

**[N.Y. Gen. Bus. Law §§ 340 through 347.]**

**§ 340. Contracts or agreements for monopoly or in restraint of trade illegal and void: Monopolies**

Contracts or agreements for monopoly or in restraint of trade illegal and void. 1. Every contract, agreement, arrangement or combination whereby

A monopoly in the conduct of any business, trade or commerce or in the furnishing of any service in this state, is or may be established or maintained, or whereby

Competition or the free exercise of any activity in the conduct of any business, trade or commerce or in the furnishing of any service in this state is or may be restrained or whereby

For the purpose of establishing or maintaining any such monopoly or unlawfully interfering with the free exercise of any activity in the conduct of any business, trade or commerce or in the furnishing of any service in this state any business, trade or commerce or the furnishing of any service is or may be restrained, is hereby declared to be against public policy, illegal and void.

2. Subject to the exceptions hereinafter provided in this section, the provisions of this article shall apply to licensed insurers, licensed insurance agents, licensed insurance brokers, licensed independent adjusters and other persons and organizations subject to the provisions of the insurance law, to the extent not regulated by provisions of article twenty-three of the insurance law; and further provided, that nothing in this section shall apply to the marine insurances, including marine protection and indemnity insurance and marine reinsurance, exempted from the operation of article twenty-three of the insurance law.

3. The provisions of this article shall not apply to cooperative associations, corporate or otherwise, of farmers, gardeners, or dairymen, including live stock farmers and fruit growers, nor to contracts, agreements or arrangements made by such associations, nor to bona fide labor unions.

4. The labor of human beings shall not be deemed or held to be a commodity or article of commerce as such terms are used in this section and nothing herein contained shall be deemed to prohibit or restrict the right of workingmen to combine in unions, organizations and associations, not organized for the purpose of profit.

5. An action to recover damages caused by a violation of this section must be commenced within four years after the cause of action has accrued. The state, or any political subdivision or public authority of the state, or any person who shall sustain damages by reason of any violation of this section, shall recover three-fold the actual damages sustained thereby, as well as costs not exceeding ten thousand dollars, and reasonable attorneys' fees. At or before the commencement of any civil action by a party other than the attorney-general for a violation of this section, notice thereof shall be served upon the attorney-general. Where the aggrieved party is a political subdivision or public authority of the state, notice of intention to commence an action under this section must be served upon the attorney-general at least ten days prior to the commencement of such action. This section shall not apply to any action commenced prior to the effective date of this act.

6. In any action pursuant to this section, the fact that the state, or any political subdivision or public authority of the state, or any person who has sustained damages by reason of violation of this section has not dealt directly with the defendant shall not bar or otherwise limit recovery; provided, however, that in any action in which claims are asserted against a defendant by both direct and indirect purchasers, the court shall take all

steps necessary to avoid duplicate liability, including but not limited to the transfer and consolidation of all related actions. In actions where both direct and indirect purchasers are involved, a defendant shall be entitled to prove as a partial or complete defense to a claim for damages that the illegal overcharge has been passed on to others who are themselves entitled to recover so as to avoid duplication of recovery of damages.

### § 340-A. Monies recovered: Monopolies

Notwithstanding any law to the contrary, all monies recovered or obtained under this article by a state agency or state official or employee acting in their official capacity shall be subject to subdivision eleven of section four of the state finance law.

### § 341. Penalty: Monopolies

Every person or corporation, or any officer or agent thereof, who shall make or attempt to make or enter into any such contract, agreement, arrangement or combination or who within this state shall do any act pursuant thereto, or in, toward or for the consummation thereof, wherever the same may have been made, is guilty of a class E felony, and on conviction thereof shall, if a natural person, be punished by a fine not exceeding one hundred thousand dollars, or by imprisonment for not longer than four years, or by both such fine and imprisonment; and if a corporation, by a fine of not exceeding one million dollars. An indictment or information based on a violation of any of the provisions of this section must be found within three years after its commission. No criminal proceeding barred by prior limitation shall be revived by this act.

### § 342. Action to restrain and prevent: Monopolies

The attorney-general may bring an action in the name and in behalf of the people of the state against any person, trustee, director, manager or other officer or agent of a corporation, or against a corporation, foreign or domestic, to restrain and prevent the doing in this state of any act herein declared to be illegal, or any act in, toward or for the making or consummation of any contract, agreement, arrangement or combination herein prohibited, wherever the same may have been made. In such an action, the court may award to the plaintiff a sum not in excess of twenty thousand dollars as an additional allowance.

### § 342-A. Recovery of civil penalty by attorney-general: Monopolies

In lieu of any penalty otherwise prescribed for a violation of a provision of this article and in addition to an action pursuant to section three hundred forty-two of this article, the attorney-general may bring an action in the name and in behalf of the people of the state against any person, trustee, director, manager or other officer or agent of a corporation, or against a corporation, foreign or domestic, to recover a penalty in the sum specified in section three hundred forty-one of this article for the doing in this state of any act herein declared to be illegal, or any act in, toward or for the making or consummation of any contract, agreement, arrangement or combination herein prohibited, wherever the same may have been made. The action must be brought within three years after the commission of the act upon which it is based.

### § 342-B. Recovery of damages by attorney general: Monopolies

In addition to existing statutory authority to bring such actions on behalf of the state and public authorities, the attorney general may also bring action on behalf of any political subdivision or public authority of the state upon the request of such political subdivision or public authority to recover damages for violations of section three hundred forty of this article, or to recover damages provided for by federal law for violations of the

federal antitrust laws. In any class action the attorney general may bring on behalf of these or other subordinate governmental entities, any governmental entity that does not affirmatively exclude itself from the action, upon due notice thereof, shall be deemed to have requested to be treated as a member of the class represented in that action. The attorney general, on behalf of the state of New York, shall be entitled to retain from any moneys recovered in such actions the costs and expenses of such services.

### § 342-C. Tolling of the period of limitations by proceedings of the United States: Monopolies

Tolling of the period of limitations by proceedings of the United States. Whenever any civil or criminal proceeding is instituted by the federal government to prevent, restrain, or punish violations of the federal antitrust laws, the running of the period of limitations in respect of every right of action arising under sections three hundred forty, three hundred forty-two and three hundred forty-two-a of this article, based in whole or in part on any matter complained of in the federal proceeding, shall be suspended during the pendency of said proceeding and for one year thereafter; provided, however, that whenever the running of the period of limitations in respect of a right of action arising under sections three hundred forty, three hundred forty-two or three hundred forty-two-a of this article is suspended hereunder, any action to enforce such right of action shall be forever barred unless commenced either within the period of suspension or within the period of limitations otherwise prescribed in this article.

### § 343. Investigation by the attorney general: Monopolies

Whenever it shall appear to the attorney general, either upon complaint or otherwise, that any person or persons, partnership, corporation, company, trust or association shall have engaged in or engages in or is about to engage in any act or practice by this article prohibited or declared to be illegal, or that any person, persons, partnership, corporation, company, trust or association has assisted or participated in any plan, scheme, agreement or combination of the nature described herein, or whenever he believes it to be in the public interest that an investigation be made, he may in his discretion either require or permit such person, persons, partnership, corporation, company, trust or association to file with him a statement in writing under oath or otherwise as to all the facts and circumstances concerning the subject matter which he believes is to be to the public interest to investigate. The attorney general may also require such other data and information as he may deem relevant and may make such special and independent investigations as he may deem necessary in connection with the matter. The attorney general, his deputy, assistant, or other officer designated by him, is empowered to subpoena witnesses, compel their attendance, examine them under oath before himself or a magistrate, a court of record or a judge or justice thereof, and require the production of any books or papers which he deems relevant or material to the inquiry. Any person, persons, partnership, corporation, company, trust or association subject to service of a summons within or without the state pursuant to article three of the civil practice law and rules shall be subject to the service of a subpoena properly issued pursuant to this section. Any subpoena served hereunder without the state shall be issued on an ex-parte order of the court based upon a showing that the information or testimony sought bears a reasonable relationship to the subject matter under investigation. All papers filed in connection with the obtaining of said order may be maintained under seal by the clerk of the court upon application of the attorney general to the court. Any person, persons, partnership, corporation, company, trust, or association, who has been served with subpoena pursuant to this section may make a motion, pursuant to section twenty-three hundred four of the civil practice law and rules, to quash, fix conditions, or modify such subpoena. Any

and all papers previously sealed by the court may be made available to the person making such motion. Such power of subpoena and examination shall not abate or terminate by reason of any action or proceeding brought by the attorney general under this article. No person shall be excused from attending such inquiry in pursuance to the mandates of a subpoena, or from producing a paper or book, document or any other record, or from being examined or required to answer questions on the ground of failure to tender or pay a witness fee or mileage unless demand therefor is made at the time testimony is about to be taken and as a condition precedent to offering such production or testimony and unless payment thereof be not thereupon made. The provisions for payment of witness fee and/or mileage do not apply to any officer, director or person in the employ of any person, partnership, company, corporation, trust or association whose conduct or practices are being investigated. If a person subpoenaed to attend such inquiry fails to obey the command of the subpoena without good cause, or if a person in attendance upon such inquiry shall without reasonable cause refuse to be sworn or to answer a question or to produce a book, paper, document or other record when ordered to do so by the officer conducting such inquiry, or if a person, partnership, corporation, company, trust or association fails to perform any act hereunder required to be performed, he shall be guilty of a misdemeanor. The foregoing shall not prevent the attorney general from instituting civil contempt proceedings under section twenty-three hundred eight (b) of the civil practice law and rules against any person who violates any of the above provisions. It shall be the duty of all public officers, their deputies, assistants, clerks, subordinates or employees, and all other persons to render and furnish to the attorney general, his deputy or other designated representative, when so requested, all information and assistance in their possession or within their power. Any officer participating in such inquiry and any person examined as a witness upon such inquiry who shall disclose to any person other than the attorney general the name of any witness examined or any other information obtained upon such inquiry, except as so directed by the attorney general shall be guilty of a misdemeanor. Such inquiry may upon written authorization of the attorney general be made public.

The misdemeanors provided in this section shall be punishable by a fine of not more than one thousand dollars or imprisonment for not more than one year, or both.

### § 345. Witnesses' immunity: Monopolies

Witnesses' immunity. Upon any investigation before the attorney general or his deputy or other officer designated by him, or in any criminal proceeding before any court or grand jury, pursuant to or for a violation of any of the provisions of this article, the attorney general, his deputy or other officer designated by him, or the court or grand jury, may confer immunity in accordance with the provisions of section 50.20 or 190.40 of the criminal procedure law. Provided, that upon twenty-four hours written notice to the attorney general, in any such criminal proceeding at which the attorney general or his deputy is not present, immunity may be conferred; but where such notice has not been given a witness who has had immunity otherwise properly conferred upon him shall not be deprived thereof.

### § 347. Criminal prosecution: Monopolies

The attorney general may prosecute every person charged with the commission of a criminal offense in violation of the laws of this state, applicable to or in respect of the practices or transactions referred to in this article. In any such prosecution by the attorney general or a district attorney hereunder, the provisions of section three hundred ninety-nine, of the code of criminal procedure shall not be applicable. In all such proceedings, the attorney general may appear in person or by his deputy before any court of record or any grand jury and exercise all the powers and perform all the duties in respect of such actions or proceedings

which the district attorney would otherwise be authorized or required to exercise or perform; or the attorney general may in his discretion transmit evidence, proof and information as to such offense to the district attorney of the county or counties in which the alleged violation has occurred, and every district attorney to whom such evidence, proof and information is so transmitted shall forthwith proceed to prosecute any corporation, company, association, or officer, manager or agent thereof, or any firm or person charged with such violation. A district attorney shall give reasonable notice to the attorney general of intention to prosecute under this article and the attorney general may appear in any criminal proceeding brought under this article. In any such proceeding, wherein the attorney general has appeared either in person or by deputy, the district attorney shall only exercise such powers and perform such duties as are required of him by the attorney general or the deputy attorney general so appearing.