§§ 57-1-1 through 57-1-19: Antitrust Act

57-1-1. Contracts, agreements, combinations or conspiracies in restraint of trade.

Every contract, agreement, combination or conspiracy in restraint of trade or commerce, any part of which trade or commerce is within this state, is unlawful.

57-1-1.1. Short title.

Sections 57-1-1 through 57-1-15 NMSA 1978 may be cited as the "Antitrust Act".

57-1-1.2. Definition.

As used in the Antitrust Act, "person" means an individual, corporation, business trust, partnership, association or any governmental or other legal entity with the exception of the state, except as used in Subsection B of Section 57-1-3 NMSA 1978, and the United States.


It is hereby declared to be unlawful for any person to monopolize or attempt to monopolize, or combine or conspire with any other person or persons to monopolize, trade or commerce, any part of which trade or commerce is within this state.

57-1-3. Contracts for restraint of trade or monopoly void; civil liability of participants; injunctive relief; purchasers relieved from payment.

A. All contracts and agreements in violation of Section 57-1-1 or 57-1-2 NMSA 1978 shall be void, and any person threatened with injury or injured in his business or property, directly or indirectly, by a violation of Section 57-1-1 or 57-1-2 NMSA 1978 may bring an action for appropriate injunctive relief, up to threefold the damages sustained and costs and reasonable attorneys' fees. If the trier of fact finds that the facts so justify, damages may be awarded in an amount less than that requested, but not less than the damages actually sustained.

B. The attorney general may bring an action under Subsection A of this section on behalf of the state, a political subdivision thereof or any public agency.

C. In any action under this section, any defendant, as a partial or complete defense against a damage claim, may, in order to avoid duplicative liability, be entitled to prove that the plaintiff purchaser or seller in the chain of manufacture, production, or distribution who paid any overcharge or received any underpayment, passed on all or any part of such overcharge or underpayment to another purchaser or seller in such chain.
D. For the purposes of this section, "business or property" includes business or nonbusiness purchases and business and nonbusiness injuries.

57-1-4. Organizations exempted.

The labor of a human being is not a commodity or article of commerce. No law against monopolies or combinations in restraint of trade shall be held or construed to forbid the existence and operation of natural gas marketing, labor, agricultural or horticultural organizations instituted for purposes of mutual help and not having capital stock or conducted for profit to the organization or to forbid or restrain individual members of such organizations from lawfully carrying out the objects thereof; nor shall such organizations or the members thereof be held or construed to be illegal combinations or conspiracies in restraint of trade under any law against monopolies or combinations in restraint of trade. No natural gas marketing organization exempted herein shall be organized in such a manner so as to control more than ten percent of the natural gas market. Nothing in this section shall be held or construed to justify any restraint of trade or restriction of competition except such as is incident to the protection and promotion of the interests of the members of such organizations, in view of their situation and circumstances, but such organizations and their objects and the effectuation thereof shall prima facie be presumed to be in reasonable restraint of trade or restriction of competition.

57-1-5. Attorney general; investigation.

A. If the attorney general has reasonable cause to believe that a person has information or may be in possession, custody or control of any document or other tangible object relevant to a civil investigation for violation of Section 57-1-1 or 57-1-2 NMSA 1978, he may, before bringing any action, apply to the district court of Santa Fe county for approval of a civil investigative demand, demanding, in writing, such person to appear and be examined under oath, to answer written interrogatories under oath, or to produce the document or object for inspection and copying. The demand shall:

(1) be served upon the person in the manner required for service of process in this state, or, if the person cannot be found or does not reside or maintain a principal place of business within this state, in the manner required for service of process in the state in which the person resides, maintains a principal place of business or can be found;

(2) describe the nature of the conduct under investigation;

(3) describe the class or classes of documents or objects with sufficient definiteness to permit them to be fairly identified, if the production of documents or objects is requested;

(4) contain a copy of the written interrogatories, if answers to written interrogatories are sought;

(5) prescribe a reasonable time at which the person must appear to testify, within which to answer the written interrogatories or within which the document or object must be produced;
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(6) specify a place for the taking of testimony or for production and designate a person who may be an
authorized employee of the attorney general, to be custodian of the document or object; and

(7) contain a copy of Subsections B, C and D of this section.

No demand to produce a document or object for inspection and copying shall contain any requirement which
would be unreasonable or improper if contained in a subpoena duces tecum issued in a civil proceeding by a
district court of this state.

The district court shall approve the demand if it finds that the attorney general has reasonable cause to
believe that a person has information or may be in possession, custody or control of any document or other
tangible object relevant to a civil investigation for violation of Section 57-1-1 or 57-1-2 NMSA 1978 and that
the demand is proper in form. A demand shall not be issued without approval of the district court.

B. If a person fails to comply with the written demand served upon him under the provisions of Subsection A
of this section, the attorney general may file in the district court of the county in which the person resides or
in which he maintains a principal place of business within this state or of the county of Santa Fe if the person
neither resides nor has a principal place of business in this state a petition for an order to enforce the demand.
Notice of hearing the petition and a copy of the petition shall be served upon the person, who may appear in
opposition to the petition. If the court finds that the demand is proper in form and there is reasonable cause
to believe that the person has information or may be in possession, custody or control of any document or
other tangible object relevant to a civil investigation for violation of Section 57-1-1 or 57-1-2 NMSA 1978, the
court shall order the person to comply with the demand, subject to any modification that the court may
prescribe. Upon motion by the person and for good cause shown, the court may make any further protective
order in the proceedings that justice requires.

C. Prior to the filing of an action under the provisions of the Antitrust Act for the violation under investigation,
any testimony taken or material produced under this section shall be kept confidential by the attorney general
unless confidentiality is waived by the person being investigated and the person who has testified, answered
interrogatories or produced material, or disclosure is authorized by the court. All court records, including
docket, application, petitions, motions and other papers filed under this section shall be open to inspection
only to the attorney general and the person upon whom the demand for which inspection is sought has been
served, unless otherwise ordered by the court.

D. Any person compelled to appear under this section and required to testify under oath may be
accompanied, represented and advised by counsel. An objection may properly be made, received and entered
upon the record when it is claimed that such person is entitled to refuse to answer the question on grounds of
any constitutional or other legal right or privilege.

57-1-6. Criminal penalty.

A. Any person who violates Section 57-1-1 or 57-1-2 NMSA 1978 shall be guilty of a fourth-degree felony and,
for conviction thereof, if a person other than an individual, it shall be punished by a fine not to exceed two
hundred fifty thousand dollars ($250,000), or, if an individual, imprisonment in the penitentiary for a
A. The attorney general may bring an action for civil penalties in the name of the state against any person for violation of Section 57-1-1 or 57-1-2 NMSA 1978. Any individual who violates Section 57-1-1 or 57-1-2 NMSA 1978 shall be subject to a civil penalty of not more than fifty thousand dollars ($50,000), or, if a person other than an individual, not to exceed two hundred fifty thousand dollars ($250,000).

B. Any person who fails to comply with a final judgement or decree of a court of this state issued for a violation of the Antitrust Act shall be subject to a civil penalty; if an individual, the penalty shall be not more than fifty thousand dollars ($50,000), or, if a person other than an individual, the penalty shall be not more than two hundred fifty thousand dollars ($250,000).

C. No action for a civil penalty may be brought against any person for the same violation for which such person has been convicted in a criminal proceeding for violation of the federal antitrust laws.

D. For the purposes of Subsections A and B of this section, "individual" means a person other than a corporation, business trust, partnership, association or other governmental or legal entity.

57-1-8. Attorney general; injunctive relief.

The attorney general may bring an action in the name of the state against any person to enjoin, restrain and prevent the doing in this state of any act declared unlawful under Section 57-1-1 or 57-1-2 NMSA 1978.

57-1-9. Election of remedies.

The obtaining of a judgement under the Antitrust Act to assess a civil penalty against a person shall be an election of remedies to not bring a criminal prosecution against such person under the Antitrust Act. The institution of a criminal prosecution under that act against a person by filing an information or complaint or returning an indictment shall be an election of remedies not to bring suit to assess a civil penalty against such person under that act.
57-1-10. District attorneys; enforcement.

In order to promote the uniform administration of the Antitrust Act in New Mexico, the attorney general is to be responsible for its enforcement, but he may, on a case-by-case basis, delegate this authority to the district attorneys of the state and when this is done, the district attorneys shall have every power and duty conferred upon the attorney general by this act [57-1-1 to 57-1-3, 57-1-5 to 57-1-19 NMSA 1978].


A. A final judgment or decree in a civil or criminal proceeding determining that a person has violated Section 57-1-1 or 57-1-2 NMSA 1978 in an action brought by the state is prima facie evidence against such person in any other action against him under the provisions of Section 57-1-3 NMSA 1978 as to all matters with respect to which the judgment or decree would be an estoppel between the parties thereto. This section does not affect the application of collateral estoppel or issue preclusion.

B. For the purposes of Subsection A of this section, "final judgment" or "decree" shall not include a consent judgment or decree entered before any testimony has been taken at trial in a civil proceeding or a judgment based upon a plea of nolo contendere in a criminal proceeding.

57-1-12. Limitations of actions.

A. An action brought under the provisions of Section 57-1-7 or 57-1-8 NMSA 1978 is barred if it is not commenced within four years after the cause of action accrues or 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 cause of action, whichever is later.

B. An action brought under the provisions of Section 57-1-3 NMSA 1978 to recover damages is barred if it is not commenced within four years after the cause of action accrues or 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 cause of action, whichever is later. Provided, however, that a cause of action is not barred if it is commenced within one year after the conclusion of a timely action brought by the state under the provisions of Section 57-1-6, 57-1-7 or 57-1-8 NMSA 1978, based in whole or in part on any matter complained of in the action for damages, whichever is later.

C. For the purposes of this section, a cause of action for a continuing violation is deemed to accrue at any time during the period of the violation.

57-1-13. Actions involving interstate or foreign commerce.

No action under the Antitrust Act shall be barred on the ground that the activity or conduct complained of in any manner affects or involves interstate or foreign commerce.
57-1-14. Remedies cumulative.

Subject to Section 57-1-9 NMSA 1978, the remedies afforded the state under the Antitrust Act shall be cumulative.


Unless otherwise provided in the Antitrust Act, the Antitrust Act shall be construed in harmony with judicial interpretations of the federal antitrust laws. This construction shall be made to achieve uniform application of the state and federal laws prohibiting restraints of trade and monopolistic practices.

57-1-16. [Lawful activities.]

Nothing contained in the Antitrust Act is intended to prohibit actions which are:

A. clearly and expressly authorized by any state agency or regulatory body acting under a clearly articulated and affirmatively expressed state policy to displace competition with regulation; and

B. actively supervised by the state agency or regulatory body which is constitutionally or statutorily granted the authority to supervise such actions when the agency or regulatory body does not have any proprietary interest in the actions.

57-1-17. Limitation on recovery of damages.

A. Notwithstanding the provisions of Section 57-1-3 NMSA 1978:

(1) no damages or interest on damages may be recovered under the Antitrust Act from any local government or official or employee thereof acting in an official capacity; provided, however, that in an action for a permanent injunction brought against a local government or official or employee thereof acting in an official capacity, costs and reasonable attorneys' fees may be granted to the prevailing party; and

(2) no damages or interest on damages may be recovered under the Antitrust Act in any claim against a person based on any official action directed by a local government or official or employee thereof acting in an official capacity; provided, however, that in an action for permanent injunction brought against a person based on any official action directed by a local government or official or employee thereof acting in an official capacity, costs and reasonable attorneys' fees may be granted to the prevailing party.

B. As used in this section:

(1) "local government" means:

(a) a city, county or any other general function governmental unit established by state law; or
(b) a school district, sanitary district or any other special function governmental unit established by state law; and

(2) "person" has the meaning given it in Section 57-1-1.2 NMSA 1978 but does not include any local government as defined in Paragraph (1) of this subsection.

57-1-18. Limitation of retail purchases unlawful.

It is unlawful for any merchant to advertise or offer for sale any item of merchandise with a limitation upon the number of the item that any retail purchaser may purchase at the advertised price. It is further unlawful for any merchant offering or advertising any item of merchandise in his place of business at any given price to refuse to sell to any prospective retail purchaser for cash the whole or any part of his stock of such item at such price. However, this section shall not be applicable to a purchaser purchasing for resale.

57-1-19. [Violation of act; penalty.]

Any person convicted of violating this act [57-1-18, 57-1-19 NMSA 1978] shall be punished by a fine of not more than five hundred dollars ($500) or by imprisonment of not more than ninety days, or by both such fine and imprisonment.