

STATE OF OKLAHOMA

2nd Session of the 58th Legislature (2022)

SENATE BILL 1810

By: Jett

AS INTRODUCED

An Act relating to the Oklahoma Antitrust Reform Act; amending 79 O.S. 2021, Sections 205, 207, and 210, which relate to actions brought by injured persons and Attorney General, witness subpoenas, and civil investigative demand; authorizing district attorneys to bring certain actions; providing exception; authorizing district attorney to make certain application; authorizing district attorney to take certain evidence; authorizing district attorney to prosecute certain violations; modifying definitions; authorizing district attorney to obtain certain discovery; modifying procedures for certain compliance; updating statutory references; 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~~ Section 201 et seq. of this title, 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

1 state, as parens patriae on behalf of natural persons residing in  
2 the state for appropriate injunctive or other equitable relief and  
3 to secure monetary damages for injury sustained by such natural  
4 persons to their business or property by reason of any violation of  
5 ~~this act~~ Section 201 et seq. of this title. A district attorney may  
6 bring an action in the name of the state, as parens patriae on  
7 behalf of natural persons residing in the district of the district  
8 attorney for appropriate injunctive or other equitable relief and to  
9 secure monetary damages for injury sustained by such natural persons  
10 to their business or property by reason of any violation of the  
11 Oklahoma Antitrust Reform Act, except to the extent to which the  
12 Attorney General has brought an action under the same theory of  
13 relief. The court shall exclude from the amount of the monetary  
14 damages awarded in such action any amount of monetary damages:

- 15 a. which duplicates amounts which have been awarded for
- 16 the same injury, or
- 17 b. which is properly allocable to:
  - 18 (1) natural persons who have excluded their claims,
  - 19 and
  - 20 (2) any other persons.

21 The court shall award the state as parens patriae threefold the  
22 total damages sustained and the cost of suit, including a reasonable  
23 attorney fee. Whenever the state is hereafter injured in its  
24 business or property by anything forbidden in ~~this act~~ Section 201

1 et seq. of this title, it may obtain appropriate injunctive or other  
2 equitable relief and monetary damages therefor and shall recover  
3 actual damages by it sustained and the cost of suit including a  
4 reasonable attorney fee. The court may award under this section,  
5 pursuant to a motion by such person or the state, simple interest on  
6 actual damages for the period beginning on the date of service of  
7 such person's or the state's pleading setting forth a claim under  
8 ~~this act~~ Section 201 et seq. of this title and ending on the date of  
9 judgment, or for any shorter period therein, if the court finds that  
10 the award of such interest for such period is just in the  
11 circumstances. The Attorney General may bring an action on behalf  
12 of either the state or a political subdivision of the state when  
13 either is injured in its business or property by anything forbidden  
14 by the provisions of ~~this act~~ Section 201 et seq. of this title.

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

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

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

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

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

17       Section 207. It shall be the duty of the court before whom any  
18 proceeding under ~~this act~~, the Oklahoma Antitrust Reform Act may be  
19 brought, upon the application of the Attorney General or district  
20 attorney, to cause to be issued by the clerk of the court subpoenas  
21 for witnesses as may be named in the application, and cause the same  
22 to be served by the sheriff of the county where the subpoena is  
23 issued; and the witnesses shall be compelled to appear before the  
24 court or judge, at the time and place set forth in the subpoena, and

1 shall be compelled to testify as to any knowledge they may have of  
2 the violations of any of the provisions of ~~this act~~ Section 201 et  
3 seq. of this title; and any witness who fails or refuses to attend  
4 and testify shall be punished as for contempt, as provided by law.  
5 The evidence of all the witnesses shall, at the option of the  
6 Attorney General or district attorney, be taken down and shall be  
7 transcribed and placed in the hands of the Attorney General or  
8 district attorney, and the Attorney General or district attorney  
9 shall be authorized to prosecute a violator or violators of ~~this act~~  
10 Section 201 et seq. of this title. Witnesses subpoenaed as provided  
11 in this section shall be compelled to attend proceedings from any  
12 county in the state.

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

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

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

21 2. "Antitrust violation" means any act or omission in violation  
22 of any of the prohibitions contained in ~~this act~~ Section 201 et seq.  
23 of this title or in violation of any of the antitrust laws set forth  
24 in 15 U.S.C., Section 12(a);

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

6        4. "Person" means a natural person, proprietorship,  
7 partnership, corporation, limited liability company, municipal  
8 corporation, public trust, association, or any other public or  
9 private entity, however organized, and includes any person acting  
10 under color or authority of state law.

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

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

4 2. Each demand for production of documentary material and for  
5 answers to written interrogatories shall prescribe a reasonable  
6 return date or dates by which the material shall be produced and the  
7 answers to interrogatories shall be submitted; and

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

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

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

19 D. At any time before the return date specified in a demand or  
20 within twenty (20) days after the demand has been served, whichever  
21 period is shorter, the person who has been served and, in the case  
22 of a demand for a product of discovery, the person from whom the  
23 discovery is sought, may file a petition for an order modifying or  
24 setting aside the demand in the district court in the county of the

1 person's residence or principal office or place of business. Any  
2 such petition shall specify each ground upon which the petitioner  
3 relies in seeking the relief sought. The petition may be based upon  
4 any failure of such demand to comply with the provisions of this  
5 section or upon any constitutional or other legal right or privilege  
6 of the petitioner. The petitioner shall serve a copy of the  
7 petition upon the Attorney General or district attorney. The  
8 Attorney General or district attorney may submit an answer to the  
9 petition. In ruling on the petition, the court shall presume absent  
10 evidence to the contrary that the Attorney General or district  
11 attorney issued the demand in good faith and within the scope of his  
12 or her authority. The time for compliance with the demand in whole  
13 or in part shall not run during the pendency of any petition filed  
14 under this subsection; provided, however, that the petitioner shall  
15 comply, with any portions of the demand not sought to be modified or  
16 set aside.

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

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

5 2. Any person, who, with intent to avoid, evade, or prevent  
6 compliance in whole or part with a demand issued under this section,  
7 removes from any place, conceals, withholds, destroys, mutilates,  
8 alters, or by any other means falsifies any documentary material or  
9 otherwise provides inaccurate information is guilty of a misdemeanor  
10 and, upon conviction, shall be punished by a fine of not more than  
11 Five Thousand Dollars (\$5,000.00) or by confinement in the county  
12 jail for not more than one (1) year or by both such fine and  
13 imprisonment.

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

1 so ordered, the Attorney General or district attorney may disclose  
2 the trade secrets or confidential information.

3 2. Upon written request, the Attorney General or district  
4 attorney shall return documentary material produced under this  
5 section in connection with an antitrust investigation to the person  
6 who produced it whenever:

- 7 a. any case or proceeding before any court arising out of  
8 the investigation has been completed, or
- 9 b. the Attorney General or district attorney has decided  
10 after completing an examination and analysis of the  
11 material not to institute any case or proceeding  
12 before a court in connection with the investigation.

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

20 SECTION 4. This act shall become effective November 1, 2022.

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