

BUSINESS AND COMMERCE CODE

TITLE 2. COMPETITION AND TRADE PRACTICES

CHAPTER 15. MONOPOLIES, TRUSTS AND CONSPIRACIES IN RESTRAINT OF
TRADE

SUBCHAPTER A. GENERAL PROVISIONS AND PROHIBITED RESTRAINTS

Sec. 15.01. TITLE OF ACT. This Act shall be known and may be cited as the Texas Free Enterprise and Antitrust Act of 1983.

Amended by Acts 1983, 68th Leg., p. 3010, ch. 519, Sec. 1, eff. Aug. 29, 1983.

Sec. 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.

Amended by Acts 1983, 68th Leg., p. 3010, ch. 519, Sec. 1, eff. Aug. 29, 1983.

Sec. 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.

Amended by Acts 1983, 68th Leg., p. 3010, ch. 519, Sec. 1, eff. Aug. 29, 1983; Acts 1991, 72nd Leg., ch. 242, Sec. 6.01, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 601, Sec. 2, eff. Sept. 1, 1995.

Sec. 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.

Amended by Acts 1983, 68th Leg., p. 3010, ch. 519, Sec. 1, eff. Aug. 29, 1983; Acts 1991, 72nd Leg., ch. 242, Sec. 6.02, eff. Sept. 1, 1991.

Sec. 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.

Amended by Acts 1983, 68th Leg., p. 3010, ch. 519, Sec. 1, eff. Aug. 29, 1983; Acts 1991, 72nd Leg., ch. 242, Sec. 6.02, eff. Sept. 1, 1991.

SUBCHAPTER B. PROCEDURE AND EVIDENCE

Sec. 15.10. CIVIL INVESTIGATIVE DEMANDS. (a) Definitions. For purposes of this section:

(1) The terms "antitrust investigation" and "investigation" mean any inquiry conducted by the attorney general for the purpose of ascertaining whether any person is or has been engaged in or is actively preparing to engage in activities which may constitute an antitrust violation.

(2) The term "antitrust violation" means any act or omission in violation of any of the prohibitions contained in Section 15.05 of this Act or in violation of any of the antitrust laws set forth in Subsection (a) of Section 12 of Title 15, the United States Code.

(3) The terms "civil investigative demand" and "demand" mean any demand issued by the attorney general under Subsection (b) of this section.

(4) The terms "documentary material" and "material" include the original or any identical copy and all nonidentical copies of any contract, agreement, book, booklet, brochure, pamphlet, catalog, magazine, notice, announcement, circular, bulletin, instruction, minutes, agenda, study, analysis, report, graph, map, chart, table, schedule, note, letter, telegram, telephone or other message, product of discovery, magnetic or electronic recording, and any other written, printed, or recorded matter.

(5) The term "person" means a natural person, proprietorship, partnership, corporation, municipal corporation,

association, or any other public or private group, however organized, and includes any person acting under color or authority of state law.

(6) The term "product of discovery" includes without limitation the original or duplicate of any deposition, interrogatory, document, thing, result of the inspection of land or other property, examination, or admission obtained by any method of discovery in any judicial or administrative proceeding of an adversarial nature; any digest, analysis, selection, compilation, or other derivation thereof, and any index or manner of access thereto.

(b) Authority to Issue Demand. Whenever the attorney general has reason to believe that any person may be in possession, custody, or control of any documentary material or may have any information relevant to a civil antitrust investigation, the attorney general may, prior to the institution of a civil proceeding, issue in writing and serve upon such person a civil investigative demand requiring the person to produce such documentary material for inspection and copying, to answer in writing written interrogatories, to give oral testimony, or to provide any combination of such material, answers, and testimony; provided, however, that the attorney general may not issue and serve a demand for documentary material upon a proprietorship or partnership whose annual gross income does not exceed \$5 million.

(c) Contents of Demand.

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

(2) Each demand for production of documentary material shall:

(A) describe the class or classes of material to be produced with reasonable specificity so that the material demanded is fairly identified;

(B) prescribe a return date or dates which will provide a reasonable period of time within which the material is to be produced; and

(C) identify the individual or individuals acting on behalf of the attorney general to whom the material is to be made available for inspection and copying.

(3) Each demand for answers to written interrogatories shall:

(A) propound the interrogatories with definiteness and certainty;

(B) prescribe a date or dates by which answers to interrogatories shall be submitted; and

(C) identify the individual or individuals acting on behalf of the attorney general to whom the answers should be submitted.

(4) Each demand for the giving of oral testimony shall:

(A) prescribe a reasonable date, time, and place at which the testimony shall begin; and

(B) identify the individual or individuals acting on behalf of the attorney general who will conduct the examination.

(5) No demand for any product of discovery may be returned until 20 days after the attorney general serves a copy of the demand upon the person from whom the discovery was obtained.

(d) Protected Material and Information.

(1) A demand may require the production of documentary material, the submission of answers to written interrogatories, or the giving of oral testimony only if the material or information sought would be discoverable under the Texas Rules of Civil Procedure or other state law relating to discovery.

(2) Any demand for a product of discovery supercedes any inconsistent order, rule, or provision of law (other than this subchapter) preventing or restraining disclosure of such product of discovery; provided, however, that voluntary disclosure of a product of discovery under this section does not constitute a waiver of any right or privilege, including any right or privilege

which may be invoked to resist discovery of trial preparation materials, to which the person making the disclosure may be entitled.

(e) Service; Proof of Service.

(1) Service of any demand or of any petition filed under Subsection (f) or (h) of this section may be made upon any natural person by delivering a duly executed copy of the demand or petition to the person to be served or by mailing such copy by registered or certified mail, return receipt requested, to such person at his or her residence or principal office or place of business.

(2) Service of any demand or of any petition filed under Subsection (f) or (h) of this section may be made upon any person other than a natural person by delivering a duly executed copy of the demand or petition to a person to whom delivery would be appropriate under state law if the demand or petition were process in a civil suit.

(3) A verified return by the individual serving any demand or any petition filed under Subsection (f) or (h) setting forth the manner of service shall be proof of such service. In the case of service by registered or certified mail, the return shall be accompanied by the return post office receipt of delivery of the demand or petition.

(f) Petition for Order Modifying or Setting Aside Demand. At any time before the return date specified in a demand or within 20 days after the demand has been served, whichever period is shorter, the person who has been served and, in the case of a demand for a product of discovery, the person from whom the discovery was obtained may file a petition for an order modifying or setting aside the demand in the district court in the county of the person's residence or principal office or place of business or in a district court of Travis County. Any such petition shall specify each ground upon which the petitioner relies in seeking the relief sought. The petition may be based upon any failure of such demand to comply with the provisions of this section or upon any constitutional or other legal right or privilege of the petitioner. The petitioner shall serve a copy of the petition upon the attorney general. The

attorney general may submit an answer to the petition. In ruling on the petition, the court shall presume absent evidence to the contrary that the attorney general issued the demand in good faith and within the scope of his or her authority.

(g) Compliance With Demand.

(1) A person on whom a demand is served shall comply with the terms of the demand unless otherwise provided by court order.

(2) The time for compliance with the demand in whole or in part shall not run during the pendency of any petition filed under Subsection (f) of this section; provided, however, that the petitioner shall comply with any portions of the demand not sought to be modified or set aside.

(3) Documentary Material.

(A) Any person upon whom any demand for the production of documentary material has been duly served under this section shall make such material available to the attorney general for inspection and copying during normal business hours on the return date specified in the demand at the person's principal office or place of business or as otherwise may be agreed upon by the person and the attorney general. The attorney general shall bear the expense of any copying. The person may substitute copies for originals of all or part of the requested documents so long as the originals are made available for inspection. The person shall indicate in writing which if any of the documents produced contain trade secrets or confidential information.

(B) The production of documentary material in response to any demand shall be made under a sworn certificate in such form as the demand designates by a natural person having knowledge of the facts and circumstances relating to such production to the effect that all of the requested material in the possession, custody, or control of the person to whom the demand is directed has been produced.

(4) Interrogatories.

(A) Each interrogatory in any demand duly served under this section shall be answered separately and fully in writing, unless it is objected to, in which case the basis for the

objection shall be set forth in lieu of an answer. The person shall indicate in writing which if any of the answers contain trade secrets or confidential information.

(B) Answers to interrogatories shall be submitted under a sworn certificate in such form as the related demand designates by a natural person having knowledge of the facts and circumstances relating to the preparation of the answers to the effect that all of the requested information in the possession, custody, control, or knowledge of the person to whom the demand is directed has been set forth fully and accurately.

(5) Oral Examination.

(A) The examination of any person pursuant to a demand for oral testimony duly served under this section shall be taken before any person authorized to administer oaths and affirmations by the laws of Texas or the United States. The person before whom the testimony is to be taken shall put the witness on oath or affirmation and shall personally or by someone acting under his or her direction and in his or her presence record the witness's testimony. At the expense of the attorney general, the testimony shall be taken stenographically and may be transcribed.

(B) The oral testimony of any person taken pursuant to a demand served under this section shall be taken in the county where the person resides, is found, transacts business, or in such other place as may be agreed upon by the person and the attorney general.

(C) Any person compelled to appear under a demand for oral testimony under this section may be accompanied, represented, and advised by counsel. Counsel may advise such person in confidence, either upon the request of such person or upon counsel's own initiative, with respect to any question arising in connection with the examination.

(D) The individual conducting the examination on behalf of the attorney general shall exclude from the place of examination all other persons except the person being examined, the person's counsel, the counsel of the person to whom the demand has been issued, the person before whom the testimony is to be taken, any stenographer taking the testimony, and any persons assisting

the individual conducting the examination.

(E) During the examination, the person being examined or his or her counsel may object on the record to any question, in whole or in part, and shall briefly state for the record the reason for the objection. 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, including the privilege against self-incrimination. Neither such person nor his or her counsel shall otherwise object to or refuse to answer any question or interrupt the oral examination. If the person refuses to answer any question, the attorney general may petition the district court in the county where the examination is being conducted for an order compelling the person to answer the question.

(F) If and when the testimony has been fully transcribed, the person before whom the testimony was taken shall promptly transmit the transcript of the testimony to the witness and a copy of the transcript to the attorney general. The witness shall have a reasonable opportunity to examine the transcript and make any changes in form or substance accompanied by a statement of the reasons for such changes. The witness shall then sign and return the transcript, unless he or she is ill, cannot be found, refuses to sign, or in writing waives the signing. If the witness does not sign the transcript within 15 days of receiving it, the person before whom the testimony has been given shall sign it and state on the record the reason, if known, for the witness's failure to sign. The officer shall then certify on the transcript that the witness was duly sworn and that the transcript is a true record of the testimony given by the witness and promptly transmit a copy of the certified transcript to the attorney general.

(G) Upon request, the attorney general shall furnish a copy of the certified transcript to the witness.

(H) The witness shall be entitled to the same fees and mileage that are paid to witnesses in the district courts of Texas.

(h) Failure To Comply With Demand.

(1) Petition for Enforcement. Whenever any person fails to comply with any demand duly served on such person under this section, the attorney general may file in the district court in the county in which the person resides, is found, or transacts business and serve on the person a petition for an order of the court for enforcement of this section. If the person transacts business in more than one county, the petition shall be filed in the county of the person's principal office or place of business in the state or in any other county as may be agreed upon by the person and the attorney general.

(2) Deliberate Noncompliance. Any person, who, with intent to avoid, evade, or prevent compliance in whole or part with a demand issued under this section, removes from any place, conceals, withholds, destroys, mutilates, alters, or by any other means falsifies any documentary material or otherwise provides inaccurate information is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$5,000 or by confinement in county jail for not more than one year or by both.

(i) Disclosure and Use of Material and Information.

(1) Except as provided in this section or ordered by a court for good cause shown, no documentary material, answers to interrogatories, or transcripts of oral testimony, or copies or contents thereof, shall be available for examination or used by any person without the consent of the person who produced the material, answers, or testimony and, in the case of any product of discovery, of the person from whom the discovery was obtained.

(2) The attorney general may make available for inspection or prepare copies of documentary material, answers to interrogatories, or transcripts of oral testimony in his or her possession as he or she determines may be required by the state in the course of any investigation or a judicial proceeding in which the state is a party.

(3) The attorney general may make available for inspection or prepare copies of documentary material, answers to interrogatories, or transcripts of oral testimony in his or her possession as he or she determines may be required for official use by any officer of the State of Texas or of the United States charged

with the enforcement of the laws of the State of Texas or the United States; provided that any material disclosed under this subsection may not be used for criminal law enforcement purposes.

(4) Upon request, the attorney general shall make available copies of documentary material, answers to interrogatories, and transcripts of oral testimony for inspection by the person who produced such material or information and, in the case of a product of discovery, the person from whom the discovery was obtained or by any duly authorized representative of the person, including his or her counsel.

(5) Not later than 15 days prior to disclosing any documentary material or answers to written interrogatories designated as containing trade secrets or confidential information under this subsection, the attorney general shall notify the person who produced the material of the attorney general's intent to make such disclosure. The person who produced the documentary material or answers to written interrogatories may petition a district court in any county of this state in which the person resides, does business, or maintains its principal office for a protective order limiting the terms under which the attorney general may disclose such trade secrets or confidential information.

(6) Upon written request, the attorney general shall return documentary material produced under this section in connection with an antitrust investigation to the person who produced it whenever:

(A) any case or proceeding before any court arising out of the investigation has been completed; or

(B) the attorney general has decided after completing an examination and analysis of such material not to institute any case or proceeding before a court in connection with the investigation.

(j) Jurisdiction. Whenever any petition is filed in the district court in any county as provided for in this section, the court shall have jurisdiction to hear and determine the matter presented and to enter any order or orders required to implement the provisions of this section. Any final order is subject to appeal. Failure to comply with any final order entered by a court under this

section is punishable by the court as a contempt of the order.

(k) Nonexclusive Procedures. Nothing in this section shall preclude the attorney general from using procedures not specified in the section in conducting an antitrust investigation; provided, however, that in conducting such an investigation, the attorney general shall use the procedures set forth in this section in lieu of those set forth in Article 1302-5.01 through Article 1302-5.06, Texas Miscellaneous Corporation Laws Act.

Added by Acts 1983, 68th Leg., p. 3019, ch. 519, Sec. 2, eff. Aug. 29, 1983.

Sec. 15.11. PARTY TO SUIT MAY SUBPOENA WITNESS. (a) A party to a suit brought to enforce any of the prohibitions in Section 15.05 of this Act or to enforce the laws conserving natural resources may apply to the clerk of the court in which the suit is pending to subpoena a witness located anywhere in the state. On receipt of the application, the clerk shall issue the subpoena applied for but may not issue more than five subpoenas for a party without first obtaining the court's written approval.

(b) A witness subpoenaed under Subsection (a) of this section who fails to appear and testify in compliance with the subpoena is guilty of contempt of court and may be fined not more than \$100 and attached and imprisoned in the county jail until he or she appears in court and testifies as required.

Added by Acts 1983, 68th Leg., p. 3019, ch. 519, Sec. 2, eff. Aug. 29, 1983.

Sec. 15.12. ADDITIONAL PROCEDURES. In addition to the procedures set forth in this subchapter, the attorney general and any other party to a suit brought by the attorney general to enforce any of the prohibitions in Section 15.05 of this Act may request discovery and production of documents and other things, serve written interrogatories, and subpoena and depose witnesses in accordance with the applicable provisions of the Texas Rules of Civil Procedure and other state law relating to discovery.

Amended by Acts 1983, 68th Leg., p. 3019, ch. 519, Sec. 2, eff. Aug. 29, 1983.

Sec. 15.13. IMMUNITY FROM CRIMINAL PROSECUTION. (a) Application by Attorney General. If a person upon whom an investigative demand or request for discovery has been properly served pursuant to Section 15.10, 15.11, or 15.12 of this Act refuses or is likely to refuse to comply with the demand or request on the basis of his or her privilege against self-incrimination, the attorney general may apply to a district court in the county in which the person is located for an order granting the person immunity from prosecution and compelling the person's compliance with the demand or request.

(b) Order Granting Immunity and Compelling Testimony and Production. Upon receipt of an application filed under Subsection (a) of this section, the court may issue an order granting the person immunity from prosecution and requiring the person to comply with the demand or request notwithstanding his or her claim of privilege. The order shall explain the scope of protection afforded by it.

(c) Effectiveness of Order. An order may be issued under Subsection (b) of this section prior to the assertion of the privilege against self-incrimination but shall not be effective until the person to whom it is directed asserts the privilege and is informed of the order.

(d) Compliance with Order. A person who has been informed of an order issued by a court under this section compelling his or her testimony or production of material may not refuse to comply with the order on the basis of his or her privilege against self-incrimination. A person who complies with the order may not be criminally prosecuted for or on account of any act, transaction, matter, or thing about which he or she is ordered to testify or produce unless the alleged offense is perjury or failure to comply with the order. Failure to comply with the order may be punished by the court as contempt of the order.

Amended by Acts 1983, 68th Leg., p. 3019, ch. 519, Sec. 2, eff. Aug. 29, 1983.

Sec. 15.16. DECLARATORY JUDGMENT ACTION. (a) A person

(other than a foreign corporation not having a permit or certificate of authority to do business in this state) uncertain of whether or not his or her action or proposed action violates or will violate the prohibitions contained in Section 15.05 of this Act may file suit against the state for declaratory judgment, citing this section as authority, in one of the Travis County district courts.

(b) Citation and all process in the suit shall be served on the attorney general, who shall represent the state. The petition shall describe in detail the person's action or proposed action and all other relevant facts, and the court in its declaratory judgment shall fully recite the action or proposed action and other facts considered.

(c) A declaratory judgment granted under this section which rules that action or proposed action does not violate the prohibitions contained in Section 15.05 of this Act:

(1) shall be strictly construed and may not be extended by implication to an action or fact not recited in the judgment;

(2) does not bind the state with reference to a person not a party to the suit in which the judgment was granted; and

(3) does not estop the state from subsequently establishing a violation of the prohibitions contained in Section 15.05 of this Act based on an action or fact not recited in the declaratory judgment, which action or fact, when combined with an action or fact recited in the judgment, constitutes a violation of the prohibitions contained in Section 15.05 of this Act.

(d) A person filing suit under this section shall pay all costs of the suit.

Amended by Acts 1983, 68th Leg., p. 3019, ch. 519, Sec. 2, eff. Aug. 29, 1983.

SUBCHAPTER C. ENFORCEMENT

Sec. 15.20. CIVIL SUITS BY THE STATE. (a) Suit to Collect Civil Fine. The attorney general may file suit in district court in Travis County or in any county in the State of Texas in which any of the named defendants resides, does business, or maintains its

principal office on behalf of the State of Texas to collect a civil fine from any person, other than a municipal corporation, whom the attorney general believes has violated any of the prohibitions in Subsection (a), (b), or (c) of Section 15.05 of this Act. Every person adjudged to have violated any of these prohibitions shall pay a fine to the state not to exceed \$1 million if a corporation, or, if any other person, \$100,000.

(b) Suit for Injunctive Relief. The attorney general may file suit against any person, other than a municipal corporation, in district court in Travis County, or in any county in the State of Texas in which any of the named defendants resides, does business, or maintains its principal office on behalf of the State of Texas to enjoin temporarily or permanently any activity or contemplated activity that violates or threatens to violate any of the prohibitions in Section 15.05 of this Act. In any such suit, the court shall apply the same principles as those generally applied by courts of equity in suits for injunctive relief against threatened conduct that would cause injury to business or property. In any such suit in which the state substantially prevails on the merits, the state shall be entitled to recover the cost of suit.

Upon finding a violation of the prohibition against acquiring the stock, share capital, or assets of a person in Subsection (d) of Section 15.05 of this Act, the court shall, upon further finding that no other remedy will eliminate the lessening of competition, order the divestiture or other disposition of the stock, share capital, or assets and shall prescribe a reasonable time, manner, and degree of the divestiture or other disposition.

(c) No suit filed under Subsection (a) or (b) of this section may be transferred to another county except on order of the court.

(d) Nothing in this section shall be construed to limit the constitutional or common law authority of the attorney general to bring actions under state and federal law.

Amended by Acts 1983, 68th Leg., p. 3034, ch. 519, Sec. 3, eff. Aug. 29, 1983.

Sec. 15.21. SUITS BY INJURED PERSONS OR GOVERNMENTAL

ENTITIES. (a) Suit to Recover Damages.

(1) Any person or governmental entity, including the State of Texas and any of its political subdivisions or tax-supported institutions, whose business or property has been injured by reason of any conduct declared unlawful in Subsection (a), (b), or (c) of Section 15.05 of this Act may sue any person, other than a municipal corporation, in district court in any county of this state in which any of the named defendants resides, does business, or maintains its principal office or in any county in which any of the named plaintiffs resided at the time the cause of action or any part thereof arose and shall recover actual damages sustained, interest on actual damages for the period beginning on the date of service of such person's pleading setting forth a claim under the antitrust laws and ending on the date of judgment (the rate of such interest to be in accordance with Texas law regarding postjudgment interest rates and the amount of interest to be adjusted by the court if it finds that the award of all or part of such interest is unjust in the circumstances), and the cost of suit, including a reasonable attorney's fee; provided, however, that if the trier of fact finds that the unlawful conduct was willful or flagrant, it shall increase the recovery to threefold the damages sustained and the cost of suit, including a reasonable attorney's fee; provided that interest on actual damages as specified above may not be recovered when recovered damages are increased threefold.

(2) Any person or governmental entity who obtains a judgment for damages under 15 U.S.C. Section 15 or any other provision of federal law comparable to this subsection may not recover damages in a suit under this subsection based on substantially the same conduct that was the subject of the federal suit.

(3) On a finding by the court that an action under this section was groundless and brought in bad faith or for the purpose of harassment, the court shall award to the defendant or defendants a reasonable attorney's fee, court costs, and other reasonable expenses of litigation.

(b) Suit for Injunctive Relief. Any person or governmental

entity, including the State of Texas and any of its political subdivisions or tax-supported institutions, whose business or property is threatened with injury by reason of anything declared unlawful in Subsection (a), (b), or (c) of Section 15.05 of this Act may sue any person, other than a municipal corporation, in district court in any county of this state in which any of the named defendants resides, does business, or maintains its principal office or in any county in which any of the named plaintiffs resided at the time the cause of action or any part thereof arose to enjoin the unlawful practice temporarily or permanently. In any such suit, the court shall apply the same principles as those generally applied by courts of equity in suits for injunctive relief against threatened conduct that would cause injury to business or property. In any such suit in which the plaintiff substantially prevails on the merits, the plaintiff shall be entitled to recover the cost of suit, including a reasonable attorney's fee based on the fair market value of the attorney services used.

(c) Copies of Complaints to Attorney General. Any person or governmental entity filing suit under this section shall mail a copy of the complaint to the Attorney General of Texas. The attorney general as representative of the public may intervene in the action by filing a notice of intervention with the court before which the action is pending and serving copies of the notice on all parties to the action. The penalty for failure to comply with this subsection shall be a monetary fine not in excess of \$200. The attorney general may file suit to recover the fine on behalf of the state in the district court in which the private suit has been brought.

Amended by Acts 1983, 68th Leg., p. 3034, ch. 519, Sec. 3, eff. Aug. 29, 1983.

Sec. 15.22. CRIMINAL SUITS. (a) Every person, other than a municipal corporation, who acts in violation of any of the prohibitions in Section 15.05(a) or (b) shall be deemed guilty of a felony and upon conviction shall be punished by confinement in the Texas Department of Criminal Justice for a term of not more than three years or by a fine not to exceed \$5,000 or by both.

(b) A district attorney or criminal district attorney may file criminal suit to enforce the provisions in Subsection (a) of this section in district court in Travis County or in any county in which any of the acts that allegedly have contributed to a violation of any of the prohibitions in Subsections (a) and (b) of Section 15.05 of this Act are alleged to have occurred or to be occurring. Amended by Acts 1983, 68th Leg., p. 3034, ch. 519, Sec. 3, eff. Aug. 29, 1983.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.010, eff. September 1, 2009.

Sec. 15.24. JUDGMENT IN FAVOR OF THE STATE EVIDENCE IN ACTION. A final judgment rendered in an action brought under Section 15.20 or 15.22 of this Act to the effect that a defendant or defendants have violated any of the prohibitions in Section 15.05 of this Act is prima facie evidence against such defendant or defendants in any action brought under Section 15.21 as to all matters with respect to which the judgment would be an estoppel between the parties to the suit. This section shall not apply to consent judgments or decrees entered before any testimony has been taken.

Added by Acts 1983, 68th Leg., p. 3034, ch. 519, Sec. 3, eff. Aug. 29, 1983.

Sec. 15.25. LIMITATION OF ACTIONS. (a) Any suit to recover damages under Section 15.21 of this Act is barred unless filed within four years after the cause of action accrued or within one year after the conclusion of any action brought by the state under Section 15.20 or 15.22 of this Act based in whole or in part on the same conduct, whichever is longer. For the purpose of this subsection, a cause of action for a continuing violation is considered to accrue at any and all times during the period of the violation.

(b) No suit under this Act shall be barred on the grounds that the activity or conduct complained of in any way affects or involves interstate or foreign commerce. It is the intent of the

legislature to exercise its powers to the full extent consistent with the constitutions of the State of Texas and the United States. Added by Acts 1983, 68th Leg., p. 3034, ch. 519, Sec. 3, eff. Aug. 29, 1983.

Sec. 15.26. JURISDICTION. Whenever any suit or petition is filed in the district court in any county in the State of Texas as provided for in Section 15.10, 15.20, 15.21, or 15.22 of this Act, the court shall have jurisdiction and venue to hear and determine the matter presented and to enter any order or orders required to implement the provisions of this Act. Once suit is properly filed, it may be transferred to another county upon order of the court for good cause shown.

Added by Acts 1983, 68th Leg., p. 3034, ch. 519, Sec. 3, eff. Aug. 29, 1983.

SUBCHAPTER D. RECOVERY OF DAMAGES PURSUANT TO FEDERAL ANTITRUST
LAWS

Sec. 15.40. AUTHORITY, POWERS, AND DUTIES OF ATTORNEY GENERAL. (a) The attorney general may bring an action on behalf of the state or of any of its political subdivisions or tax supported institutions to recover the damages provided for by the federal antitrust laws, Title 15, United States Code, provided that the attorney general shall notify in writing any political subdivision or tax supported institution of his intention to bring any such action on its behalf, and at any time within 30 days thereafter, such political subdivision or tax supported institution may, by formal resolution of its governing body or as otherwise specifically provided by applicable law, withdraw the authority of the attorney general to bring the intended action. In any action brought pursuant to this section on behalf of any political subdivision or tax supported institution of the state, the state shall retain for deposit in the general revenue fund of the State Treasury, out of the proceeds, if any, resulting from such action, an amount equal to the expense incurred by the state in the investigation and prosecution of such action.

(b) In any action brought by the attorney general pursuant to the federal antitrust laws for the recovery of damages by the estate or any of its political subdivisions or tax supported institutions, in addition to his other powers and authority the attorney general may enter into contracts relating to the investigation and the prosecution of such action with any other party who could bring a similar action or who has brought such an action for the recovery of damages and with whom the attorney general finds it advantageous to act jointly, or to share common expenses or to cooperate in any manner relative to such action. In any such action the attorney general may undertake, among other things, either to render legal services as special counsel to, or to obtain the legal services of special counsel from, any department or agency of the United States, any other state or any department or agency thereof, any county, city, public corporation or public district of this state or of any other state, that has brought or intends to bring a similar action for the recovery of damages, or their duly authorized legal representatives in such action.

Added by Acts 1969, 61st Leg., p. 1708, ch. 559, Sec. 1, eff. June 10, 1969.

SUBCHAPTER E. COVENANTS NOT TO COMPETE

Sec. 15.50. CRITERIA FOR ENFORCEABILITY OF COVENANTS NOT TO COMPETE. (a) Notwithstanding Section 15.05 of this code, and subject to any applicable provision of Subsection (b), a covenant not to compete is enforceable if it is ancillary to or part of an otherwise enforceable agreement at the time the agreement is made to the extent that it contains limitations as to time, geographical area, and scope of activity to be restrained that are reasonable and do not impose a greater restraint than is necessary to protect the goodwill or other business interest of the promisee.

(b) A covenant not to compete relating to the practice of medicine is enforceable against a person licensed as a physician by the Texas Medical Board if such covenant complies with the following requirements:

- (1) the covenant must:

(A) not deny the physician access to a list of his patients whom he had seen or treated within one year of termination of the contract or employment;

(B) provide access to medical records of the physician's patients upon authorization of the patient and any copies of medical records for a reasonable fee as established by the Texas Medical Board under Section [159.008](#), Occupations Code; and

(C) provide that any access to a list of patients or to patients' medical records after termination of the contract or employment shall not require such list or records to be provided in a format different than that by which such records are maintained except by mutual consent of the parties to the contract;

(2) the covenant must provide for a buy out of the covenant by the physician at a reasonable price or, at the option of either party, as determined by a mutually agreed upon arbitrator or, in the case of an inability to agree, an arbitrator of the court whose decision shall be binding on the parties; and

(3) the covenant must provide that the physician will not be prohibited from providing continuing care and treatment to a specific patient or patients during the course of an acute illness even after the contract or employment has been terminated.

(c) Subsection (b) does not apply to a physician's business ownership interest in a licensed hospital or licensed ambulatory surgical center.

Added by Acts 1989, 71st Leg., ch. 1193, Sec. 1, eff. Aug. 28, 1989.

Amended by Acts 1993, 73rd Leg., ch. 965, Sec. 1, eff. Sept. 1, 1993; Acts 1999, 76th Leg., ch. 1574, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1420, Sec. 14.729, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 971 (H.B. [3623](#)), Sec. 1, eff. September 1, 2009.

Sec. 15.51. PROCEDURES AND REMEDIES IN ACTIONS TO ENFORCE COVENANTS NOT TO COMPETE. (a) Except as provided in Subsection (c) of this section, a court may award the promisee under a covenant not to compete damages, injunctive relief, or both damages and injunctive relief for a breach by the promisor of the covenant.

(b) If the primary purpose of the agreement to which the covenant is ancillary is to obligate the promisor to render personal services, for a term or at will, the promisee has the burden of establishing that the covenant meets the criteria specified by Section 15.50 of this code. If the agreement has a different primary purpose, the promisor has the burden of establishing that the covenant does not meet those criteria. For the purposes of this subsection, the "burden of establishing" a fact means the burden of persuading the triers of fact that the existence of the fact is more probable than its nonexistence.

(c) If the covenant is found to be ancillary to or part of an otherwise enforceable agreement but contains limitations as to time, geographical area, or scope of activity to be restrained that are not reasonable and impose a greater restraint than is necessary to protect the goodwill or other business interest of the promisee, the court shall reform the covenant to the extent necessary to cause the limitations contained in the covenant as to time, geographical area, and scope of activity to be restrained to be reasonable and to impose a restraint that is not greater than necessary to protect the goodwill or other business interest of the promisee and enforce the covenant as reformed, except that the court may not award the promisee damages for a breach of the covenant before its reformation and the relief granted to the promisee shall be limited to injunctive relief. If the primary purpose of the agreement to which the covenant is ancillary is to obligate the promisor to render personal services, the promisor establishes that the promisee knew at the time of the execution of the agreement that the covenant did not contain limitations as to time, geographical area, and scope of activity to be restrained that were reasonable and the limitations imposed a greater restraint than necessary to protect the goodwill or other business interest of the promisee, and the promisee sought to enforce the covenant to a greater extent than was necessary to protect the goodwill or other business interest of the promisee, the court may award the promisor the costs, including reasonable attorney's fees, actually and reasonably incurred by the promisor in defending the action to enforce the covenant.

Added by Acts 1989, 71st Leg., ch. 1193, Sec. 1, eff. Aug. 28, 1989.

Amended by Acts 1993, 73rd Leg., ch. 965, Sec. 2, eff. Sept. 1, 1993.

Sec. 15.52. PREEMPTION OF OTHER LAW. The criteria for enforceability of a covenant not to compete provided by Section 15.50 of this code and the procedures and remedies in an action to enforce a covenant not to compete provided by Section 15.51 of this code are exclusive and preempt any other criteria for enforceability of a covenant not to compete or procedures and remedies in an action to enforce a covenant not to compete under common law or otherwise.

Added by Acts 1993, 73rd Leg., ch. 965, Sec. 3, eff. Sept. 1, 1993.