or to recover~~
30 ~~penalties—~~

31 ~~Judgment by default upon failure to testify.~~

32 ~~Whenever the persons mentioned in § 4-75-313 are notified, as provided~~
33 ~~in § 4-75-313, to request any officer, agent, director, or employee to attend~~
34 ~~before any court, or before any person authorized to take the testimony in the~~
35 ~~proceedings, and the person whose testimony is required, as provided in § 4-~~
36 ~~75-313, fails to appear and testify and produce any books, papers, and~~

1 ~~documents he has been ordered to procure by the court or the other officer~~
2 ~~authorized to take such evidence, then it will be the duty of the court, upon~~
3 ~~motion of the Attorney General, to strike out the answer, motion, reply,~~
4 ~~demurrer, or other pleading then or thereafter filed in the action or~~
5 ~~proceeding by the corporation, joint stock association, or copartnership whose~~
6 ~~officer, agent, director, or employee has neglected or failed to attend and~~
7 ~~testify and produce all books, papers, and documents he or they shall have~~
8 ~~been ordered to produce in the action by the court or person authorized to~~
9 ~~take said testimony, and the court shall proceed to render judgment by default~~
10 ~~against the corporation, joint stock association, or copartnership. In case~~
11 ~~any officer, agent, employee, director, or representative of any corporation,~~
12 ~~joint stock association, or copartnership in such proceedings as hereinbefore~~
13 ~~mentioned, who resides or is found within this state shall be subpoenaed to~~
14 ~~appear and testify or to produce books, papers, and documents and shall fail,~~
15 ~~neglect, or refuse to do so, then the answer, motion, demurrer, or other~~
16 ~~pleading then and thereafter filed by the corporation, joint stock~~
17 ~~association, or copartnership in any proceeding shall, on motion of the~~
18 ~~Attorney General, be stricken and judgment in the cause rendered against the~~
19 ~~corporation, joint stock association, or copartnership.~~

20 /s/ Napper