

## **IC 24-1-2**

### **Chapter 2. Combinations Restraining Trade**

#### **IC 24-1-2-1**

##### **Illegal combinations; exceptions; offense; defense**

Sec. 1. Every scheme, contract, or combination in restraint of trade or commerce, or to create or carry out restrictions in trade or commerce, or to deny or refuse to any person participation, on equal terms with others, in any telegraphic service transmitting matter prepared or intended for public use, or to limit or reduce the production, or increase or reduce the price of merchandise or any commodity, or to prevent competition in manufacturing, within or without this state, is illegal, but this chapter may not be construed to apply to or repeal, modify or limit, or make unlawful any of the powers, rights or privileges now existing or conferred by law upon any person. A person who makes such a contract, engages in such a combination, or enters into such a scheme, or does within this state any act in furtherance of such a contract, combination, or scheme entered into without this state, commits a Class A misdemeanor. However, it is a defense to any action growing out of any violation of any law relating to the subject-matter of this chapter for the defendant to prove that the violation is not in restraint of trade or commerce, or does not restrict trade or commerce, limit or reduce the production, or increase or reduce the price of merchandise or any commodity, or prevent competition in manufacturing.

*(Formerly: Acts 1907, c.243, s.1.) As amended by Acts 1978, P.L.2, SEC.2402.*

#### **IC 24-1-2-2**

##### **Monopoly; offense**

Sec. 2. A person who monopolizes any part of the trade or commerce within this state commits a Class A misdemeanor.

*(Formerly: Acts 1907, c.243, s.2.) As amended by Acts 1978, P.L.2, SEC.2403.*

#### **IC 24-1-2-3**

##### **Restraint of bidding for letting contracts; offense**

Sec. 3. A person who engages in any scheme, contract, or combination to restrain or restrict bidding for the letting of any contract for private or public work, or restricts free competition for the letting of any contract for private or public work, commits a Class A misdemeanor.

*(Formerly: Acts 1907, c.243, s.3.) As amended by Acts 1978, P.L.2, SEC.2404.*

#### **IC 24-1-2-4**

##### **Collusion among contract bidders; civil action by principal; action by attorney general**

Sec. 4. If there shall be collusion or fraud of any kind or character among the bidders at the letting of any contract or work as provided in section 3 of this chapter, then the principal who lets the contract or work, or for whom the contract was let, shall not be liable for such letting or on account of said contract or work, or any part thereof, to the successful bidder to whom the contract or work was let, his successors or assigns, if such successful bidder be a party, directly or indirectly, to such collusion or fraud on such contract or letting, or for any work, materials furnished, or thing done in discharge thereof or with reference thereto, and if before notice of such collusion or fraud payment or partial payment thereon or therefor shall have been made, such principal may at any time within five (5) years from the date of the last payment made thereon or therefor in an appropriate action in any court of competent jurisdiction in this state recover to the full amount of such payment or payments with interest to date of judgment thereon, and attorney's fees, against such successful bidder, and such recovery shall not be a bar to any action, either civil or criminal, brought against such bidder on account of any violation of this chapter on behalf of the state by the attorney general, a prosecuting attorney, or otherwise.

*(Formerly: Acts 1907, c.243, s.4.) As amended by P.L.152-1986, SEC.6.*

#### **IC 24-1-2-5**

#### **Duty of attorney general and prosecuting attorney; civil and criminal proceedings**

Sec. 5. It shall be the duty of the attorney general and of the prosecuting attorney of each judicial circuit to institute appropriate proceedings to prevent and restrain violations of the provisions of this chapter or any other statute or the common law relating to the subject matter of this chapter and to prosecute any person or persons guilty of having violated any of the penal provisions thereof. In all criminal proceedings the prosecution may be by way of affidavit or indictment the same as in other criminal matters, and the attorney general shall have concurrent jurisdiction with the prosecuting attorneys in instituting and prosecuting any such actions. All civil proceedings to prevent and restrain violations shall be in the name of the state of Indiana upon relation of the proper party. The attorney general may file such proceedings upon his own relation or that of any private person in any circuit or superior court of the state, without applying to such court for leave, when he shall deem it his duty so to do. Such proceedings shall be by information filed by any prosecuting attorney in a circuit or superior court of the proper county upon his own relation whenever he shall deem it his duty so to do, or shall be directed by the court or governor or attorney general, and an information may be filed by any taxpayer on his own relation. If judgment or decree be rendered against any domestic corporation or against any person claiming to be a corporation, the

court may cause the costs to be collected by execution against the person claiming to be a corporation or by attachment against any or all of the directors or officers of the corporation, and may restrain the corporation or any director, agent, employee, or stockholder and appoint a receiver for its property and effects, and take an accounting and make distribution of its assets among its creditors, and exercise any other power or authority necessary and proper for carrying out the provisions of this chapter. If judgment or decree be rendered against any corporation incorporated under the laws of the United States, or of any district or territory thereof, or of any state other than this state, or of any foreign country, the court may cause the costs to be collected as in this section provided and may render judgment and decree of ouster perpetually excluding such corporation from the privilege of transacting business in the state of Indiana and forfeiting to the school fund any or all property of such corporation within the state, and shall exercise such power and authority with regard to the property of such corporation as may be exercised with regard to that of domestic corporations.

*(Formerly: Acts 1907, c.243, s.5; Acts 1923, c.82, s.1.) As amended by P.L.152-1986, SEC.7.*

#### **IC 24-1-2-5.1**

##### **Attorney general may bring action on behalf of the state or a political subdivision**

Sec. 5.1. The attorney general may bring an action on behalf of the state or a political subdivision (as defined in IC 34-6-2-110) for injuries or damages sustained directly or indirectly as a result of a violation of this chapter.

*As added by P.L.135-2008, SEC.3.*

#### **IC 24-1-2-6**

##### **Discovery proceedings; examination of defendant; sanctions for noncompliance**

Sec. 6. In all proceedings instituted under and pursuant to section 5 of this chapter, the plaintiff may propound interrogatories to the defendant or defendants to be answered by such defendant or defendants under oath, as is provided by law in civil actions, and if any defendant to whom interrogatories be propounded as aforesaid be a corporation, then such interrogatories shall be answered by the highest officer of such corporation, or by any other officer, agent, or employee of such corporation designated by the plaintiff. The plaintiff in any such action shall be entitled upon motion to an order for an examination under oath before trial of any defendant or all the defendants in such action, and if any defendant in such action be a corporation, then of any officer, agent, or employee of any such defendant corporation, concerning any or all of the facts alleged in the information or other pleadings in such cause. The said defendant shall be given five (5) days' notice by the plaintiff of the time and

place of the taking of said examination, but such officer, agent, or employee shall not be compelled to attend such examination except in the county where he resides or where the principal office or place of business of such corporation be situate in this state. If such defendant corporation be incorporated under the laws of the United States, or of any district or territory thereof, or of any state other than the state of Indiana, or of any foreign country, and the officer, agent, or employee to be examined be without the jurisdiction of this state, then such defendant shall produce the officer, agent, or employee to be examined as aforesaid at some place in the city or town where the principal office or place of business of such defendant be situate, upon five (5) days' notice being served upon the attorneys of such defendant corporation of the time and place fixed for the examination of such officer, agent or employee. In any examination of any defendant or of any officer, agent, or employee of any defendant corporation, such defendant officer, agent or employee may be compelled upon notice to produce for inspection by the plaintiff and to testify concerning the same, or for use in evidence upon the trial, or both, all books, papers, documents, or writings pertaining or in any wise relating to the facts, or any of them, stated in the information or other pleadings filed in the cause. In such notice to produce for inspection and testimony or for trial, or both, it shall only be necessary to notify the defendant or the attorney or attorneys of the defendant to produce, at the time and place fixed in the notice, all books, papers, documents, or writings pertaining or in any wise relating to the facts stated in the information or other pleadings filed, and it shall not be necessary to state in such notice the particular books, papers, documents, or writings to be produced at such time and place. Such examinations shall be taken before an officer authorized to take depositions and may be continued from day to day. Upon the failure or refusal of any defendant to comply with any order made as aforesaid to answer interrogatories, or for the examination of the defendant or the officer, agent, or employee of any defendant corporation, or upon the failure or refusal of any defendant corporation to produce any officer, agent, or employee for examination when notified as aforesaid, or upon the failure or refusal of any defendant to produce books, papers, documents, and writings when notified as aforesaid, then all pleadings of such defendant so failing to comply with such order or notice shall be stricken from the files upon motion supported by affidavit, and the allegations of the information as to such defendant in default shall be taken as confessed and judgment and decree shall be entered accordingly. (Formerly: Acts 1907, c.243, s.6.) As amended by P.L.152-1986, SEC.8.

#### **IC 24-1-2-7**

#### **Treble damage action; attorney general's representation of state or political subdivision**

Sec. 7. (a) Any person whose business or property is injured by a violation of this chapter may bring an action in the circuit or superior court of any county in which the defendant resides or is found without respect to the amount in controversy, and is entitled to recover a penalty of threefold the damages awarded in the action, together with the costs of suit, including reasonable attorney's fees.

(b) The attorney general may bring an action under this section on behalf of the state or a political subdivision if the state or political subdivision has been directly or indirectly injured by a violation of this section.

*(Formerly: Acts 1907, c.243, s.7.) As amended by P.L.152-1986, SEC.9; P.L.135-2008, SEC.4.*

#### **IC 24-1-2-8**

##### **General importance of case; certificate**

Sec. 8. In any proceeding under this chapter the attorney general or prosecuting attorney may file with the clerk of the court a certificate that in his opinion the case is of general importance, a copy of which shall be immediately furnished by said clerk to the judge or each of the judges of the court wherein the proceedings may be pending, and the court shall thereupon make the proper orders in the premises.

*(Formerly: Acts 1907, c.243, s.8.) As amended by P.L.152-1986, SEC.10.*

#### **IC 24-1-2-9**

##### **Costs of proceedings**

Sec. 9. Whenever an information is filed by the attorney general or by any prosecuting attorney, such officer shall not be liable for costs; but when it is filed upon the relation of a private person, he shall be liable for costs unless the same are adjudged against the defendant. In all proceedings instituted under the provisions of this chapter by the attorney general or by the prosecuting attorney on the order and direction of the court, the attorney general, or the governor, all necessary costs and expenses of the prosecution shall be paid out of moneys in the state treasury not otherwise appropriated if such costs cannot be collected from the defendant or defendants, in case judgment be rendered against such defendant or defendants, and it shall be the duty of the auditor of state, upon receipt from the attorney general of a statement of the costs and expenses of any such prosecution, to draw his warrant upon the treasurer of state for the amount so certified; provided, however, that the attorney general shall not involve the state in any extraordinary expense for experts or other assistants without first obtaining the consent of the governor, and twenty thousand dollars (\$20,000) is appropriated biennially from any funds of the state not otherwise appropriated to defray the expenses of such prosecutions by the attorney general. Such prosecuting attorney shall also be allowed by the court trying such

cause reasonable compensation for his services, and such allowances shall be paid as part of the costs and expenses of such prosecution. *(Formerly: Acts 1907, c.243, s.9.) As amended by P.L.152-1986, SEC.11.*

#### **IC 24-1-2-10**

##### **Person; definition**

Sec. 10. The words "person" or "persons" whenever used in this chapter shall be deemed to include corporations, associations, limited liability companies, joint stock companies, partnerships, limited or otherwise, existing under or authorized by the laws of the state of Indiana, or of the United States, or of any state, territory, or district of the United States, or of any foreign country.

*(Formerly: Acts 1907, c.243, s.10.) As amended by P.L.152-1986, SEC.12; P.L.8-1993, SEC.335.*

#### **IC 24-1-2-11**

##### **Examination of witness or party; immunity from criminal prosecution**

Sec. 11. Any person or officer, agent, or employee of a corporation may be examined as a witness or a party as in other cases, in any civil action instituted under the provisions of this chapter and required to disclose all the facts relevant to the case in his knowledge as provided in this chapter, but the testimony of such witness or party or any answer to any question propounded to him in such examination shall not be used against such witness or party in any criminal prosecution except in case of perjury committed by him therein; and he shall not be liable to trial by indictment or affidavit or to punishment for any offense inquired about; provided, however, that such exemption shall be personal to such witness and shall not exempt or render immune the corporation of which such witness shall be an officer, agent, or employee, and such corporation shall be as liable for any violation of this chapter as if such officer, agent, or employee had not so testified.

*(Formerly: Acts 1907, c.243, s.11; Acts 1923, c.82, s.2.) As amended by P.L.152-1986, SEC.13.*

#### **IC 24-1-2-12**

##### **Cumulative and supplemental effect of chapter**

Sec. 12. The provisions of this chapter shall be held cumulative of or supplemental to each other and of all other laws in any way affecting them, or any matter which in any manner is the subject of this chapter in this state, and cumulative of and supplemental to the common law of this state relative thereto or to any thereof.

*(Formerly: Acts 1907, c.243, s.12.) As amended by P.L.152-1986, SEC.14.*