

**SENATE, No. 3778**

**STATE OF NEW JERSEY**  
**220th LEGISLATURE**

INTRODUCED MAY 8, 2023

**Sponsored by:**  
**Senator TROY SINGLETON**  
**District 7 (Burlington)**

**SYNOPSIS**

Amends “New Jersey Antitrust Act” to make monopsony illegal and regulate entity in dominate position in market.

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT concerning the “New Jersey Antitrust Act” and amending  
2 P.L.1970, c.73.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6

7 1. Section 4 of P.L.1970, c.73 (C.56:9-4) is amended to read as  
8 follows:

9 4. a. It shall be unlawful for any person to monopolize or  
10 monopsonize, or attempt to monopolize or monopsonize, or to  
11 combine or conspire with any person or persons, to monopolize or  
12 monopsonize trade or commerce in any relevant market, or the  
13 furnishing of any service within this State.

14 b. No corporation engaged in commerce shall acquire, directly  
15 or indirectly, the whole or any part of the stock or other share  
16 capital of another corporation engaged also in commerce, where the  
17 effect of such acquisition may be to substantially lessen competition  
18 within this State between the corporation whose stock is so acquired  
19 and the corporation making the acquisition, or to restrain such  
20 commerce in any section or community of this State, or tend to  
21 create a monopoly of any line of commerce within this State.

22 c. No corporation shall acquire, directly or indirectly, the whole  
23 or any part of the stock or other share capital of two or more  
24 corporations engaged in commerce where the effect of such  
25 acquisition, or the use of such stock by the voting or granting of  
26 proxies or otherwise, may be to substantially lessen competition  
27 within this State between such corporations, or any of them, or to  
28 restrain such commerce in any section or community of this State,  
29 or tend to create a monopoly of any line of commerce within this  
30 State.

31 d. It shall be unlawful for any person with a dominant position  
32 in the conduct of any business, trade or commerce, in any labor  
33 market, or in the furnishing of any service in this State to abuse that  
34 dominant position.

35 (1) In any action brought due to a violation of this subsection, a  
36 person's dominant position may be established by direct evidence,  
37 indirect evidence, or a combination of the two.

38 (a) Examples of direct evidence include, but are not limited to,  
39 the unilateral power to set prices, terms, conditions, or standards;  
40 the unilateral power to dictate non-price contractual terms without  
41 compensation; or other evidence that a person is not constrained by  
42 meaningful competitive pressures, such as the ability to degrade  
43 quality without suffering reduction in profitability. In labor  
44 markets, examples of direct evidence include, but are not limited to,

**EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.**

**Matter underlined thus is new matter.**

1 the use of non-compete clauses or no-poach agreements, or the  
2 unilateral power to set wages.

3 (b) A person's dominant position may also be established by  
4 indirect evidence such as the person's share of a relevant market. A  
5 person who has a share of forty percent or greater of a relevant  
6 market as a seller shall be presumed to have a dominant position in  
7 that market under this subsection. A person who has a share of  
8 thirty percent or greater of a relevant market as a buyer shall be  
9 presumed to have a dominant position in that market under this  
10 subsection.

11 (c) If direct evidence is sufficient to demonstrate that a person  
12 has a dominant position or has abused such a dominant position, no  
13 court shall require definition of a relevant market in order to  
14 evaluate the evidence, find liability, or find that a claim has been  
15 stated under this subsection.

16 (2) In any action brought due to a violation of this subsection,  
17 abuse of a dominant position may include, but is not limited to,  
18 conduct that tends to foreclose or limit the ability or incentive of  
19 one or more actual or potential competitors to compete, such as  
20 leveraging a dominant position in one market to limit competition  
21 in a separate market, or refusing to deal with another person with  
22 the effect of unnecessarily excluding or handicapping actual or  
23 potential competitors. In labor markets, abuse may include, but is  
24 not limited to, imposing contracts by which any person is restrained  
25 from engaging in a lawful profession, trade, or business of any kind,  
26 or by restricting the freedom of workers and independent  
27 contractors to disclose wage and benefit information.

28 (3) Evidence of pro-competitive effects shall not be a defense to  
29 abuse of dominance and shall not offset or cure competitive harm.

30 e. (1) The Attorney General shall promulgate rules and  
31 regulations pursuant to the "Administrative Procedure Act," P.L.  
32 1968, c. 410 (C. 52:14B-1 et seq.) to implement the provisions of  
33 P.L. , c. (C.56:9-4 et seq.) (pending before the Legislature as  
34 this act).

35 (2) The Attorney General shall issue guidance on how it will  
36 interpret market shares and other relevant market conditions to  
37 achieve the purposes of subsection d. of this section while taking  
38 into account the important role of small and medium-sized  
39 businesses in the State's economy. The Attorney General may issue  
40 other guidance with respect to subsection d. of this section.

41 f. This section shall not apply to corporations purchasing such  
42 stock solely for investment and not using the same by voting or  
43 otherwise to bring about, or in attempting to bring about, the  
44 substantial lessening of competition. Nor shall anything contained  
45 in this section prevent a corporation engaged in commerce from  
46 causing the formation of subsidiary corporations for the actual  
47 carrying on of their immediate lawful business, or the natural and  
48 legitimate branches or extensions thereof, or from owning and

1 holding all or a part of the stock of such subsidiary corporations,  
2 when the effect of such formation is not to substantially lessen  
3 competition.

4 **【e.】** g. Nothing contained in this section shall be held to affect or  
5 impair any right heretofore legally acquired.

6 (cf: P.L.1970, c.73, s.4)

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8 2. Section 5 of P.L.1970, c.73 (C.56:9-5) is amended to read as  
9 follows:

10 5. a. **【This act】** P.L.1970, c.73 (C.56:9-4 et seq.) shall not  
11 forbid the existence of trade and professional organizations created  
12 for the purpose of mutual help, and not having capital stock, nor  
13 forbid or restrain members of such organizations from lawfully  
14 carrying out the legitimate objects thereof not otherwise in violation  
15 of **【this act】** P.L.1970, c.73 (C.56:9-4 et seq.); nor shall those  
16 organizations or members per se be illegal combinations or  
17 conspiracies in restraint of trade under the provisions of **【this act】**  
18 P.L.1970, c.73 (C.56:9-4 et seq.).

19 b. No provisions of **【this act】** P.L.1970, c.73 (C.56:9-4 et seq.)  
20 shall be construed to make illegal:

21 (1) The activities of any labor organization or of individual  
22 members thereof which are directed solely to labor objectives which  
23 are legitimate under the laws of either the State of New Jersey or  
24 the United States, or activities of individuals to establish or  
25 maintain union apprenticeship or training programs that may lead to  
26 any government-issued trade license, to bargain collectively  
27 concerning wages and the terms and conditions of employment;

28 (2) The activities of any agricultural or horticultural cooperative  
29 organization, whether incorporated or unincorporated, or of  
30 individual members thereof, which are directed solely to objectives  
31 of such cooperative organizations which are legitimate under the  
32 laws of either the State of New Jersey or the United States;

33 (3) The activities of any public utility, as defined in R.S.48:2-13  
34 to the extent that such activities are subject to the jurisdiction of the  
35 Board of Public Utilities, the Department of Transportation, the  
36 Federal Energy Regulatory Commission, the Federal  
37 Communications Commission, the Federal Department of  
38 Transportation or the Interstate Commerce Commission, except that  
39 this exemption, and that of subsection c. of this section, shall apply  
40 to the activities of any electric public utility or gas public utility or  
41 any related competitive business segment of an electric public  
42 utility or related competitive business segment of a gas public  
43 utility, or any public utility holding company or related competitive  
44 business segment of a public utility holding company as those  
45 terms are defined in section 3 of P.L.1999, c.23 (C.48:3-51), only to  
46 the extent such activities are expressly required by and supervised  
47 pursuant to State regulation or are required by federal or State law;

1 (4) The activities, including, but not limited to, the making of or  
2 participating in joint underwriting or joint reinsurance  
3 arrangements, of any insurer, insurance agent, insurance broker,  
4 independent insurance adjuster or rating organization to the extent  
5 that such activities are subject to regulation by the Commissioner of  
6 Banking and Insurance of this State under, or are permitted, or are  
7 authorized by, the "Department of Banking and Insurance Act of  
8 1948," P.L.1948, c.88 (C.17:1-1.1 et al.) and the "Department of  
9 Insurance Act of 1970," P.L.1970, c.12 (C.17:1C-1 et seq.),  
10 provided, however, the provisions of this paragraph (4) shall not  
11 apply to private passenger automobile insurance business, except as  
12 provided in section 69 of P.L.1990, c.8 (C.17:33B-31);

13 (5) The bona fide religious and charitable activities of any not  
14 for profit corporation, trust or organization established exclusively  
15 for religious or charitable purposes, or for both purposes;

16 (6) The activities engaged in by securities dealers, issuers or  
17 agents who are (i) a. licensed by the State of New Jersey under the  
18 "Uniform Securities Law (1967)," P.L.1967, c.93 (C.49:3-47 et  
19 seq.); or (ii) members of the National Association of Securities  
20 Dealers, or (iii) members of any National Securities Exchange  
21 registered with the Securities and Exchange Commission under the  
22 "Securities Exchange Act of 1934," as amended, in the course of  
23 their business of offering, selling, buying and selling, or otherwise  
24 trading in or underwriting securities, as agent, broker, or principal,  
25 and activities of any National Securities Exchange so registered,  
26 including the establishment of commission rates and schedules of  
27 charges;

28 (7) The activities of any State or national banking institution to  
29 the extent that such activities are regulated or supervised by officers  
30 of the State government under the "Department of Banking and  
31 Insurance Act of 1948," P.L.1948, c.88 (C.17:1-1.1 et al.) or  
32 P.L.1970, c.11 (C.17:1B-1 et seq.), or the federal government under  
33 the banking laws of the United States;

34 (8) The activities of any state or federal savings and loan  
35 association to the extent that such activities are regulated or  
36 supervised by officers of the State government under the  
37 "Department of Banking and Insurance Act of 1948," P.L.1948,  
38 c.88 (C.17:1-1.1 et al.) or P.L.1970, c.11 (C.17:1B-1 et seq.), or the  
39 federal government under the banking laws of the United States;

40 (9) The activities of any bona fide not for profit professional  
41 association, society or board, licensed and regulated by the courts or  
42 any other agency of this State, in recommending schedules of  
43 suggested fees, rates or commissions for use solely as guidelines in  
44 determining charges for professional and technical services; **[or]**

45 (10) The activities permitted under the provisions of chapter 4 of  
46 Title 56 of the Revised Statutes, "An act to regulate the retail sale of  
47 motor fuels," P.L.1938, c.163 (C.56:6-1 et seq.), the "Unfair Motor  
48 Fuels Practices Act," P.L.1953, c.413 (C.56:6-19 et seq.) and the

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1 "Unfair Cigarette Sales Act of 1952," P.L.1952, c.247 (C.56:7-18 et  
2 seq.);

3 (11) The creation, production, and dissemination of a single  
4 expressive work that is copyrighted, including but not limited to, a  
5 streaming series, television programs or motion pictures; or

6 (12) A bona fide collective bargaining agreement, project labor  
7 agreement or any other agreement which is lawful under 29 U.S.C.  
8 s.158(f), as amended.

9 c. **【This act】** P.L.1970, c.73 (C.56:9-4 et seq.) shall not apply  
10 to any activity directed, authorized or permitted by any law of this  
11 State that is in conflict or inconsistent with the provisions of this  
12 act, and the enactment of this act shall not be deemed to repeal,  
13 either expressly or by implication, any such other law in effect on  
14 the date of its enactment.

15 (cf: P.L.1999, c.23, s.61)

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17 3. Section 5 of P.L.1970, c.73 (C.56:9-10) is amended to read  
18 as follows:

19 5. a. The Superior Court shall have jurisdiction to prevent and  
20 restrain violations of this act. The Attorney General may institute  
21 proceedings to prevent and restrain violations. In addition to  
22 granting prohibitory injunctions and other restraints for a period and  
23 upon terms and conditions necessary to deter the defendant from,  
24 and insure against, the committing of a future violation of this act,  
25 the court may grant mandatory injunctions reasonably necessary to  
26 restore and preserve competition in the trade or commerce affected  
27 by the violation. The court may issue temporary restraining orders  
28 or prohibitions and the court may proceed in a summary manner.

29 b. Any person may institute proceedings for injunctive relief,  
30 temporary or permanent in the Superior Court against threatened  
31 loss or damage to his property or business by a violation of this act,  
32 when and under the same conditions and principles as injunctive  
33 relief against threatened conduct that will cause loss or damage is  
34 granted by courts of equity, under the rules governing such  
35 proceedings, and upon the execution of proper bond against  
36 damages for an injunction improvidently granted and a showing that  
37 the danger of irreparable loss or damage is immediate, a preliminary  
38 injunction may issue. If the court issues a permanent injunction,  
39 the plaintiff shall be awarded reasonable attorneys' fees, filing fees  
40 and reasonable costs of suit. Reasonable costs of suit may include,  
41 but shall not be limited to the expenses of discovery and document  
42 reproduction and expert fees.

43 c. In addition to injunctive relief authorized pursuant to  
44 subsection a of this section, any person who violates the provisions  
45 of this act shall be liable to a penalty of not more than the greater of  
46 \$100,000.00 or \$500.00 per day for each and every day of said  
47 violation.

48 (cf: P.L.1970, c.73, s.10)

1       4. This act shall take effect immediately.

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STATEMENT

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6       This bill amends the “New Jersey Antitrust Act” to make  
7 monopsonies illegal. A monopsony refers to a market situation in  
8 which there is only one buyer. Under current law, the “New Jersey  
9 Antitrust Act” makes only a monopoly illegal, which refers to a  
10 market situation in which a single seller controls or dominates the  
11 supply of goods and services.

12       Additionally, the bill makes it unlawful for any person with a  
13 dominant position in the conduct of any business, trade or  
14 commerce, in any labor market, or in the furnishing of any service  
15 in the State to abuse that dominant position. The bill establishes  
16 various ways in which a person's unlawful dominant position may  
17 be demonstrated:

18       (1) the unilateral power to set prices, terms, conditions, or  
19 standards;

20       (2) the unilateral power to dictate non-price contractual terms  
21 without compensation;

22       (3) other evidence that a person is not constrained by meaningful  
23 competitive pressures, such as the ability to degrade quality without  
24 suffering reduction in profitability;

25       (4) in labor markets, examples of direct evidence include, but are  
26 not limited to, the use of non-compete clauses or no-poach  
27 agreements, or the unilateral power to set wages; or

28       (5) the person's share of a relevant market. A person who has a  
29 share of forty percent or greater of a relevant market as a seller will  
30 be presumed to have a dominant position in that market under the  
31 bill. A person who has a share of thirty percent or greater of a  
32 relevant market as a buyer will be presumed to have a dominant  
33 position in that market under the bill.

34       The bill adds the following activities to the list of exemption  
35 under current law from the provisions of the “New Jersey Antitrust  
36 Act:”

37       (1) Activities of individuals to establish or maintain union  
38 apprenticeship or training programs that may lead to any  
39 government-issued trade license, to bargain collectively concerning  
40 wages and the terms and conditions of employment;

41       (2) The creation, production, and dissemination of a single  
42 expressive work that is copyrighted, including but not limited to, a  
43 streaming series, television programs or motion pictures; or

44       (3) A bona fide collective bargaining agreement, project labor  
45 agreement or any other agreement which is lawful under 29 U.S.C.  
46 s.158(f) (details unfair labor practices).