

STATE OF OKLAHOMA

2nd Session of the 58th Legislature (2022)

HOUSE BILL 3881

By: Crosswhite Hader

AS INTRODUCED

An Act relating to trusts and pools; amending 79 O.S. 2021, Sections 205, 207, and 210, which relate to the actions brought under the Oklahoma Antitrust Reform Act; authorizing district attorneys to bring action; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 79 O.S. 2021, Section 205, is amended to read as follows:

Section 205. A. 1. Any person who is injured in his or her business or property by a violation of this act, may obtain appropriate injunctive or other equitable relief and monetary damages and shall recover threefold the damages sustained, and the cost of suit, including a reasonable attorney fee. The Attorney General may bring an action in the name of the state, as parens patriae on behalf of natural persons residing in the state for appropriate injunctive or other equitable relief and to secure monetary damages for injury sustained by such natural persons to their business or property by reason of any violation of this act.

1 A district attorney may bring an action in the name of the state, as
2 parens patriae on behalf of natural persons residing in the district
3 of the district attorney, for appropriate injunctive or other
4 equitable relief and to secure monetary damages for injury sustained
5 by such natural persons to their business or property by reason of
6 any violation of this act, except to the extent to which the
7 Attorney General has brought an action under the same theory of
8 relief. The court shall exclude from the amount of the monetary
9 damages awarded in such action any amount of monetary damages:

10 a. which duplicates amounts which have been awarded for
11 the same injury, or

12 b. which is properly allocable to:

13 (1) natural persons who have excluded their claims,
14 and

15 (2) any other persons.

16 The court shall award the state as parens patriae threefold the
17 total damages sustained and the cost of suit, including a reasonable
18 attorney fee. Whenever the state is hereafter injured in its
19 business or property by anything forbidden in this act, it may
20 obtain appropriate injunctive or other equitable relief and monetary
21 damages therefor and shall recover actual damages by it sustained
22 and the cost of suit including a reasonable attorney fee. The court
23 may award under this section, pursuant to a motion by such person or
24 the state, simple interest on actual damages for the period

1 beginning on the date of service of such person's or the state's
2 pleading setting forth a claim under this act and ending on the date
3 of judgment, or for any shorter period therein, if the court finds
4 that the award of such interest for such period is just in the
5 circumstances. The Attorney General may bring an action on behalf
6 of either the state or a political subdivision of the state when
7 either is injured in its business or property by anything forbidden
8 by the provisions of this act.

9 2. In any civil action brought by the Attorney General or
10 district attorney as parens patriae, the Attorney General or
11 district attorney shall, at such times, in such manner, and with
12 such content as the court may direct, cause notice thereof to be
13 given by publication. Any person on whose behalf an action is
14 brought may elect to exclude from adjudication the portion of the
15 claim for monetary damages attributable to him or her by filing
16 notice of this election with the court within the time specified in
17 the notice given pursuant to this paragraph.

18 3. In a civil action brought by the Attorney General or
19 district attorney as parens patriae, the final judgment shall be res
20 judicata as to any claim under this section by any person on behalf
21 of whom the action was brought and who fails to give notice within
22 the period specified in the notice given pursuant to paragraph 2 of
23 this subsection.

1 B. Any person or governmental entity who or which obtains a
2 judgment for damages under 15 U.S.C., Section 15 or any other
3 provision of federal law comparable to this section may not recover
4 damages in a suit under this section based on substantially the same
5 conduct that was the subject of the federal suit.

6 C. Any action to recover damages under this section is barred
7 unless commenced within four (4) years after the claim accrued or
8 was discovered, whichever is later.

9 SECTION 2. AMENDATORY 79 O.S. 2021, Section 207, is
10 amended to read as follows:

11 Section 207. It shall be the duty of the court before whom any
12 proceeding under this act, may be brought, upon the application of
13 the Attorney General or district attorney, to cause to be issued by
14 the clerk of the court subpoenas for witnesses as may be named in
15 the application, and cause the same to be served by the sheriff of
16 the county where the subpoena is issued; and the witnesses shall be
17 compelled to appear before the court or judge, at the time and place
18 set forth in the subpoena, and shall be compelled to testify as to
19 any knowledge they may have of the violations of any of the
20 provisions of this act; and any witness who fails or refuses to
21 attend and testify shall be punished as for contempt, as provided by
22 law. The evidence of all the witnesses shall, at the option of the
23 Attorney General or district attorney, be taken down and shall be
24 transcribed and placed in the hands of the Attorney General or

1 district attorney, and the Attorney General or district attorney
2 shall be authorized to prosecute a violator or violators of this
3 act. Witnesses subpoenaed as provided in this section shall be
4 compelled to attend proceedings from any county in the state.

5 SECTION 3. AMENDATORY 79 O.S. 2021, Section 210, is
6 amended to read as follows:

7 Section 210. A. As used in this section:

8 1. "Antitrust investigation" and "investigation" mean any
9 inquiry conducted by the Attorney General or district attorney for
10 the purpose of ascertaining whether any person is or has been
11 engaged in or is actively preparing to engage in activities which
12 may constitute an antitrust violation;

13 2. "Antitrust violation" means any act or omission in violation
14 of any of the prohibitions contained in this act or in violation of
15 any of the antitrust laws set forth in 15 U.S.C., Section 12(a);

16 3. "Civil investigative demand" and "demand" mean any demand
17 issued by the Attorney General or district attorney under subsection
18 B of this section and consistent with the discovery methods set
19 forth in subsection A of Section 3226 of Title 12 of the Oklahoma
20 Statutes; and

21 4. "Person" means a natural person, proprietorship,
22 partnership, corporation, limited liability company, municipal
23 corporation, public trust, association, or any other public or
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1 private entity, however organized, and includes any person acting
2 under color or authority of state law.

3 B. Whenever the Attorney General or district attorney has
4 reason to believe that any person may be in possession, custody, or
5 control of any information, documentary material, or physical
6 evidence relevant to a civil antitrust investigation, the Attorney
7 General or district attorney may, prior to the institution of a
8 civil proceeding, obtain discovery by issuing in writing and serving
9 upon the person a civil investigative demand requiring the person to
10 produce the information, documentary material, or physical evidence
11 for inspection and copying, to permit entry upon land or other
12 property, to answer in writing written interrogatories, to give oral
13 testimony, or to provide any combination of the above.

14 1. Each demand shall describe the nature of the activities that
15 are the subject of the investigation and shall set forth each
16 statute and section of that statute that may have been or may be
17 violated as a result of the activities. Each demand shall advise
18 the person upon whom the demand is to be served that the person has
19 the right to object to the demand as provided for in this section;

20 2. Each demand for production of documentary material and for
21 answers to written interrogatories shall prescribe a reasonable
22 return date or dates by which the material shall be produced and the
23 answers to interrogatories shall be submitted;

1 3. Each demand for the giving of oral testimony shall prescribe
2 a reasonable date, time, and place at which the testimony shall
3 begin.

4 C. 1. A demand issued under subsection B of this section may
5 require compliance only if the material or information sought would
6 be discoverable under the Oklahoma Discovery Code, and only in the
7 manner prescribed in the applicable provisions therein.

8 2. A demand under subsection B of this section may not be
9 issued upon the Oklahoma Tax Commission for records or files which
10 are considered confidential and privileged under Section 205 of
11 Title 68 of the Oklahoma Statutes.

12 D. At any time before the return date specified in a demand or
13 within twenty (20) days after the demand has been served, whichever
14 period is shorter, the person who has been served and, in the case
15 of a demand for a product of discovery, the person from whom the
16 discovery is sought, may file a petition for an order modifying or
17 setting aside the demand in the district court in the county of the
18 person's residence or principal office or place of business. Any
19 such petition shall specify each ground upon which the petitioner
20 relies in seeking the relief sought. The petition may be based upon
21 any failure of such demand to comply with the provisions of this
22 section or upon any constitutional or other legal right or privilege
23 of the petitioner. The petitioner shall serve a copy of the
24 petition upon the Attorney General or district attorney. The

1 Attorney General or District Attorney may submit an answer to the
2 petition. In ruling on the petition, the court shall presume absent
3 evidence to the contrary that the Attorney General or district
4 attorney issued the demand in good faith and within the scope of his
5 or her authority. The time for compliance with the demand in whole
6 or in part shall not run during the pendency of any petition filed
7 under this subsection; provided, however, that the petitioner shall
8 comply, with any portions of the demand not sought to be modified or
9 set aside.

10 E. A person on whom a demand is served shall comply with the
11 terms of the demand unless otherwise provided by court order.

12 F. 1. Whenever any person fails to comply with any demand duly
13 served on that person under this section, the Attorney General or
14 district attorney may file in the district court in the county in
15 which the person resides, is found, or transacts business and serve
16 on the person a petition for an order of the court for enforcement
17 of this section. If the person transacts business in more than one
18 county, the petition shall be filed in the county of the person's
19 principal office or place of business in the state or in any other
20 county as may be agreed upon by the person and the Attorney General
21 or district attorney.

22 2. Any person, who, with intent to avoid, evade, or prevent
23 compliance in whole or part with a demand issued under this section,
24 removes from any place, conceals, withholds, destroys, mutilates,

1 alters, or by any other means falsifies any documentary material or
2 otherwise provides inaccurate information is guilty of a misdemeanor
3 and, upon conviction, shall be punished by a fine of not more than
4 Five Thousand Dollars (\$5,000.00) or by confinement in the county
5 jail for not more than one (1) year or by both such fine and
6 imprisonment.

7 G. 1. Not later than fifteen (15) days prior to disclosing
8 under this subsection any documentary material or answers to written
9 interrogatories designated as containing trade secrets or
10 confidential information, the Attorney General or district attorney
11 shall notify the person who produced the material of the Attorney
12 General's or district attorney's intent to make the disclosure.
13 After providing such notification, the Attorney General or district
14 attorney may petition a district court in any county of this state
15 in which the person resides, does business, or maintains its
16 principal office for an order authorizing disclosure of the trade
17 secrets or confidential information. After notice and hearing, if
18 so ordered, the Attorney General or district attorney may disclose
19 the trade secrets or confidential information.

20 2. Upon written request, the Attorney General or district
21 attorney shall return documentary material produced under this
22 section in connection with an antitrust investigation to the person
23 who produced it whenever:
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- 1 a. any case or proceeding before any court arising out of
2 the investigation has been completed, or
3 b. the Attorney General or district attorney has decided
4 after completing an examination and analysis of the
5 material not to institute any case or proceeding
6 before a court in connection with the investigation.

7 H. Whenever any petition is filed in the district court as
8 provided for in this section, the court shall have jurisdiction to
9 hear and determine the matter presented and to enter any order or
10 orders required to implement the provisions of this section. Any
11 final order shall be subject to appeal. Failure to comply with any
12 final order entered by a court under this section is punishable by
13 the court as contempt.

14 SECTION 4. This act shall become effective June 1, 2023.

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