

1 AMENDMENT TO HOUSE BILL 3468

2 AMENDMENT NO. _____. Amend House Bill 3468 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Illinois Antitrust Act is amended by
5 changing Sections 7, 7.2, 7.5, 7.6, and 7.7 and by adding
6 Section 12 as follows:

7 (740 ILCS 10/7) (from Ch. 38, par. 60-7)

8 Sec. 7. The following civil actions and remedies are
9 authorized under this Act:

10 (1) The Attorney General, with such assistance as he may
11 from time to time require of the State's Attorneys in the
12 several counties, shall bring suit in the Circuit Court to
13 prevent and restrain violations of Section 3 of this Act. In
14 such a proceeding, the court shall determine whether a
15 violation has been committed, and shall enter such judgment
16 as it considers necessary to remove the effects of any
17 violation which it finds, and to prevent such violation from
18 continuing or from being renewed in the future. The court,
19 in its discretion, may exercise all powers necessary for this
20 purpose, including, but not limited to, injunction,
21 divestiture of property, divorcement of business units,
22 dissolution of domestic corporations or associations, and

1 suspension or termination of the right of foreign
2 corporations or associations to do business in the State of
3 Illinois.

4 (2) Any person who has been injured in his business or
5 property, or is threatened with such injury, by a violation
6 of Section 3 of this Act may maintain an action in the
7 Circuit Court for damages, or for an injunction, or both,
8 against any person who has committed such violation. If, in
9 an action for an injunction, the court issues an injunction,
10 the plaintiff shall be awarded costs and reasonable
11 attorney's fees. In an action for damages, if injury is
12 found to be due to a violation of subsections (1) or (4) of
13 Section 3 of this Act, the person injured shall be awarded 3
14 times the amount of actual damages resulting from that
15 violation, together with costs and reasonable attorney's
16 fees. If injury is found to be due to a violation of
17 subsections (2) or (3) of Section 3 of this Act, the person
18 injured shall recover the actual damages caused by the
19 violation, together with costs and reasonable attorney's
20 fees, and if it is shown that such violation was willful, the
21 court may, in its discretion, increase the amount recovered
22 as damages up to a total of 3 times the amount of actual
23 damages. This State, counties, municipalities, townships and
24 any political subdivision organized under the authority of
25 this State, and the United States, are considered a person
26 having standing to bring an action under this subsection.
27 The Attorney General may bring an action on behalf of this
28 State, counties, municipalities, townships and other
29 political subdivisions organized under the authority of this
30 State to recover the damages under this subsection or by any
31 comparable Federal law.

32 No provision of this Act shall deny any person who is an
33 indirect purchaser the right to sue for damages. Provided,
34 however, that in any case in which claims are asserted

1 against a defendant by both direct and indirect purchasers,
2 the court shall take all steps necessary to avoid duplicate
3 liability for the same injury including transfer and
4 consolidation of all actions. Provided further that no
5 person other than the Attorney General of this State shall be
6 authorized to maintain a class action in any court of this
7 State for indirect purchasers asserting claims under this
8 Act.

9 Beginning January 1, 1970, a file setting out the names
10 of all special assistant attorneys general retained to
11 prosecute antitrust matters and containing all terms and
12 conditions of any arrangement or agreement regarding fees or
13 compensation made between any such special assistant attorney
14 general and the office of the Attorney General shall be
15 maintained in the office of the Attorney General, open during
16 all business hours to public inspection.

17 Any action for damages under this subsection is forever
18 barred unless commenced within 4 years after the cause of
19 action accrued, except that, whenever any action is brought
20 by the Attorney General for a violation of this Act, the
21 running of the foregoing statute of limitations, with respect
22 to every private right of action for damages under the
23 subsection which is based in whole or in part on any matter
24 complained of in the action by the Attorney General, shall be
25 suspended during the pendency thereof, and for one year
26 thereafter. No cause of action barred under existing law on
27 July 21, 1965 shall be revived by this Act. In any action
28 for damages under this subsection the court may, in its
29 discretion, award reasonable fees to the prevailing defendant
30 upon a finding that the plaintiff acted in bad faith,
31 vexatiously, wantonly or for oppressive reasons.

32 (3) Upon a finding that any domestic or foreign
33 corporation organized or operating under the laws of this
34 State has been engaged in conduct prohibited by Section 3 of

1 this Act, or the terms of any injunction issued under this
2 Act, a circuit court may, upon petition of the Attorney
3 General, order the revocation, forfeiture or suspension of
4 the charter, franchise, certificate of authority or
5 privileges of any corporation operating under the laws of
6 this State, or the dissolution of any such corporation.

7 (4) In lieu of any criminal penalty otherwise prescribed
8 for a violation of this Act, and in addition to any action
9 under this Act or any Federal antitrust law, the Attorney
10 General may bring an action in the name and on behalf of the
11 people of the State against any person, trustee, director,
12 manager or other officer or agent of a corporation, or
13 against a corporation, domestic or foreign, to recover a
14 penalty not to exceed \$1,000,000 ~~\$100,000~~ from every
15 corporation or \$100,000 ~~\$50,000~~ from every other person for
16 any act herein declared illegal. The action must be brought
17 within 4 years after the commission of the act upon which it
18 is based. Nothing in this subsection shall impair the right
19 of any person to bring an action under subsection (2) of this
20 Section.

21 (Source: P.A. 83-1362.)

22 (740 ILCS 10/7.2) (from Ch. 38, par. 60-7.2)

23 Sec. 7.2. Whenever it appears to the Attorney General
24 that any person has engaged in, is engaging in, or is about
25 to engage in any act or practice prohibited by this Act, or
26 that any person has assisted or participated in any agreement
27 or combination of the nature described herein, he may, in his
28 discretion, conduct an investigation as he deems necessary in
29 connection with the matter and has the authority prior to the
30 commencement of any civil or criminal action as provided for
31 in the Act to subpoena witnesses, and pursuant to a subpoena
32 (i) compel their attendance for the purpose of examining,
33 examine them under oath, or (ii) require the production of

1 any books, documents, records, writings or tangible things
2 hereafter referred to as "documentary material" which the
3 Attorney General deems relevant or material to his
4 investigation, for inspection, reproducing or copying under
5 such terms and conditions as hereafter set forth, (iii)
6 require written answers under oath to written
7 interrogatories, or (iv) require compliance with a
8 combination of the foregoing. Any subpoena issued by the
9 Attorney General shall contain the following information:

10 (a) The statute and section thereof, the alleged
11 violation of which is under investigation and the general
12 subject matter of the investigation.

13 (b) The date and place at which time the person is
14 required to appear or produce documentary material in his
15 possession, custody or control or submit answers to
16 interrogatories in the office of the Attorney General located
17 in Springfield or Chicago. Said date shall not be less than
18 10 days from date of service of the subpoena.

19 (c) Where documentary material is required to be
20 produced, the same shall be described by class so as to
21 clearly indicate the material demanded.

22 The Attorney General is hereby authorized, and may so
23 elect, to require the production, pursuant to this section,
24 of documentary material or interrogatory answers prior to the
25 taking of any testimony of the person subpoenaed. ~~7-in-which~~
26 ~~event,~~ Said documentary material shall be made available for
27 inspection and copying during normal business hours at the
28 principal place of business of the person served, or at such
29 other time and place, as may be agreed upon by the person
30 served and the Attorney General. When documentary material is
31 demanded by subpoena, said subpoena shall not:

32 (i) Contain any requirement which would be unreasonable
33 or improper if contained in a subpoena duces tecum issued by
34 a court of this State; or

1 (ii) Require the disclosure of any documentary material
2 which would be privileged, or which for any other reason
3 would not be required by a subpoena duces tecum issued by a
4 court of this State.

5 (d) The production of documentary material in response
6 to a subpoena served pursuant to this Section shall be made
7 under a sworn certificate, in such form as the subpoena
8 designates, by the person, if a natural person, to whom the
9 demand is directed or, if not a natural person, by a person
10 or persons having knowledge of the facts and circumstances
11 relating to such production, to the effect that all of the
12 documentary material required by the demand and in the
13 possession, custody, or control of the person to whom the
14 demand is directed has been produced and made available to
15 the custodian. Answers to interrogatories shall be
16 accompanied by a statement under oath attesting to the
17 accuracy of the answers.

18 While in the possession of the Attorney General and under
19 such reasonable terms and conditions as the Attorney General
20 shall prescribe: (A) documentary material shall be available
21 for examination by the person who produced such material or
22 by any duly authorized representative of such person, and (B)
23 transcript of oral testimony shall be available for
24 examination by the person who produced such testimony, or his
25 or her counsel and (C) answers to interrogatories shall be
26 available for examination by the person who swore to their
27 accuracy.

28 Except as otherwise provided in this Section, no
29 documentary material or transcripts of oral testimony, or
30 copies thereof, in the possession of the Attorney General
31 shall be available for examination by any individual other
32 than an authorized employee of the Attorney General or other
33 law enforcement officials, federal or local, without the
34 consent of the person who produced such material or

1 transcripts.

2 (e) No person shall, with intent to avoid, evade,
3 prevent, or obstruct compliance in whole or in part by any
4 person with any duly served subpoena of the Attorney General
5 under this Act, knowingly remove from any place, conceal,
6 withhold, destroy, mutilate, alter, or by any other means
7 falsify any documentary material that is the subject of such
8 subpoena. A violation of this subsection is a Class A
9 misdemeanor. The Attorney General, with such assistance as
10 he may from time to time require of the State's Attorneys in
11 the several counties, shall investigate suspected violations
12 of this subsection and shall commence and try all
13 prosecutions under this subsection.

14 (Source: P.A. 81-1051.)

15 (740 ILCS 10/7.5) (from Ch. 38, par. 60-7.5)

16 Sec. 7.5. Fees for witnesses; document production.

17 (1) All persons served with a subpoena by the Attorney
18 General under this Act shall be paid the same fees and
19 mileage as paid witnesses in the courts of this State.

20 (2) Where a subpoena requires the production of
21 documentary material, the respondent shall produce the
22 original of such documentary material, provided, however,
23 that the Attorney General may agree that copies may be
24 substituted, in which case the respondent shall have copies
25 made and produced at the respondent's expense.

26 (Source: P.A. 76-208.)

27 (740 ILCS 10/7.6) (from Ch. 38, par. 60-7.6)

28 Sec. 7.6. In the event a witness served with a subpoena
29 by the Attorney General under this Act fails or refuses to
30 obey same or produce documentary material or interrogatory
31 answers as provided herein, or to give testimony, relevant or
32 material, to the investigation being conducted, the Attorney

1 General may petition the Circuit Court of Sangamon or Cook
 2 County, or the county wherein the witness resides for an
 3 order requiring said witness to attend and testify or produce
 4 the documentary material or interrogatory answers demanded;
 5 ~~thereafter, any failure or refusal on the part of the witness~~
 6 ~~to obey such order of court may be punishable by the court as~~
 7 ~~a contempt thereof.~~ The court's order shall require the
 8 witness to attend and testify or produce the documentary
 9 material or interrogatory answers, or a combination thereof,
 10 by a specified date, and shall further provide a date
 11 thereafter on which the witness shall show cause in court why
 12 he or she should not be held in contempt of court if he or
 13 she fails to comply. The Attorney General shall cause the
 14 order to be served upon the witness in the manner provided
 15 for service of subpoenas in Section 7.3 of this Act. Service
 16 of the order shall constitute service of process, and no
 17 other form of process is necessary to submit the witness to
 18 the jurisdiction of the court and to require compliance with
 19 the court order.

20 (Source: P.A. 76-208.)

21 (740 ILCS 10/7.7) (from Ch. 38, par. 60-7.7)

22 Sec. 7.7. In any investigation brought by the Attorney
 23 General pursuant to this Act, no individual shall be excused
 24 from attending, testifying or producing documentary material,
 25 objects or tangible things in obedience to a subpoena or
 26 under order of the court on the ground that the testimony or
 27 evidence required of him or her may tend to incriminate him
 28 or subject him to any penalty. No individual shall be
 29 criminally prosecuted or subjected to any criminal penalty
 30 for or on account of (a) any testimony or interrogatory
 31 answers given by him or her, or (b) any documentary material
 32 produced by him or her, as to which he or she would otherwise
 33 have a right not to give or produce by virtue of his or her

1 right against self-incrimination, in any investigation
2 brought by the Attorney General pursuant to this Act;
3 provided no individual so giving testimony or answers or so
4 producing documentary material testifying shall be exempt
5 from prosecution or punishment for perjury committed in so
6 testifying, answering, or producing.

7 (Source: P.A. 81-1051.)

8 (740 ILCS 10/12 new)

9 Sec. 12. Jury Trial. In the trial of all actions
10 brought under this Act for the imposition of criminal
11 sanctions or the recovery of civil penalties or damages, any
12 party, upon timely demand, shall be entitled to a trial by
13 jury."