§§ 15.01 through 15.05: Texas Free Enterprise and Antitrust Act of 1983

§ 15.01. Title of Act.

This Act shall be known and may be cited as the Texas Free Enterprise and Antitrust Act of 1983.

§ 15.02. Applicability of Provisions.

(a) The provisions of this Act are cumulative of each other and of any other provision of law of this state in effect relating to the same subject. Among other things, the provisions of this Act preserve the constitutional and common law authority of the attorney general to bring actions under state and federal law.

(b) If any of the provisions of this Act are held invalid, the remainder shall not be affected as a result; nor shall the application of the provision held invalid to persons or circumstances other than those as to which it is held invalid be affected as a result.

§ 15.03. Definitions.

Except as otherwise provided in Subsection (a) of Section 15.10 of this Act, for purposes of this Act:

(1) The term "attorney general" means the Attorney General of Texas or any assistant attorney general acting under the direction of the Attorney General of Texas.

(2) The term "goods" means any property, tangible or intangible, real, personal, or mixed, and any article, commodity, or other thing of value, including insurance.

(3) The term "person" means a natural person, proprietorship, partnership, corporation, municipal corporation, association, or any other public or private group, however organized, but does not include the State of Texas, its departments, and its administrative agencies or a community center operating under Subchapter A, Chapter 534, Health and Safety Code.

(4) The term "services" means any work or labor, including without limitation work or labor furnished in connection with the sale, lease, or repair of goods.

(5) The terms "trade" and "commerce" mean the sale, purchase, lease, exchange, or distribution of any goods or services; the offering for sale, purchase, lease, or exchange of any goods or services; the advertising of any goods or services; the business of insurance; and all other economic activity undertaken in whole or in part for the purpose of financial gain involving or relating to any goods or services.

§ 15.04. Purpose and Construction.

The purpose of this Act is to maintain and promote economic competition in trade and commerce occurring wholly or partly within the State of Texas and to provide the benefits of that competition to consumers in the state. The provisions of this Act shall be construed to accomplish this purpose and shall be construed in
harmony with federal judicial interpretations of comparable federal antitrust statutes to the extent consistent with this purpose.

§ 15.05. Unlawful Practices.
(a) Every contract, combination, or conspiracy in restraint of trade or commerce is unlawful.
(b) It is unlawful for any person to monopolize, attempt to monopolize, or conspire to monopolize any part of trade or commerce.
(c) It is unlawful for any person to sell, lease, or contract for the sale or lease of any goods, whether patented or unpatented, for use, consumption, or resale or to fix a price for such use, consumption, or resale or to discount from or rebate upon such price, on the condition, agreement, or understanding that the purchaser or lessee shall not use or deal in the goods of a competitor or competitors of the seller or lessor, where the effect of the condition, agreement, or understanding may be to lessen competition substantially in any line of trade or commerce.
(d) It is unlawful for any person to acquire, directly or indirectly, the whole or any part of the stock or other share capital or the assets of any other person or persons, where the effect of such acquisition may be to lessen competition substantially in any line of trade or commerce.

This subsection shall not be construed:
(1) to prohibit the purchase of stock or other share capital of another person where the purchase is made solely for investment and does not confer control of that person in a manner that could substantially lessen competition;
(2) to prevent a corporation from forming subsidiary or parent corporations for the purpose of conducting its immediately lawful business, or any natural and legitimate branch extensions of such business, or from owning and holding all or a part of the stock or other share capital of a subsidiary, or transferring all or part of its stock or other share capital to be owned and held by a parent, where the effect of such a transaction is not to lessen competition substantially;
(3) to affect or impair any right previously legally acquired; or
(4) to apply to transactions duly consummated pursuant to authority given by any statute of this state or of the United States or pursuant to authority or approval given by any regulatory agency of this state or of the United States under any constitutional or statutory provisions vesting the agency with such power.
(e) It is unlawful for an employer and a labor union or other organization to agree or combine so that:
(1) a person is denied the right to work for an employer because of membership or nonmembership in the labor union or other organization; or
(2) membership or nonmembership in the labor union or other organization is made a condition of obtaining or keeping a job with the employer.
(f) It is not unlawful for:
(1) employees to agree to quit their employment or to refuse to deal with tangible personal property of their immediate employer, unless their refusal to deal with tangible personal property of their immediate employer
is intended to induce or has the effect of inducing that employer to refrain from buying or otherwise acquiring tangible personal property from a person; or

(2) persons to agree to refer for employment a migratory worker who works on seasonal crops if the referral is made irrespective of whether or not the worker belongs to a labor union or organization.

(g) Nothing in this section shall be construed to prohibit activities that are exempt from the operation of the federal antitrust laws, 15 U.S.C. Section 1 et seq., except that an exemption otherwise available under the McCarran-Ferguson Act (15 U.S.C. Sections 1011-1015) does not serve to exempt activities under this Act. Nothing in this section shall apply to actions required or affirmatively approved by any statute of this state or of the United States or by a regulatory agency of this state or of the United States duly acting under any constitutional or statutory authority vesting the agency with such power.

(h) In any lawsuit alleging a contract, combination, or conspiracy to fix prices, evidence of uniform prices alone shall not be sufficient to establish a violation of Subsection (a) of Section 15.05.

(i) In determining whether a restraint related to the sale or delivery of professional services is reasonable, except in cases involving price fixing, or other per se violations, the court may consider, but shall not reach its decision solely on the basis of, criteria which include: (1) whether the activities involved maintain or improve the quality of such services to benefit the public interest; (2) whether the activities involved limit or reduce the cost of such services to benefit the public interest. For purposes of this subsection, the term "professional services" means services performed by any licensed accountant, physician, or professional engineer in connection with his or her professional employment or practice.