

CHAPTER 553

IOWA COMPETITION LAW

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553.1 Short title.

This chapter shall be known and may be cited as the “*Iowa Competition Law*”.
[C77, 79, 81, §553.1]

553.2 Construction.

This chapter shall be construed to complement and be harmonized with the applied laws of the United States which have the same or similar purpose as this chapter. This construction shall not be made in such a way as to constitute a delegation of state authority to the federal government, but shall be made to achieve uniform application of the state and federal laws prohibiting restraints of economic activity and monopolistic practices.

[C77, 79, 81, §553.2]

553.3 Definitions.

As used in this chapter unless the context otherwise requires:

1. “*Commodity*” means tangible or intangible property, real, personal, or mixed.
2. “*Enterprise*” means a business, commercial or professional entity, including a corporation, partnership, limited partnership, professional corporation, proprietorship, incorporated or unincorporated association, or other form of organization.
3. “*Government agency*” means the state, its political subdivisions, and any public agency supported in whole or in part by taxation.
4. “*Person*” means a natural person, estate, trust, enterprise or government agency.
5. “*Price*” includes the terms and conditions of sale, rental, rate, fee, or any other form of payment for a commodity or service.
6. “*Relevant market*” means the geographical area of actual or potential competition in a line of commerce, all or any part of which is within this state.
7. “*Service*” means any activity which is performed in whole or part for financial gain.
8. “*Trade or commerce*” means any economic activity involving or relating to any commodity, service, or business activity.

[C77, 79, 81, §553.3]

553.4 Restraint prohibited.

A contract, combination, or conspiracy between two or more persons shall not restrain or monopolize trade or commerce in a relevant market.

[C97, §5060, 5061; S13, §5067-a; C24, 27, 31, 35, 39, §9906, 9907, 9915; C46, 50, 54, 58, 62, 66, 71, 73, 75, §553.1, 553.2, 553.10; C77, 79, 81, §553.4]

553.5 Monopoly prohibited.

A person shall not attempt to establish or establish, maintain, or use a monopoly of trade or commerce in a relevant market for the purpose of excluding competition or of controlling, fixing, or maintaining prices.

[C97, §5060, 5061; S13, §5067-a; C24, 27, 31, 35, 39, §9906, 9907, 9915; C46, 50, 54, 58, 62, 66, 71, 73, 75, §553.1, 553.2, 553.10; C77, 79, 81, §553.5]

553.6 Exemptions.

This chapter shall not be construed to prohibit:

1. The activities of any labor organization, individual members of such an organization, or group of such organizations, of any employer or group of employers, or of any groups of employees, if these activities are directed solely to legitimate labor objectives which are permitted under the laws of either this state or the United States.
2. The activities of any agricultural or horticultural organization, whether incorporated or unincorporated, or of the individual members of such organizations, if these activities carry out the legitimate objectives of such organizations, to the extent permitted under the laws of either this state or the United States.
3. The activities of persons engaged in the production of agricultural products when these persons act together in associations, corporate or otherwise, with or without capital stock, in collectively processing, preparing for market, handling, and marketing the products of these persons, to the extent permitted under the laws of either this state or the United States. These associations may have marketing and purchasing agencies in common and their members may make the necessary contracts and agreements to effect such purposes. However, such associations must be operated for the mutual benefit of the members of these associations acting as producers to qualify under this subsection.
4. The activities or arrangements expressly approved or regulated by any regulatory body or officer acting under authority of this state or of the United States.
5. The activities of a city or county, or an administrative or legal entity created by a city or county, when acting within its statutory or constitutional home rule powers and to the same extent that the activities would not be prohibited if undertaken by the state.

[C24, 27, 31, 35, 39, §9916; C46, 50, 54, 58, 62, 66, 71, 73, 75, §553.11; C77, 79, 81, §553.6]
84 Acts, ch 1020, §1

553.7 Attorney general to enforce.

The attorney general, with such assistance as may be required from time to time of the county attorneys in their respective counties, shall institute all criminal and civil actions and proceedings brought under this Act in the name of the state.

[C97, §5067; C24, 27, 31, 35, 39, §9913; C46, 50, 54, 58, 62, 66, 71, 73, 75, §553.8; C77, 79, 81, §553.7]

553.8 Venue.

A suit or proceeding brought under this chapter may be brought in the county where the cause of action arose, where any defendant resides or transacts business, or where an act in furtherance of the conduct prohibited by this chapter occurred.

[C77, 79, 81, §553.8]

553.9 Investigation.

1. If the attorney general has reasonable cause to believe that a person has engaged in or is engaging in conduct prohibited by this chapter, the attorney general shall make such investigation as is deemed necessary and may, prior to the commencement of a suit against this person under this chapter:

a. Issue written demand on this person, its officers, directors, partners, fiduciaries, or employees to compel their attendance before the attorney general and examine them under oath;

b. Issue written demand to produce, examine, and copy a document or tangible item in the possession of this person or its officers, directors, partners, or fiduciaries;

c. Upon an order of a district court, pursuant to a showing that such is reasonably necessary to an investigation being conducted under this section:

(1) Compel the attendance of any other person before the attorney general and examine this person under oath;

(2) Require the production, examination, and copying of a document or other tangible item in the possession of such person; and,

d. Upon an order of a district court, impound a document or other tangible item produced

pursuant to this section and retain possession of it until the completion of all proceedings arising out of the investigation.

2. A written demand or court order issued pursuant to this section shall contain the following information, as applicable:

a. A reference to this chapter and a general description of the subject matter being investigated;

b. The date, time and place at which any person is to appear or to produce documents or other tangible items;

c. Where the production of documents or other tangible items is required, a description of such documents or items by class with sufficient clarity so that they may be reasonably identified.

3. Any procedure, testimony taken, or material produced under this section shall be sealed by the court and be kept confidential by the attorney general, until an action is filed against a person under this chapter 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 unless disclosure is authorized by the court for the purposes of interstate cooperation in enforcing this chapter and similar state and federal laws.

4. This chapter shall not be construed to limit or abridge statutory or constitutional limitations on self-incrimination.

5. Evidence obtained from a natural person pursuant to the provisions of this section shall not be introduced in a subsequent criminal prosecution of this person. However, evidence obtained from a natural person pursuant to a grand jury proceeding may be so introduced.

[C77, 79, 81, §553.9]

553.10 Investigation enforcement.

If a person objects or otherwise fails to obey a written demand or court order issued under section 553.9, the attorney general may file in the district court of the county in which the person resides or maintains a principal place of business within this state an application for an order to enforce the demand or order. Notice of hearing and a copy of the application shall be served upon the person, who may appear in opposition to the application. If the court finds that the demand or order is proper, that there is reasonable cause to believe there has been a violation of this chapter, and that the information sought or document or object demanded is relevant to the violation, it shall order the person to comply with the demand or order, subject to such modification as the court may prescribe. Upon motion by the person and for good cause shown, the court may make any further order in the proceedings which justice requires to protect the person from unreasonable annoyance, embarrassment, oppression, burden, or expense.

[C77, 79, 81, §553.10]

553.11 Protective orders.

Before the attorney general files an application under section 553.10 and upon application of any person who was served a written demand or court order under section 553.9, upon notice and hearing, and for good cause shown, the district court may make any order which justice requires to protect the person from annoyance, embarrassment, oppression, or undue burden of expense, including the following:

1. That the examination of this person shall not be taken or that documents or other tangible items shall not be produced for inspection and copying;

2. That the examination or production of documents or other tangible items shall be had only on specified terms and conditions, including a change in the time or place;

3. That certain matters shall not be inquired into or that the scope of the examination or production shall be limited to certain matters;

4. That the examination or production and inspection shall be conducted with only those persons present as designated by the court;

5. That the transcript of the examination shall be sealed and be opened only by order of the court;

6. That a trade secret or other confidential research, development, or commercial information shall not be disclosed or shall be disclosed only in a designated way.

[C77, 79, 81, §553.11]

553.12 Remedies.

The state or a person who is injured or threatened with injury by conduct prohibited under this chapter may bring suit to:

1. Prevent or restrain conduct prohibited under this chapter and remove the conduct's effect by injunction, divestiture, divorcement, dissolution of domestic enterprises right to do business in this state, compelling the forfeiture or restraint of the issuance of a certificate of incorporation, permit to transact business, license, or franchise, or granting other equitable relief. The state may bring suit under this section without posting bond.

2. Recover actual damages resulting from conduct prohibited under this chapter.

3. Recover, at the court's discretion, exemplary damages which do not exceed twice the actual damages awarded under subsection 2, from a person other than a city or county or legal entity created by a city or county, if:

a. The trier of fact determines that the prohibited conduct is willful or flagrant; and,

b. The person bringing suit is not the state.

4. Recover the necessary costs of bringing suit, including a reasonable attorney fee. However, the state may not recover any attorney fee.

[C77, 79, 81, §553.12]

84 Acts, ch 1020, §2

553.13 Civil penalty.

In addition to suit under section 553.12, the state may bring suit to assess a civil penalty against an enterprise whose conduct is prohibited under this chapter. The suit may be tried to the jury and the civil penalty provided for in this section shall be imposed by the court. The civil penalty assessed shall not exceed ten percent of the total value of the specific commodities by their brand, make, and size or of services either of which were the subject of the prohibited conduct sold in the relevant market in this state by the enterprise in each year in which this conduct occurred, but this penalty shall not exceed one hundred fifty thousand dollars. In computing this penalty, only the four most recent years in which the prohibited conduct occurred, as of commencement of suit under this section, shall be used in the computation.

[C77, 79, 81, §553.13]

553.14 Criminal penalties.

A person or a natural person having substantial control over an enterprise who knowingly and willfully engages in conduct prohibited by this chapter shall be guilty of a serious misdemeanor.

A person having substantial control over an enterprise who knowingly and willfully engages in bid rigging or price fixing involving a contract with the state or a governmental agency is guilty of a class "D" felony.

[C97, §5062; S13, §5062, 5067-c, 5077-a5; C24, 27, 31, 35, 39, §9908, 9918, 9926; C46, 50, 54, 58, 62, 66, 71, 73, 75, §553.3, 553.13, 553.21; C77, 79, 81, §553.14]

84 Acts, ch 1143, §1

553.15 Election of remedies.

The bringing of suit to assess a civil penalty against a person by filing a petition shall be an election of remedies to not bring a criminal prosecution against this person. The bringing of a criminal prosecution against a person by filing an information or returning an indictment shall be an election of remedies to not bring suit to assess a civil penalty against this person.

[C77, 79, 81, §553.15]

553.16 Limitations.

1. Suit by the state to assess a civil penalty or to obtain a criminal conviction under this

chapter must be commenced within four years after the cause of action accrues or, if there is fraudulent concealment of this cause of action, within four years after the cause of action becomes known, whichever period is later.

2. Suit under section 553.12 must be commenced within four years after the cause of action accrues or, if there is a fraudulent concealment of this cause of action, within four years after the cause of action becomes known, whichever period is later. However, if this cause is based, in whole or part, on the same set of facts as alleged in a suit brought under section 553.13, this period shall be suspended until one year after the suit brought under section 553.13 is concluded.

[C77, 79, 81, §553.16]

553.17 Prima facie evidence.

A final decree or judgment, other than a consent decree or consent judgment entered before trial, in a suit brought by the state is prima facie evidence against the defendant in a suit brought by any person other than the state under section 553.12 as to all matters respecting which this decree or judgment would be an estoppel between the state and the defendant. This section shall not affect the application of collateral estoppel or issue preclusion.

[C77, 79, 81, §553.17]

553.18 Debarment.

A contractor or supplier of goods or services to the state or a governmental agency, and the enterprise for which the illegal action was taken, convicted under this chapter, or convicted under the laws of any other state or the federal government for actions which would constitute a violation of this chapter, are prohibited from bidding on a governmental contract for one year from the date of conviction, unless the state or governmental agency accepting bids expressly allows the contractor or supplier to bid after being informed of the conviction.

84 Acts, ch 1143, §2

553.19 Antitrust fund.

1. An antitrust fund is created as a separate fund in the state treasury to be administered by the attorney general. Moneys credited to the fund shall include amounts received as a result of a state or federal civil antitrust judgment or settlement which are based on damages sustained by the state, civil penalties, costs, or attorney fees, and amounts which are specifically directed to the credit of the fund by the judgment or settlement, and amounts which are designated by the judgment or settlement for use by the attorney general for antitrust enforcement or education. Amounts based upon damages sustained by individuals or entities outside of state government not designated for antitrust enforcement purposes or amounts based upon actual damages awarded to the state which would not otherwise be deposited in the general fund of the state shall not be credited to the fund.

2. For each fiscal year, not more than five hundred thousand dollars is appropriated from the fund to the department of justice to be used for enforcement of this chapter and chapter 551, and for enforcement of federal antitrust laws and for public education about state and federal antitrust laws.

3. Notwithstanding section 8.33, moneys credited to the fund shall not revert to any other fund. Notwithstanding section 12C.7, interest or earnings on the moneys in the fund shall be credited to the fund.

2007 Acts, ch 213, §23