



Sub. H.B. 126

124th General Assembly
(As Passed by the House)

Reps. Seitz, Grendell, Damschroder, Wolpert, Hartnett, Willamowski, Webster, Britton, Lendrum, Boccieri, Womer Benjamin, Latta, DePiero, Faber, Perry, Gilb, Manning, Schneider, Raga, Niehaus, Clancy, G. Smith, Hughes, Schmidt, Coates, Sulzer, Collier, Husted, Young, Flowers, Metzger, Rhine, Hoops, Flannery, Otterman, Latell, Salerno, Stapleton

BILL SUMMARY

- Specifies a four-year statute of limitations for any civil or criminal action or proceeding under the Ohio Antitrust Law.
- Increases the amount of damages available in a civil action under the Ohio Antitrust Law.

CONTENT AND OPERATION

Operation of the bill

The bill modifies the existing Antitrust Law "period of limitations" provisions described in the preceding paragraph. The bill repeals the existing provision that specifies that no statute of limitations prevents or is a bar to any action for the recovery of damages that is brought on behalf of the state or a political subdivision of the state or brought by the state in a *parens patriae* capacity for the benefit of consumers, to any proceeding in *quo warranto* or in injunction, or to any other action brought by the AG or a prosecuting attorney for any violation of the Antitrust Law. It makes the existing four-year statute of limitations that is applicable to actions brought under the Antitrust Law by persons other than the Attorney General or a prosecuting attorney applicable to all actions brought under the Antitrust Law. Under the bill, any civil or criminal action or proceeding for a violation of the Antitrust Law, other than one upon which action was brought in any court by any person not later than 45 days after the effective date of the bill, is forever barred unless commenced within four years after the cause of action accrued. (R.C. 1331.12.)

The bill increases from twofold to treble the amount of damages a person may recover in a civil action under the Antitrust Law. Under the bill, a person injured in the person's business or property by another person by reason of anything forbidden or declared to be unlawful in the Antitrust Law is permitted to bring a civil action in any court having jurisdiction and venue, without respect to the amount in controversy, and recover treble the damages the person sustained. (R.C. 1331.08.)

Existing law

Chapter 1331. of the Revised Code (also known as the "Valentine Act") sets forth Ohio's Antitrust Law. Under its existing provisions, a "person" (see "**Definitions**," below) is prohibited from issuing or owning "trust" certificates (see "**Definitions**," below) and from entering into a combination, contract, or agreement, the purpose and effect of which is to place the management or control of that combination, or the product or service thereof, in the hands of a trustee with the intent to limit or fix the price or lessen the production or sale of an article or service of commerce, use, or consumption, to prevent, restrict, or diminish the manufacture or output of that article or service, or refuse to buy from, sell to, or trade with any person because that person appears on a blacklist issued by, or is being boycotted by, any foreign corporate or governmental entity. A violation of the prohibition is a felony of the fifth degree. (R.C. 1331.02 and 1331.99(A)--not in the bill).

In addition, the Law prohibits the following: (1) engaging in or being involved in a conspiracy against trade (R.C. 1331.04), (2) acquiring control of an Ohio corporation or its assets if the effect of which may be to substantially lessen competition in a market for petroleum products in Ohio or diminish the availability of petroleum products for resale in Ohio (R.C. 1331.021), and (3) forming a combination to control the price or supply, or to prevent competition in the sale, of bread, butter, eggs, flour, meat, or vegetables, or any one of those articles (R.C. 1331.05). A violation of the prohibition described in clause (1) is a misdemeanor of the first degree for each day of the violation, and a violation of the prohibition described in clause (3) is a felony of the fifth degree, and each day's violation of either prohibition is a separate offense. (R.C. 1331.04, 1331.05, and 1331.99--not in the bill.)

A person who violates the Antitrust Law is required to forfeit to the state, for the use of the general revenue fund, \$500 for each day that the violation is committed or continued after due notice is given by the Attorney General (AG) or a prosecuting attorney. The AG, or the prosecuting attorney of any county upon the order of the AG, is required to prosecute the person for the recovery of the money to be forfeited. The AG and prosecuting attorneys also are required to bring proceedings in *quo warranto* (see **COMMENT**) against violators of the

Antitrust Law as well as proceedings to restrain and enjoin violators of that Law. (R.C. 1331.03 and 1331.11--not in the bill.)

In addition to the civil and criminal penalties in the Antitrust Law, a person injured in the person's business or property by another person by reason of anything forbidden or declared to be unlawful in the Antitrust Law is permitted to bring a civil action in any court having jurisdiction and venue, without respect to the amount in controversy, and recover twofold the damages the person sustained and the costs of the suit (R.C. 1331.08).

Existing law states that no statute of limitations prevents or is a bar to any action for the recovery of damages that is brought on behalf of the state or a political subdivision of the state or brought by the state in a *parens patriae* capacity for the benefit of consumers, to any proceeding in *quo warranto* or in injunction, or to any other action brought by the AG or a prosecuting attorney for any violation of the Antitrust Law. It also states that a cause of action for any violation of the Antitrust Law, other than one upon which action is brought by the AG or a prosecuting attorney and other than one upon which action was brought in any court by any person not later than 45 days after the effective date of the provision (July 20, 1994), is forever barred unless commenced within four years after the cause of action accrued. (R.C. 1331.12(A) and (B).)

Definitions

The existing Antitrust Law contains the following definitions, unchanged by the bill (R.C. 1331.01--not in the bill):

(1) "Person" includes corporations, partnerships, and associations existing under or authorized by any state or territory of the United States, and solely for the purpose of the definition of "trust," below, a foreign governmental entity.

(2) "Trust" means a combination of capital, skill, or acts by two or more persons for any of the following purposes: (a) to create or carry out restrictions in trade or commerce, (b) to limit or reduce the production, or increase or reduce the price of merchandise or a commodity, (c) to prevent competition in manufacturing, making, transportation, sale, or purchase of merchandise, produce, or a commodity, (d) to fix at a standard or figure, whereby its price to the public or consumer is in any manner controlled or established, an article or commodity of merchandise, produce, or commerce intended for sale, barter, use, or consumption in this state, (e) to make, enter into, execute, or carry out contracts, obligations, or agreements of any kind by which they bind or have bound themselves not to sell, dispose of, or transport an article or commodity, or an article of trade, use, merchandise, commerce, or consumption below a common standard figure or fixed value, or by which they agree in any manner to keep the price of the article,

commodity, or transportation at a fixed or graduated figure, or by which they shall in any manner establish or settle the price of an article, commodity, or transportation between them or themselves and others, so as directly or indirectly to preclude a free and unrestricted competition among themselves, purchasers, or consumers in the sale or transportation of the article or commodity, or by which they agree to pool, combine, or directly or indirectly unite any interests which they have connected with the sale or transportation of that article or commodity, that its price might in any manner be affected, or (f) to refuse to buy from, sell to, or trade with any person because that person appears on a blacklist issued by, or is being boycotted by, any foreign corporate or governmental entity.

A trust defined in this manner is unlawful and void.

"Trust" does not include bargaining by a labor organization in negotiating or effecting contracts with an employer or employer group with reference to minimum payment to any member of the labor organization for any motor vehicles owned, driven, and used exclusively by the member in the performance of his duties of employment pursuant to a collective bargaining agreement between the labor organization and the employer or employer group.

COMMENT

R.C. 2733.02, not in the bill, states that a civil action in *quo warranto* can be brought in the name of the state against a corporation when: (1) it has offended against a law providing for its creation or renewal, or any amendment thereof, (2) it has forfeited its privileges and franchises by nonuser, (3) it has committed or omitted an act which amounts to a surrender of its corporate rights, privileges, and franchises, (4) it has misused a franchise, privilege, or right conferred upon it by law, or when it claims or holds by contract or otherwise, or has exercised a franchise, privilege, or right in contravention of law, or (5) any application for a license to transact business in this state filed by a foreign corporation, any articles of incorporation of a domestic corporation or any amendment to them, or any certificate of merger or consolidation which set forth a corporate name prohibited by the Revised Code, has been improperly approved and filed.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	02-22-01	p. 177
Reported, H. Criminal Justice	06-06-01	pp. 631-632
Passed House (99-0) h0126-ph.124/kl	06-20-01	pp. 688-689

