

SENATE No. 1579

The Commonwealth of Massachusetts

SENATE, May 23, 1991.

The committee on Commerce and Labor, to whom was referred the petition (accompanied by bill, Senate, No. 102) of Lois G. Pines and Robert A. Durand for legislation relative to the enforcement of the Massachusetts Antitrust Act, reports the accompanying bill (Senate, No. 1579).

For the committee,

LOIS G. PINES.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-One.

AN ACT TO STRENGTHEN ENFORCEMENT OF THE MASSACHUSETTS ANTITRUST ACT.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 93 of the General Laws is hereby
2 amended by inserting after Section 12 the following new sec-
3 tion: —

4 Section 12A. In any action brought under Section 9 or Sec-
5 tion 12 of this chapter, the fact that the Commonwealth, any
6 public agency, political subdivision or any other person has not
7 dealt directly with a defendant shall not bar or otherwise limit
8 recovery. A defendant shall be entitled to prove as a partial or
9 complete defense to a claim of damages that an illegal overcharge
10 has been passed on to others who are themselves entitled to
11 recover so as to avoid duplication of recovery of damages;
12 provided, however, that such pass-on defense must be
13 affirmatively pleaded, in which event the court may issue such
14 orders as it may deem appropriate in its discretion concerning
15 notice, by publication or otherwise, to persons affected, if any.

1 SECTION 2. Section 2 of Chapter 93 is hereby amended by
2 deleting the definition of “trade or commerce” in its entirety.

1 SECTION 3. Section 3 of Chapter 93 is hereby amended by
2 deleting the first and second paragraphs thereof and inserting the
3 following in its place: — The provisions of this Act shall apply
4 to conduct or activities that substantially affect trade or commerce
5 within the Commonwealth.

1 SECTION 4. Paragraph one of Section 8 is hereby amended
2 by deleting the paragraph in its entirety and inserting in place
3 thereof the following: —

4 Whenever the attorney general has reasonable cause to believe
5 that any person has engaged in, is engaging in, or is about to
6 engage in any act or practice prohibited by this Act, he may, prior
7 to the commencement of any civil or criminal action against said
8 person as provided for by this Act, issue in writing and cause to
9 be served upon such person or any person who may be in
10 possession, custody or control of any documentary material, or
11 may have any information relevant to said act or practice, a civil
12 investigative demand requiring such person to produce
13 documentary material for inspection or copying, to answer written
14 interrogatories in writing and under oath, to give oral testimony
15 concerning documentary material or information, or to furnish
16 any combination of such material, answers or testimony.

1 SECTION 5. Section 8 of Chapter 93 is hereby further
2 amended by inserting after the sixth paragraph of said Section 8
3 the following: —

4 The production of documentary material in response to a
5 demand served pursuant to this section shall be made under sworn
6 certificate, in such form as the demand designates, by the person,
7 if a natural person, to whom the demand is directed or, if not a
8 natural person, by a person or persons having knowledge of the
9 facts and circumstances relating to such production, to the effect
10 that all of the documentary material required by the demand and
11 in the possession, custody, or control of the person to whom the
12 demand is directed has been produced and made available to the
13 attorney general.

14 Each interrogatory in a demand served pursuant to this section
15 shall be answered separately and fully in writing under oath, unless
16 it is objected to, in which event the reasons for the objection shall
17 be stated in lieu of an answer and signed by the person or attorney
18 making them. Answers shall be submitted under a sworn
19 certificate, in such form as the demand designates, by the person,
20 if a natural person, to whom the demand is directed or, if not a
21 natural person, by a person or persons responsible for answering
22 each interrogatory, to the effect that all information required by
23 the demand and in the possession, custody, control or knowledge
24 of the person to whom the demand is directed has been submitted.

1 SECTION 6. Section 8 of Chapter 93 is hereby further
2 amended by inserting the following paragraph after paragraph 10
3 thereof: —

4 A person upon whom a demand is served pursuant to the
5 provisions of this Section shall comply with the terms thereof
6 unless otherwise provided by an order of a court of the
7 Commonwealth. Any person who fails to appear or otherwise
8 petitions for an order pursuant to paragraph 5 of this section, or
9 who, with intent to avoid, evade, or prevent compliance, in whole
10 or in part, with any civil investigation under this chapter, removes
11 from any place, conceals, withholds, destroys, mutilates, alters,
12 or by any other means falsifies any documentary material in the
13 possession, custody or control of any person subject to any such
14 notice, or who knowingly conceals any relevant information, shall
15 be assessed a civil penalty of not more than five thousand dollars
16 for each violation of this Section.

1 SECTION 7. Section 8 of Chapter 93 is hereby further
2 amended by deleting the first sentence of the twelfth paragraph
3 and inserting in place thereof the following: —

4 No documentary material, answers to interrogatories, or
5 transcripts of oral testimony, or copies thereof, obtained by the
6 attorney general in the course of an investigation under this
7 chapter shall be available for examination by any person other
8 than a duly authorized official, employee or agent of the attorney
9 general. Nothing in this section, however, is intended to prevent
10 the attorney general from disclosing such material or information
11 in court pleadings or other papers filed in court or in federal or
12 state litigation when and if the attorney general deems such
13 disclosure necessary to prosecute any case. The attorney general
14 may not be compelled to disclose such material in any litigation
15 or other proceedings except by order of a court of the Common-
16 wealth upon a showing of good cause.

1 SECTION 8. The fourteenth paragraph of Section 8 of
2 Chapter 93 is hereby amended by inserting the following sentence
3 after the first sentence of said paragraph: —

4 Nothing in this section is intended to prevent officials of the
5 United States and the several states receiving information

6 pursuant to this section from disclosing such information in court
7 pleadings or other papers filed in court if said official deems such
8 disclosure necessary to prosecute any case.

1 SECTION 9. Section 9 of Chapter 93 is hereby amended by
2 deleting the first paragraph thereof and inserting the following: —
3 The attorney general may bring a civil action in the name of
4 the Commonwealth to prevent and restrain violations of sec-
5 tions four, five or six of this chapter; to secure, as *parens patriae*
6 on behalf of natural persons residing in the Commonwealth,
7 monetary relief for damages sustained by such natural persons by
8 reason of any violation of sections four, five or six; and to secure
9 monetary relief on behalf of the Commonwealth, its public
10 agencies and political subdivisions for damages sustained by
11 reason of any violation of sections four, five or six. The attorney
12 general may bring a civil action in the name of the Commonwealth
13 to recover a civil penalty of not more than one hundred thousand
14 dollars for each violation of said sections four, five and six of this
15 chapter. In any action brought for damages under this section,
16 the court shall award threefold the damages sustained. In any
17 successful action under this section in which the attorney general
18 substantially prevails, the court shall award the costs of
19 investigation and suit, including reasonable attorney's fees.

1 SECTION 10. Section 9 of Chapter 93 is hereby further
2 amended by deleting the words "with the consent of a defendant"
3 from the third paragraph thereof.

1 SECTION 11. Section 9 of Chapter 93 is hereby amended by
2 deleting the last paragraph thereof, and inserting in its place the
3 following: —
4 The Attorney General may conclude any civil action brought
5 or contemplated under this section, or any investigation
6 commenced or contemplated under section eight, by the
7 acceptance of a written assurance of discontinuance or consent
8 decree. Any such consent decree and any such assurance shall be
9 filed with the superior court. Any evidence of a violation of such
10 assurance shall be *prima facie* evidence of a violation of sec-
11 tions four, five or six, respectively, as the case may be.

1 SECTION 12. Section 10 of Chapter 93 is hereby amended by
2 deleting the words “by a fine not exceeding one hundred thousand
3 dollars if a corporation, or, if any other person, by a fine not
4 exceeding twenty-five thousand dollars or by imprisonment not
5 exceeding one year, or both” and inserting in place thereof the
6 following: — by a fine not exceeding one hundred thousand
7 dollars for each violation if a natural person, or, if any other
8 person, by a fine not exceeding one million dollars for each
9 violation or by imprisonment in a state prison for not more than
10 three years, or both.

1 SECTION 12A. Section 11 of Chapter 93 is hereby amended
2 by inserting the following after the first sentence thereof: —
3 Nothing contained in the section shall be construed to impose any
4 limitation on the application of collateral estoppel.

1 SECTION 13. Section 12 of Chapter 93 is hereby amended by
2 deleting the first paragraph thereof, and inserting in its place the
3 following: —

4 Any person injured in his business or property by reason of a
5 violation of the provisions of this chapter may sue therefor and
6 shall recover threefold the amount of actual damages sustained,
7 together with the costs of suit, including reasonable attorney’s
8 fees.

1 SECTION 13A. Section 12 of Chapter 93 is hereby further
2 amended by inserting the following paragraph after paragraph 4
3 thereof: —

4 Any person filing a complaint, counterclaim or answer pursuant
5 to this section shall, simultaneously with such filing, mail or
6 otherwise deliver a copy of the complaint, counterclaim or answer
7 to the attorney general.

1 SECTION 14. Section 20D of Chapter 233 is hereby amended
2 by inserting after the words “involving the following crimes:
3 abortion,” the words “violations of the antitrust laws.”



