

CHAPTER 51-08.1 UNIFORM STATE ANTITRUST ACT

51-08.1-01. Definitions.

As used in this chapter:

1. "Person" means an individual, corporation, limited liability company, business trust, partnership, association, or any other legal entity.
2. "Relevant market" means the geographical area of actual or potential competition in a line of commerce, all or any part of which is within this state.

51-08.1-02. Contract, combination, or conspiracy to restrain or monopolize trade.

A contract, combination, or conspiracy between two or more persons in restraint of, or to monopolize, trade or commerce in a relevant market is unlawful.

51-08.1-03. Establishment, maintenance, or use of monopoly.

The establishment, maintenance, or use of a monopoly, or an attempt to establish a monopoly, of trade or commerce in a relevant market by any person, for the purpose of excluding competition or controlling, fixing, or maintaining prices, is unlawful.

51-08.1-04. Exclusions.

1. Labor of a human being is not a commodity or an article of commerce.
2. Nothing in this chapter forbids the existence and operation of any labor, agricultural, or horticultural organization instituted for the purpose of mutual help, while lawfully carrying out its legitimate objects.

51-08.1-05. Judicial jurisdiction.

An action for violation of this chapter must be brought in district court.

51-08.1-06. Official investigation.

1. If the attorney general has reasonable cause to believe that a person has information or is in possession, custody, or control of any document or other tangible object relevant to an investigation for violation of this chapter, the attorney general may serve upon the person, before bringing any action in the district court, a written demand to appear and be examined under oath, to answer written interrogatories under oath, and to produce the document or object for inspection and copying. The demand must:
 - a. Be served upon the person in the manner required for service of process in this state;
 - b. Describe the nature of the conduct constituting the violation under investigation;
 - c. Describe the document or object with sufficient definiteness to permit it to be fairly identified;
 - d. Contain a copy of the written interrogatories;
 - e. Prescribe a reasonable time at which the person must appear to testify, within which to answer the written interrogatories, and within which the document or object must be produced, and advise the person that a reasonable opportunity will be afforded for examination and notation of corrections upon any transcript of an oral examination, that a copy of one's own transcript can be obtained upon payment of reasonable charges, and that objections to or reasons for not complying with the demand may be filed with the attorney general at or before the designated time;
 - f. Specify a place for the taking of testimony or for production and designate a person who shall be custodian of the document or object; and
 - g. Contain a copy of subsection 2.
2. If a person objects to or otherwise fails to comply with the written demand served upon that person under subsection 1, the attorney general may file in the district court of the county in which the person resides, or in which the person maintains a principal place

of business within this state, a petition for an order to enforce the demand. Notice of hearing the petition and a copy of the petition must be served upon the person, who may appear in opposition to the petition. If the court finds that the demand is proper, there is reasonable cause to believe there has been a violation of this chapter, and the information sought or document or object demanded is relevant to the violation, it shall order the person to comply with the demand, subject to modification the court may prescribe. Upon motion by the person and for good cause shown, the court may make any further order in the proceedings that justice requires to protect the person from unreasonable annoyance, embarrassment, oppression, burden, or expense.

3. Any procedure, testimony taken, or material produced under this section must be kept confidential by the attorney general before bringing an action against a person under this chapter for the violation under investigation, unless confidentiality is waived by the person being investigated and the person who has testified, answered interrogatories, or produced material, or disclosure is authorized by the court.

51-08.1-07. Civil penalty and injunctive enforcement by state.

The attorney general, or a state's attorney with the permission or at the request of the attorney general, may bring an action for appropriate injunctive relief, equitable relief, including disgorgement, and civil penalties in the name of the state for a violation of this chapter. The trier of fact may assess for the benefit of the state a civil penalty of not more than one hundred thousand dollars for each violation of this chapter.

51-08.1-08. Damages and injunctive relief.

1. The state, a political subdivision, or any public agency threatened with injury or injured in its business or property by a violation of this chapter may bring an action for appropriate injunctive or other equitable relief, damages sustained and, as determined by the court, taxable costs and reasonable attorney's fees.
2. The attorney general may bring an action as *parens patriae* on behalf of a person residing in the state to recover damages sustained by the person by reason of any violation of this chapter.
3. A person threatened with injury or injured in that person's business or property by a violation of this chapter may bring an action for appropriate injunctive or other equitable relief, damages sustained and, as determined by the court, taxable costs and reasonable attorney's fees. If the trier of fact finds that the violation is flagrant, it may increase recovery to an amount not in excess of three times the damages sustained.
4. In any action for damages under this section, the fact that the state, political subdivision, public agency, or person threatened with injury or injured in its business or property by any violation of the provisions of this chapter has not dealt directly with the defendant does not bar recovery.
5. In any action for damages under this section, any defendant, as a partial or complete defense against a claim for damages, is entitled to prove that the plaintiff purchaser, or seller in the chain of manufacture, production, or distribution, who paid any overcharge or received any underpayment passed on all or any part of the overcharge or underpayment to another purchaser or seller in that action.

51-08.1-09. Judgment in favor of state as prima facie evidence.

A final judgment or decree determining that a person has violated this chapter in an action brought by the state under section 51-08.1-07 or under subsection 1 of section 51-08.1-08, other than a consent judgment or decree entered before any testimony has been taken, is prima facie evidence against that person in any other action against that person under section 51-08.1-08 as to all matters with respect to which the judgment or decree would be an estoppel between the parties thereto. This section does not affect the application of collateral estoppel or issue preclusion.

51-08.1-10. Limitation of actions.

1. An action under section 51-08.1-07 to recover a civil penalty is barred if it is not commenced within four years after the claim for relief accrues.
2. An action under section 51-08.1-08 to recover damages is barred if it is not commenced within four years after the claim for relief accrues, or within one year after the conclusion of any timely action brought by the state under section 51-08.1-07 or 51-08.1-08 based in whole or in part on any matter complained of in the action for damages, whichever is later.

51-08.1-11. Remedies cumulative.

The remedies provided in this chapter are cumulative.

51-08.1-12. Rights, privileges, and immunities.

Nothing in this chapter may be construed so as to abrogate an individual's constitutionally guaranteed rights, privileges, and immunities.