



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

HB2222

Introduced 2/8/2023, by Rep. Jennifer Gong-Gershowitz

SYNOPSIS AS INTRODUCED:

30 ILCS 105/5.990 new
740 ILCS 10/7.2
740 ILCS 10/7.2a new
740 ILCS 10/13 new

from Ch. 38, par. 60-7.2

Amends the Illinois Antitrust Act. Provides that documentary material, transcripts of oral testimony, or answers to interrogatories obtained in an investigation of a violation of the Act may be used by the Attorney General in any administrative or judicial action or proceeding. Provides that information voluntarily produced to the Attorney General for purposes of an investigation of a violation of the Act or information provided to the Attorney General under a notice requirement shall be treated as if produced pursuant to a subpoena for purposes of maintaining the confidentiality of such information. Provides that health care facilities that are party to a covered transaction shall provide notice of such transaction to the Attorney General no later than 60 days prior to the transaction closing or effective date of the transaction. Provides that any health care facility that fails to comply with the notice requirement is subject to a civil penalty of not more than \$500 per day for each day during which the health care facility is in violation of the requirement. When the Attorney General has reason to believe that a health care facility has engaged in or is engaging in a covered transaction without complying with the notice requirement, allows the Attorney General to apply for and obtain a temporary restraining order or injunction prohibiting the health care facility from continuing its noncompliance or doing any act in furtherance thereof. Makes a conforming change in the State Finance Act. Effective January 1, 2024.

LRB103 30580 LNS 57017 b

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The State Finance Act is amended by adding
5 Section 5.990 as follows:

6 (30 ILCS 105/5.990 new)

7 Sec. 5.990. The Antitrust Enforcement Fund.

8 Section 10. The Illinois Antitrust Act is amended by
9 changing Section 7.2 and by adding Sections 7.2a and 13 as
10 follows:

11 (740 ILCS 10/7.2) (from Ch. 38, par. 60-7.2)

12 Sec. 7.2. (1) Whenever it appears to the Attorney General
13 that any person has engaged in, is engaging in, or is about to
14 engage in any act or practice prohibited by this Act, or that
15 any person has assisted or participated in any agreement or
16 combination of the nature described herein, he may, in his
17 discretion, conduct an investigation as he deems necessary in
18 connection with the matter and has the authority prior to the
19 commencement of any civil or criminal action as provided for
20 in the Act to subpoena witnesses, and pursuant to a subpoena
21 (i) compel their attendance for the purpose of examining them

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

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

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

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

23 The Attorney General is hereby authorized, and may so
24 elect, to require the production, pursuant to this section, of
25 documentary material or interrogatory answers prior to the
26 taking of any testimony of the person subpoenaed. Said

1 documentary material shall be made available for inspection
2 and copying during normal business hours at the principal
3 place of business of the person served, or at such other time
4 and place, as may be agreed upon by the person served and the
5 Attorney General. When documentary material is demanded by
6 subpoena, said subpoena shall not:

7 (i) contain any requirement which would be
8 unreasonable or improper if contained in a subpoena duces
9 tecum issued by a court of this State; or

10 (ii) require the disclosure of any documentary
11 material which would be privileged, or which for any other
12 reason would not be required by a subpoena duces tecum
13 issued by a court of this State.

14 (2) The production of documentary material in response to
15 a subpoena served pursuant to this Section shall be made under
16 a sworn certificate, in such form as the subpoena designates,
17 by the person, if a natural person, to whom the demand is
18 directed or, if not a natural person, by a person or persons
19 having knowledge of the facts and circumstances relating to
20 such production, to the effect that all of the documentary
21 material required by the demand and in the possession,
22 custody, or control of the person to whom the demand is
23 directed has been produced and made available to the
24 custodian. Answers to interrogatories shall be accompanied by
25 a statement under oath attesting to the accuracy of the
26 answers.

1 While in the possession of the Attorney General and under
2 such reasonable terms and conditions as the Attorney General
3 shall prescribe: (A) documentary material shall be available
4 for examination by the person who produced such material or by
5 any duly authorized representative of such person, (B)
6 transcript of oral testimony shall be available for
7 examination by the person who produced such testimony, or his
8 or her counsel and (C) answers to interrogatories shall be
9 available for examination by the person who swore to their
10 accuracy.

11 Except as otherwise provided in this Section, no
12 documentary material, transcripts of oral testimony, or
13 answers to interrogatories, or copies thereof, in the
14 possession of the Attorney General shall be available for
15 examination by any individual other than an authorized
16 employee of the Attorney General or other law enforcement
17 officials, federal, State, or local, without the consent of
18 the person who produced such material, transcripts, or
19 interrogatory answers. Such documentary material, transcripts
20 of oral testimony, or answers to interrogatories, or copies
21 thereof may be used by the Attorney General in any
22 administrative or judicial action or proceeding.

23 For purposes of this Section, all documentary materials,
24 transcripts of oral testimony, ~~or~~ answers to interrogatories
25 obtained by the Attorney General from other law enforcement
26 officials, information voluntarily produced to the Attorney

1 General for purposes of any investigation conducted under
2 subsection (1), or information provided to the Attorney
3 General pursuant to the notice requirement of Section 7.2a
4 shall be treated as if produced pursuant to a subpoena served
5 pursuant to this Section for purposes of maintaining the
6 confidentiality of such information.

7 (3) No person shall, with intent to avoid, evade, prevent,
8 or obstruct compliance in whole or in part by any person with
9 any duly served subpoena of the Attorney General under this
10 Act, knowingly remove from any place, conceal, withhold,
11 destroy, mutilate, alter, or by any other means falsify any
12 documentary material that is the subject of such subpoena. A
13 violation of this subsection is a Class A misdemeanor. The
14 Attorney General, with such assistance as he may from time to
15 time require of the State's Attorneys in the several counties,
16 shall investigate suspected violations of this subsection and
17 shall commence and try all prosecutions under this subsection.
18 (Source: P.A. 96-751, eff. 1-1-10; 96-1000, eff. 7-2-10.)

19 (740 ILCS 10/7.2a new)

20 Sec. 7.2a. Notification to the Attorney General.

21 (a) It is the intent of the General Assembly to ensure that
22 competition beneficial to consumers and workers in health care
23 markets across the State is vigorous and robust. When health
24 care businesses compete, consumers benefit from higher quality
25 services at reasonable prices, and health care workers benefit

1 from higher wages and better conditions of employment which in
2 turn improves patient care. The General Assembly supports that
3 intent through this Section, which provides the Attorney
4 General with notice of all material health care facility
5 transactions in this State. The notice requirement will give
6 the Attorney General information necessary to determine
7 whether an investigation under this Act is warranted to
8 determine whether a proposed transaction may substantially
9 lessen competition, result in anticompetitive conduct, or
10 potentially harm consumers or workers. This Section is
11 intended to supplement the federal Hart-Scott-Rodino Antitrust
12 Improvements Act of 1976, 15 U.S.C. 18a, by requiring notice
13 of transactions not reportable under Hart-Scott-Rodino
14 reporting thresholds and by providing the Attorney General
15 with a copy of any filings made pursuant to the
16 Hart-Scott-Rodino Antitrust Improvements Act of 1976.

17 (b) As used in this Section:

18 "Acquisition" means an agreement, arrangement, or activity
19 the consummation of which results in a person acquiring
20 directly or indirectly the control of another person, and
21 includes the acquisition of voting securities and noncorporate
22 interests, such as assets, capital stock, membership
23 interests, or equity interests.

24 "Contracting affiliation" means the formation of a
25 relationship between 2 or more entities that permits the
26 entities to negotiate jointly with health carriers or

1 third-party administrators over rates for professional medical
2 services, or for one entity to negotiate on behalf of the other
3 entity with health carriers or third-party administrators over
4 rates for professional medical services. "Contracting
5 affiliation" does not include arrangements among entities
6 under common ownership.

7 "Covered transaction" means any merger, acquisition, or
8 contracting affiliation between 2 or more health care
9 facilities not previously under common ownership or
10 contracting affiliation.

11 "Health care facility" has the same meaning as provided in
12 Section 3 of the Health Facilities Planning Act. "Health care
13 facility" includes provider organizations as defined in this
14 Section.

15 "Health care services revenue" means the total revenue
16 received for health care services in the previous 12 months.

17 "Health carriers" has the same meaning as provided in
18 Section 10 of the Health Carrier External Review Act.

19 "Illinois health care facility" means a health care
20 facility that has an office in or is doing business in this
21 State.

22 "Merger" means the consolidation of 2 or more
23 organizations, including 2 or more organizations joining
24 through a common parent organization or 2 or more
25 organizations forming a new organization, but does not include
26 a corporate reorganization.

1 "Out-of-state health care facility" means a health care
2 facility that is not headquartered in this State and does not
3 do business in this State.

4 "Provider organization" means a corporation, partnership,
5 business trust, association, or organized group of persons,
6 whether incorporated or not, which is in the business of
7 health care delivery or management and that represents 7 or
8 more health care providers in contracting with health carriers
9 or third-party administrators for the payment of health care
10 services. "Provider organization" includes physician
11 organizations, physician-hospital organizations, independent
12 practice associations, provider networks, and accountable care
13 organizations.

14 "Third-party administrator" means an entity that
15 administers payments for health care services on behalf of a
16 client in exchange for an administrative fee.

17 (c) Health care facilities that are party to a covered
18 transaction shall provide notice of such transaction to the
19 Attorney General no later than 60 days prior to the
20 transaction closing or effective date of the transaction.

21 Covered transactions between an Illinois health care
22 facility and an out-of-state health care facility must provide
23 notice under this subsection where the out-of-state entity
24 generates \$10,000,000 or more in annual revenue from patients
25 residing in this State.

26 (d) The written notice provided by the parties under

1 subsection (c) must include:

2 (1) the names of the parties and their current
3 business addresses;

4 (2) identification of all locations where health care
5 services are currently provided by each party;

6 (3) a brief description of the nature and purpose of
7 the proposed transaction;

8 (4) the anticipated effective date of the proposed
9 transaction;

10 (5) all proposed agreements relating to the proposed
11 transaction;

12 (6) all agreements regarding collateral transactions
13 that relate to the principal transaction; and

14 (7) any reports of financial and economic analysis
15 that the party reviewed or relied on in negotiating the
16 proposed transaction.

17 Nothing in this subsection prohibits the parties to a
18 covered transaction from voluntarily providing additional
19 information to the Attorney General.

20 (e) Any health care facility conducting business in this
21 State that files a premerger notification with the Federal
22 Trade Commission or the United States Department of Justice,
23 in compliance with the Hart-Scott-Rodino Antitrust
24 Improvements Act of 1976, 15 U.S.C. 18a, shall provide a copy
25 of such filing to the Attorney General at the same time as it
26 is provided to the federal government. Providing a copy of the

1 Hart-Scott-Rodino filing to the Attorney General satisfies the
2 notice requirement under subsections (c) and (d).

3 (f) The Attorney General may make any requests for
4 additional information from the parties within 30 days of the
5 date notice is received under subsections (c) and (d). If the
6 Attorney General requests additional information, the merger
7 may not proceed until 30 days after the parties have
8 substantially complied with the request. Nothing in this
9 Section precludes the Attorney General from conducting an
10 investigation or enforcing State or federal antitrust laws at
11 a later date.

12 (g) Any health care facility that fails to comply with any
13 provision of this Section is subject to a civil penalty of not
14 more than \$500 per day for each day during which the health
15 care facility is in violation of this Section.

16 Whenever the Attorney General has reason to believe that a
17 health care facility has engaged in or is engaging in a covered
18 transaction without complying with the provisions of this
19 Section, the Attorney General may apply for and obtain, in an
20 action in the Circuit Court of Sangamon or Cook County, a
21 temporary restraining order or injunction, or both,
22 prohibiting the health care facility from continuing its
23 noncompliance or doing any act in furtherance thereof. The
24 court may make such further orders or judgments, at law or in
25 equity, as may be necessary to remedy such noncompliance.

1 (740 ILCS 10/13 new)

2 Sec. 13. Antitrust Enforcement Fund. Any penalties
3 collected from an entity for violations of this Act shall be
4 deposited into the Antitrust Enforcement Fund, a special fund
5 created in the State treasury that is dedicated to enforcing
6 this Act.

7 Section 99. Effective date. This Act takes effect January
8 1, 2024.