

LAWS OF ARIZONA

CHAPTER 26

Senate Bill 1075

AN ACT

RELATING TO TRADE AND COMMERCE; ESTABLISHING THE  
UNIFORM STATE ANTITRUST ACT, AND AMENDING TITLE  
44, CHAPTER 10, ARIZONA REVISED STATUTES, BY ADDING  
ARTICLE 1.1; AMENDING TITLE 10, CHAPTER 2, ARTICLE 2,

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ARIZONA REVISED STATUTES, BY ADDING SECTION 10-780.01; AMENDING TITLE 30, CHAPTER 2, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 30-356.01; AMENDING TITLE 30, CHAPTER 3, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 30-552.01; AMENDING TITLE 40, CHAPTER 2, ARTICLE 4, ARIZONA REVISED STATUTES, BY ADDING SECTION 40-285.01; AMENDING TITLE 45, CHAPTER 9, ARTICLE 8, ARIZONA REVISED STATUTES, BY ADDING SECTION 45-2211, AND REPEALING TITLE 44, ARTICLE 1, CHAPTER 10, ARIZONA REVISED STATUTES.

**Be it enacted by the Legislature of the State of Arizona:**

Section 1. Title 44, chapter 10, Arizona Revised Statutes, is amended by adding article 1.1, sections 44-1411 through 44-1420 and 44-1420.01 through 44-1420.03, to read:

## ARTICLE 1.1 UNIFORM STATE ANTITRUST ACT

44-1411. **Definition**

IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

“PERSON” MEANS AN INDIVIDUAL, CORPORATION, BUSINESS TRUST, PARTNERSHIP, ASSOCIATION OR ANY OTHER LEGAL ENTITY.

44-1412. **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, ANY PART OF WHICH IS WITHIN THIS STATE, IS UNLAWFUL.

44-1413. **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, ANY PART OF WHICH IS WITHIN THIS STATE, BY ANY PERSON FOR THE PURPOSE OF EXCLUDING COMPETITION

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OR CONTROLLING, FIXING OR MAINTAINING PRICES IS UNLAWFUL.

44-1414. Exclusions

A. LABOR OF A HUMAN BEING IS NOT A COMMODITY OR AN ARTICLE OF COMMERCE.

B. THIS ARTICLE SHALL NOT BE CONSTRUED TO FORBID 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.

44-1415. Judicial jurisdiction

AN ACTION FOR VIOLATION OF THIS ARTICLE SHALL BE BROUGHT IN THE SUPERIOR COURT.

44-1416. Investigation; service of demand

A. 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 ARTICLE, THE ATTORNEY GENERAL MAY SERVE UPON THE PERSON, BEFORE BRINGING ANY ACTION IN THE SUPERIOR 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 SHALL:

1. BE SERVED UPON THE PERSON IN THE MANNER REQUIRED FOR SERVICE OF PROCESS IN THIS STATE OR BY CERTIFIED MAIL WITH RETURN RECEIPT REQUESTED.
2. DESCRIBE THE NATURE OF THE CONDUCT CONSTITUTING THE VIOLATION UNDER INVESTIGATION.
3. DESCRIBE THE CLASS OR CLASSES OF DOCUMENTS OR OBJECTS WITH SUFFICIENT DEFINITENESS TO PERMIT THEM TO

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BE FAIRLY IDENTIFIED.

4. CONTAIN A COPY OF THE WRITTEN INTERROGATORIES.

5. 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 OBJECTIONS TO OR REASONS FOR NOT COMPLYING WITH THE DEMAND MAY BE FILED WITH THE ATTORNEY GENERAL ON OR BEFORE THAT TIME.

6. SPECIFY A PLACE FOR THE TAKING OF TESTIMONY OR FOR PRODUCTION AND DESIGNATE A PERSON WHO SHALL BE CUSTODIAN OF THE DOCUMENT OR OBJECT.

7. CONTAIN A COPY OF SUBSECTION B.

B. IF A PERSON OBJECTS TO OR OTHERWISE FAILS TO COMPLY WITH THE WRITTEN DEMAND SERVED UPON HIM UNDER SUBSECTION A, THE ATTORNEY GENERAL MAY FILE IN THE SUPERIOR COURT OF THE COUNTY IN WHICH THE PERSON RESIDES OR IN WHICH HE 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 SHALL 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 MAY HAVE BEEN A VIOLATION OF THIS ARTICLE, 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.

C. ANY PROCEDURE, TESTIMONY TAKEN OR MATERIAL PRODUCED UNDER THIS SECTION SHALL BE KEPT CONFIDENTIAL BY THE ATTORNEY GENERAL BEFORE

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BRINGING AN ACTION AGAINST A PERSON UNDER THIS ARTICLE 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.

**44-1417. Civil penalty and injunctive enforcement**

THE ATTORNEY GENERAL OR A COUNTY ATTORNEY WITH THE PERMISSION OR AT THE REQUEST OF THE ATTORNEY GENERAL MAY BRING AN ACTION FOR APPROPRIATE INJUNCTIVE OR OTHER EQUITABLE RELIEF AND CIVIL PENALTIES IN THE NAME OF THE STATE FOR A VIOLATION OF THIS ARTICLE. THE COURT MAY ASSESS FOR THE BENEFIT OF THE STATE A CIVIL PENALTY OF NOT MORE THAN FIFTY THOUSAND DOLLARS FOR EACH VIOLATION OF THIS ARTICLE.

**44-1418. Damages; injunctive relief**

A. THE STATE, A POLITICAL SUBDIVISION OR ANY PUBLIC AGENCY THREATENED WITH INJURY OR INJURED IN ITS BUSINESS OR PROPERTY BY A VIOLATION OF THIS ARTICLE 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.

B. A PERSON THREATENED WITH INJURY OR INJURED IN HIS BUSINESS OR PROPERTY BY A VIOLATION OF THIS ARTICLE 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 SHALL INCREASE RECOVERY TO AN AMOUNT NOT IN EXCESS OF THREE TIMES THE DAMAGES SUSTAINED.

**44-1419. Judgment as prima facie evidence**

A FINAL JUDGMENT OR DECREE DETERMINING THAT A PERSON HAS VIOLATED THIS ARTICLE IN AN ACTION BROUGHT BY THE

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STATE UNDER SECTION 44-1417 OR 44-1418, SUBSECTION A, OTHER THAN A CONSENT JUDGMENT OR DECREE ENTERED BEFORE ANY TESTIMONY HAS BEEN TAKEN, IS PRIMA FACIE EVIDENCE AGAINST SUCH PERSON IN ANY OTHER ACTION AGAINST HIM UNDER SECTION 44-1418 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.

**44-1420. Limitations of actions**

A. AN ACTION UNDER SECTION 44-1417 TO RECOVER A CIVIL PENALTY IS BARRED IF IT IS NOT COMMENCED WITHIN FOUR YEARS AFTER THE CAUSE OF ACTION ACCRUES.

B. AN ACTION UNDER SECTION 44-1418 TO RECOVER DAMAGES IS BARRED IF IT IS NOT COMMENCED WITHIN FOUR YEARS AFTER THE CAUSE OF ACTION ACCRUES, OR WITHIN ONE YEAR AFTER THE CONCLUSION OF ANY TIMELY ACTION BROUGHT BY THE STATE UNDER SECTION 44-1417 OR 44-1418, SUBSECTION A, BASED IN WHOLE OR IN PART ON ANY MATTER COMPLAINED OF IN THE ACTION FOR DAMAGES, WHICHEVER IS LATER.

**44-1420.01. Remedies cumulative**

THE REMEDIES PROVIDED FOR IN THIS ARTICLE ARE CUMULATIVE.

**44-1420.02. Uniformity**

THIS ARTICLE SHALL BE APPLIED AND CONSTRUED TO EFFECTUATE ITS GENERAL PURPOSE TO MAKE UNIFORM THE LAW WITH RESPECT TO THE SUBJECT OF THIS ARTICLE AMONG THOSE STATES THAT ENACT IT. IT IS THE INTENT OF THE LEGISLATURE THAT IN CONSTRUING THIS ARTICLE, THE COURTS MAY USE AS A GUIDE INTERPRETATIONS GIVEN BY THE FEDERAL COURTS TO COMPARABLE FEDERAL ANTITRUST STATUTES.

**44-1420.03. Short title**

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THIS ARTICLE MAY BE CITED AS THE UNIFORM STATE ANTITRUST ACT.

Sec. 2. Title 10, chapter 2, article 2, Arizona Revised Statutes, is amended by adding section 10-780.01, to read:

**10-780.01. Exemption from antitrust statutes**

THE PROVISIONS OF ARTICLE 1.1, CHAPTER 10, TITLE 44 SHALL NOT APPLY TO ANY CONDUCT OR ACTIVITY OF A COOPERATIVE ORGANIZED PURSUANT TO THIS ARTICLE, WHICH CONDUCT OR ACTIVITY IS APPROVED BY A STATUTE OF THIS STATE OR OF THE UNITED STATES OR BY THE CORPORATION COMMISSION OR AN ADMINISTRATIVE AGENCY OF THIS STATE OR OF THE UNITED STATES HAVING JURISDICTION OF THE SUBJECT MATTER.

Sec. 3. Title 30, chapter 2, article 2, Arizona Revised Statutes, is amended by adding section 30-356.01, to read:

**30-356.01. Exemption from antitrust statutes**

THE PROVISIONS OF ARTICLE 1.1, CHAPTER 10, TITLE 44 SHALL NOT APPLY TO ANY CONDUCT OR ACTIVITY OF A POWER DISTRICT ORGANIZED PURSUANT TO THIS CHAPTER, WHICH CONDUCT OR ACTIVITY IS APPROVED BY A STATUTE OF THIS STATE OR OF THE UNITED STATES OR BY THE CORPORATION COMMISSION OR AN ADMINISTRATIVE AGENCY OF THIS STATE OR OF THE UNITED STATES HAVING JURISDICTION OF THE SUBJECT MATTER.

Sec. 4. Title 30, chapter 3, article 2, Arizona Revised Statutes, is amended by adding section 30-552.01, to read:

**30-552.01. Exemption from antitrust statutes**

THE PROVISIONS OF ARTICLE 1.1, CHAPTER 10, TITLE 44 SHALL NOT APPLY TO ANY CONDUCT OR ACTIVITY OF AN ELECTRICAL DISTRICT ORGANIZED PURSUANT TO THIS CHAPTER, WHICH CONDUCT OR ACTIVITY IS APPROVED BY A STATUTE OF THIS STATE OR OF THE UNITED STATES OR BY THE CORPORATION COMMISSION OR AN ADMINISTRATIVE AGENCY OF THIS STATE

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OR OF THE UNITED STATES HAVING JURISDICTION OF THE SUBJECT MATTER.

Sec. 5. Title 40, chapter 2, article 4, Arizona Revised Statutes, is amended by adding section 40-285.01, to read:

**40-285.01. Exemption from antitrust statutes**

THE PROVISIONS OF ARTICLE 1.1, CHAPTER 10, TITLE 44 SHALL NOT APPLY TO ANY CONDUCT OR ACTIVITY OF A PUBLIC SERVICE CORPORATION HOLDING A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY GRANTED PURSUANT TO THIS ARTICLE, WHICH CONDUCT OR ACTIVITY IS APPROVED BY A STATUTE OF THIS STATE OR OF THE UNITED STATES OR BY THE CORPORATION COMMISSION OR AN ADMINISTRATIVE AGENCY OF THIS STATE OR OF THE UNITED STATES HAVING JURISDICTION OF THE SUBJECT MATTER.

Sec. 6. Title 45, chapter 9, article 8, Arizona Revised Statutes, is amended by adding section 45-2211, to read:

**45-2211. Exemption from antitrust statutes**

THE PROVISIONS OF ARTICLE 1.1, CHAPTER 10, TITLE 44 SHALL NOT APPLY TO ANY CONDUCT OR ACTIVITY OF A DISTRICT ORGANIZED PURSUANT TO THIS TITLE, WHICH CONDUCT OR ACTIVITY IS APPROVED BY A STATUTE OF THIS STATE OR OF THE UNITED STATES OR BY THE CORPORATION COMMISSION OR AN ADMINISTRATIVE AGENCY OF THIS STATE OR OF THE UNITED STATES HAVING JURISDICTION OF THE SUBJECT MATTER.

**Sec. 7. Repeal**

Title 44, article 1, chapter 10, Arizona Revised Statutes, is repealed.

Approved by the Governor—April 25, 1974

Filed in the Office of the Secretary of State—April 25, 1974