

APR 1 1975

Place On Calendar

Reprinted

HOUSE FILE 584

By COMMITTEE ON JUDICIARY AND
LAW ENFORCEMENT

Passed House, Date 5-1-75 (p. 1492) Passed Senate, Date _____

Vote: Ayes 62 Nays 34 Vote: Ayes _____ Nays _____

Approved June 28, 1976

Motion to reconsider lost 5-1 (1492)

A BILL FOR

1 An Act relating to competition between business, commercial,
2 or professional entities, prohibiting unreasonable restraints
3 of economic activities, providing for enforcement, and pro-
4 viding criminal and civil penalties.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. NEW SECTION. SHORT TITLE. This Act shall
2 be known and may be cited as the "Iowa Competition Law".

3 Sec. 2. NEW SECTION. DEFINITIONS. As used in this Act,
4 unless the context otherwise requires:

5 1. "Agreement" means any contract, combination, conspir-
6 acy, understanding, or arrangement, express or implied.

7 2. "Commodity" means tangible or intangible property,
8 real, personal, or mixed.

9 3. "Economic activity" means business, trade or commerce,
10 or other activity performed for economic gain.

11 4. "Enterprise" means a business, commercial or profes-
12 sional entity, including a corporation, partnership, limited
13 partnership, professional corporation, proprietorship, incor-
14 porated or unincorporated association, or other form of or-
15 ganization.

16 5. "Government agency" includes this state, the politi-
17 cal subdivisions thereof, and any public agency supported
18 in whole or in part by taxation.

19 6. "Person" means a natural person, estate, trust, en-
20 terprise or government agency.

21 7. "Price" includes rental, rate, fee or any other form
22 of payment for a commodity or service.

23 8. "Relevant market" means the geographical area of ef-
24 fective competition between competing products or services,
25 wholly or partially within this state.

26 9. "Service" means an activity performed or benefit con-
27 ferred for the purpose of economic gain.

28 Sec. 3. NEW SECTION. RESTRAINT OF ECONOMIC ACTIVITY.

29 An agreement which unreasonably restrains economic activity
30 in this state is unlawful.

31 Sec. 4. NEW SECTION. DETERMINATION OF UNREASONABLENESS.

32 An agreement affecting economic activity in this state is
33 unreasonable if its purpose or effect is substantially to
34 lessen, limit or suppress competition or to create or main-
35 tain a monopoly in a relevant market.

1 Sec. 5. NEW SECTION. ANCILLARY RESTRAINTS. An agree-
2 ment which restrains economic activity is not unreasonable
3 if it is ancillary to an otherwise lawful objective, and les-
4 sens, limits or suppresses competition no more than is rea-
5 sonably necessary to achieve that objective.

6 Sec. 6. NEW SECTION. AGREEMENTS UNREASONABLE PER SE.

7 1. An agreement between two or more persons who are in
8 competition is conclusively presumed to be unreasonable if,
9 with respect to a commodity or service bought, rented, or
10 sold to or from others by such persons or any of them, it
11 has the purpose or effect of:

12 a. Establishing, maintaining, or regulating the price
13 of such commodity or service;

14 b. Establishing, maintaining, or regulating the quantity
15 of such commodity or service produced, bought, rented, or
16 sold;

17 c. Establishing, maintaining, or regulating the share
18 or portion of the total supply or demand for such commodity
19 or service produced, bought, rented, or sold by any person;

20 d. Establishing, limiting, or allocating the geographi-
21 cal area in which any person may produce, buy, rent, or sell
22 such commodity or service; or

23 e. Limiting, or allocating the identity or number of
24 producers, purchasers, renters, or suppliers, actual or
25 potential, with whom any person may deal, or of transactions
26 in which any person may participate.

27 2. An agreement between a person who sells a commodity
28 or service and a person by whom such commodity or service
29 is bought for resale is conclusively presumed to be unrea-
30 sonable if such agreement has the purpose of establishing,
31 maintaining, or regulating the price at which such commodity
32 is resold.

33 Sec. 7. NEW SECTION. UNREASONABLE AGREEMENTS.

34 An agreement between two or more persons is unreasonable
35 if it has the purpose or effect of:

1 1. Conditioning the purchase, rental, or sale of a com-
2 modity or service produced, rented, bought or sold by such
3 persons or any of them, or the price or other contract term,
4 upon an agreement that a person party to such agreement shall
5 purchase an additional commodity or service;

6 2. Conditioning the purchase, rental, or sale of a com-
7 modity or service produced, bought, rented, or sold by such
8 persons or any of them, or the price or other contract term,
9 upon the understanding that a person party to such agree-
10 ment shall not purchase, rent or sell a commodity or service
11 to or from another person;

12 3. Conditioning the purchase, rental, or sale of a com-
13 modity or service produced, bought, rented, or sold by such
14 persons or any of them, or the price or other contract term,
15 upon an agreement that a person party to such agreement shall
16 not purchase, rent, or sell a commodity or service in a geo-
17 graphical area;

18 4. Making a person a director, officer or partner, in
19 two or more otherwise unaffiliated enterprises which are in
20 competition.

21 Sec. 8. NEW SECTION. MONOPOLIZATION. It is unlawful
22 for a person to monopolize, attempt to monopolize or agree
23 with another person to monopolize the sale or rental of com-
24 modity or service in a relevant market, with the intent of
25 excluding or suppressing competition or of committing any
26 of the acts specified in section six (6) of this Act.

27 Sec. 9. NEW SECTION. DETERMINATION OF INTENT. Without
28 otherwise limiting the effect of section eight (8) of this
29 Act, the intent there required may be inferred from a course
30 of conduct, and shall be presumed, subject to rebuttal, if
31 such monopolization is achieved or sought to be achieved
32 through the acquisition by a person of an asset from another
33 person where such persons are, or prior to such acquisition
34 were, in competition.

35 Sec. 10. NEW SECTION. LABOR ORGANIZATIONS EXEMPT. This

1 Act shall not prohibit the existence of any labor organiza-
2 tion instituted for the purpose of mutual help and not for
3 profit, nor shall it prohibit the conduct of such organiza-
4 tion or any member thereof in collectively bargaining over
5 wages, hours or other terms and conditions of employment.

6 Sec. 11. NEW SECTION. IOWA STATE COMMERCE COMMISSION
7 EXEMPT. This Act shall not apply to conduct lawfully
8 authorized or required by the Iowa state commerce commission;
9 provided, that in authorizing or requiring conduct otherwise
10 subject to this Act, the Iowa state commerce commission shall
11 find whether and the extent to which such conduct lessens,
12 limits or suppresses competition or creates or maintains a
13 monopoly in any relevant market and shall take into
14 consideration such finding together with such other factors
15 as the Iowa state commerce commission may be required by law
16 to consider.

17 Sec. 12. NEW SECTION. ATTORNEY GENERAL TO ENFORCE. The
18 attorney general, with such assistance as he may from time
19 to time require of the county attorneys in their respective
20 counties, shall prosecute criminal violations of this Act
21 and shall institute all civil actions and proceedings brought
22 hereunder in the name of the state.

23 Sec. 13. NEW SECTION. INVESTIGATION.

24 1. If the attorney general has reasonable cause to believe
25 that a person has engaged in, is engaging in, or is about
26 to engage in conduct prohibited by this Act, or if he believes
27 it to be in the public interest that an investigation be made
28 to ascertain whether a person has engaged in, is engaging
29 in, or is about to engage in such conduct, he shall make such
30 investigation as he deems necessary and may, prior to the
31 commencement of an action against such person under this Act:

32 a. Subpoena such person, its officers, directors, part-
33 ners, fiduciaries, or employees, compel their attendance
34 before him and examine them under oath;

35 b. Require the production of, examine and copy a docu-

1 ment or tangible thing in the possession of such person or
2 its officers, directors, partners, or fiduciaries;

3 c. Pursuant to order of a district court, upon a show-
4 ing that such is reasonably necessary to an investigation
5 being conducted under this section:

6 (1) Subpoena any other person, compel his attendance
7 before him and examine him under oath;

8 (2) Require the production of, examine and a copy of docu-
9 ment or other tangible thing in the possession of such per-
10 son; and

11 d. Pursuant to order of a district court, impound a docu-
12 ment or other tangible thing produced pursuant to this sec-
13 tion, and retain it in his possession until the completion
14 of all proceedings arising out of such investigation.

15 2. A subpoena issued pursuant to this section shall con-
16 tain the following information:

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

19 b. The date, time and place at which the person subpoenaed
20 is to appear or to produce documents or other tangible things;

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

24 3. Any procedure, testimony taken, or material produced
25 under this section shall be sealed by the court and be kept
26 confidential by the attorney general except that the attorney
27 general may transmit such information to the antitrust division
28 of the United States department of justice and to the attorney
29 general's office of any other state, until an action is filed
30 against a person under this Act for the violation under inves-
31 tigation, unless confidentiality is waived by the person being
32 investigated and the person who has testified, answered inter-
33 rogatories, or produced material, or disclosed is authorized
34 by the court.

35 Sec. 14. NEW SECTION. EFFECT OF SUBPOENA. A subpoena

1 issued by the attorney general pursuant to this Act shall
2 have the same force and effect as a subpoena issued by a clerk
3 of the district court in a civil case pursuant to section
4 six hundred twenty-two point sixty-three (622.63) of the Code.

5 Sec. 15. NEW SECTION. PROTECTIVE ORDERS. Upon petition
6 of any person subpoenaed pursuant to section thirteen (13)
7 of this Act and upon notice and for good cause shown the dis-
8 trict court may make any order which justice requires to
9 protect such person from annoyance, embarrassment, oppres-
10 sion, or undue burden of expense, including but not limited
11 to one or more of the following:

12 1. That the examination of such person not be taken or
13 that documents or other tangible things not be produced for
14 inspection and copying;

15 2. That the examination or production of documents or
16 other tangible things be had only on specified terms and con-
17 ditions, including a change in the time or place;

18 3. That certain matters not be inquired into, or that
19 the scope of the examination or production be limited to
20 certain matters;

21 4. That the examination or production and inspection be
22 conducted with no one present except persons designated by
23 the court;

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

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

29 Sec. 16. NEW SECTION. CRIMINAL VIOLATIONS.

30 1. A person who engages in conduct prohibited by section
31 six (6) of this Act is guilty of a misdemeanor and shall be
32 punished by a fine not to exceed fifty thousand dollars or
33 by imprisonment in the county jail for not more than one year,
34 or by both such fine and imprisonment.

35 2. A person who has previously been convicted under this

1 Act shall, upon any subsequent conviction under this Act,
2 be guilty of a felony and shall be punished by a fine of not
3 less than ten thousand dollars nor more than fifty thousand
4 dollars or by imprisonment in the penitentiary for not more
5 than five years, or by both such fine and imprisonment.

6 Sec. 17. NEW SECTION. CIVIL PENALTY. An enterprise which
7 engages in conduct prohibited by this Act shall, in addition
8 to the penalties contained in section sixteen (16) of this
9 Act, be liable at the suit of the state to a civil penalty
10 in an amount not to exceed five percent of the total value
11 of the commodities or services sold by it in this state in
12 each year in which such conduct occurred. In computing the
13 foregoing penalty, only the four most recent years in which
14 such conduct occurred, as of the date of the commencement
15 of an action under this section, shall be taken into account.

16 Sec. 18. NEW SECTION. REMOVAL FROM OFFICE. A natural
17 person in the position of officer, director, partner, employee
18 or agent of an enterprise, who knowingly causes, advises,
19 encourages or acquiesces in such enterprise's participation
20 in conduct prohibited by this Act, may be removed from such
21 position at the suit of the state and prohibited from hold-
22 ing that or any other position with, or receiving any com-
23 pensation directly or indirectly from such enterprise for
24 such period as the court may determine.

25 Sec. 19. NEW SECTION. EQUITABLE RELIEF. The district
26 court shall at the suit of the state enter such judgment or
27 decree as may be necessary to prevent, restrain the con-
28 tinuance or renewal of, or remove the effects of any con-
29 duct prohibited by this Act and may exercise all the powers
30 of a court of equity, including but not limited to injunc-
31 tion, divestiture, divorcement, dissolution of domestic en-
32 terprises to do business in this state, and compelling the
33 forfeiture of, or restraining the issuance of certificates
34 of incorporation, permits to transact business, licenses or
35 franchises.

1 Sec. 20. NEW SECTION. LIMITATIONS. An action or prose-
2 cution commenced under sections sixteen (16), seventeen (17)
3 and eighteen (18) of this Act shall be barred unless com-
4 menced within four years after the cause of action accrues,
5 or, where there is fraudulent concealment of said cause of
6 action, when said cause of action becomes known.

7 Sec. 21. NEW SECTION. EQUITABLE RELIEF. A person in-
8 jured or threatened with injury by conduct prohibited by this
9 Act may institute a suit in equity for relief when and under
10 the same conditions and principles as equitable relief is
11 granted in other cases.

12 Sec. 22. NEW SECTION. DAMAGES. A person injured by
13 conduct prohibited by this Act may recover the actual dam-
14 ages sustained, the costs of suit and reasonable attorney's
15 fees. If the conduct complained of is willful or flagrant
16 and is specified in section six (6) of this Act, the court
17 may in addition award punitive damages to any such person
18 not a government agency, in an amount not to exceed twice
19 the actual damages sustained.

20 Sec. 23. NEW SECTION. PRIMA FACIE EFFECT OF JUDGMENT
21 OR DECREE. A final judgment or decree, other than a consent
22 judgment or decree entered before any testimony has been
23 taken, in an action or proceeding brought under sections
24 sixteen (16), seventeen (17), eighteen (18) or nineteen (19)
25 of this Act shall be prima facie evidence against the defendant
26 therein in any action brought under section twenty-two (22)
27 of this Act as to all matters respecting which such judgment
28 or decree would be an estoppel as between the parties thereto.

29 Sec. 24. NEW SECTION. LIMITATIONS. An action brought
30 under section twenty-two (22) of this Act is barred unless
31 commenced within four years after the cause of action ac-
32 crued; provided, that the running of such period of limita-
33 tions shall be suspended during the pendency of and for one
34 year after the termination of an action or proceeding brought
35 under sections sixteen (16), seventeen (17), eighteen (18)

1 and nineteen (19) of this Act, and based in whole or part
2 on any matter complained of in the action brought under sec-
3 tion twenty-two (22) of this Act.

4 Sec. 25. NEW SECTION. VENUE. An action or proceeding
5 brought under this Act may be brought in the county where
6 the cause of action arose, where any defendant resides or
7 transacts business, or where an act in furtherance of the
8 conduct prohibited by this Act occurred.

9 Sec. 26. NEW SECTION. REMEDIES CUMULATIVE. The remedies
10 provided in this Act are cumulative.

11 Sec. 27. Chapter five hundred fifty-three (553), Code
12 1975, is repealed.

13 EXPLANATION

14 This bill prohibits unreasonable restraints of economic
15 activity in Iowa. Definitions for such terms are provided,
16 certain agreements are prohibited or presumed unreasonable,
17 exemptions are provided, and enforcement is vested primarily
18 in the office of the attorney general. Legal remedies and
19 procedures for the prevention of unreasonable restraints are
20 provided as well as both civil and criminal penalties.

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H-3701

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Amend House File 584 as follows:
1. Page 5, by striking line 35.
2. Page 6, by striking lines 1 thru 4 and inserting in lieu thereof the following:
"Sec. _____ New Section.
EFFECT OF SUBPEONA OR DEMAND
If a person objects to or otherwise fails to obey a subpoena or a demand to produce documents served upon him, the attorney general may file in the district 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 subpoena or 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 subpoena or demand is proper, there is reasonable cause to believe there has been a violation of this Act, and the information sought or document or object demanded is relevant to the violation, it shall order the person to comply with the subpoena or demand, 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 that justice requires to protect the person from unreasonable annoyance, embarrassment, oppression, burden, or expense."

H-3701 FILED - *Adopted 5/1 (1475)*
APRIL 30, 1975

BY NIELSEN of Polk

H-3702

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Amend House File 584 as follows:
1. Page 5, by inserting after line 34 the following:
"No information or evidence provided the attorney general by a person pursuant to this section shall be admitted in evidence, or used in any manner whatsoever, in any criminal prosecution. If a criminal prosecution under the provisions of this act is initiated in a state court against a person who has provided information pursuant to this section, the state shall have the burden of proof that the information so provided was not used in any manner to further the criminal investigation or prosecution."

H-3702 FILED - *Adopted 5/1 (1494)*
APRIL 30, 1975

BY NIELSEN of Polk

H-3696

1 Amend House File 584, page 4, line 5, by insert-
2 ing after the word "employment" the following: ",
3 nor shall provisions of this Act impose any liabil-
4 ity on any employer for any activity arising out of
5 or in connection with a collective bargaining agree-
6 ment, its negotiation, administration or enforce-
7 ment".

H-3696 FILED - *Adopted 5/1 (1488)*
APRIL 30, 1975

BY WELDEN of Hardin
KREAMER of Polk

H-3699

1 Amend House File 584, page 4, line 3, by insert-
2 ing after the comma the words "nor shall it prohibit
3 agreements among employers or agreements among
4 labor unions made for the purpose of furthering the
5 position of the agreeing employers, or agreeing
6 unions in the course of the collective bargaining
7 process,".

H-3699 FILED - *Withdrawn 5/1 (1488)*
APRIL 30, 1975

BY JESSE of Polk

H-3700

1 Amend the amendment H-3569, to House File 584 as
2 follows:
3 1. Page 1, by striking lines 8 through 12 and
4 inserting in lieu thereof the following: a
5 "___". Page 3, by striking lines 27 through 34."
6 2. Page 1, by striking lines 22 through 30 and b
7 inserting in lieu thereof the following:
8 "Persons engaged in the production of agricultural
9 or horticultural products may act together in associa-
10 tions, corporate or otherwise, with or without
11 capital stock, in collectively affecting production,
12 processing, preparing for market, handling, and
13 marketing of their products, and in manufacturing,
14 acquiring, purchasing, providing or selling
15 agricultural or horticultural supplies and services.
16 Such associations may require membership and may have
17 marketing, transportation, procuring, processing,
18 manufacturing and handling agencies in common, and
19 such associations and their members may make the
20 necessary contracts and agreements to carry out
21 their legitimate objects."

H-3700 FILED A-*Adopted 5/1 (1475)*
APRIL 30, 1975 B-*W.D.* "

BY JESSE of Polk
BRUNOW of Appanoose

H-3703

1 Amend House File 584, pages 3 and 4, by
2 striking all of section 10.

H-3703 FILED - *Lost 5/1 (1488)* BY BRANSTAD of Winnebago
APRIL 30, 1975

House File 584

H-3704

1 Amend House File 584, as follows:
2 1. By striking the "Explanation" in its
3 entirety and by substituting in lieu thereof the
4 following:

5
6 EXPLANATION
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8 This bill is so different in approach, so broad
9 and all-encompassing, that if enacted, will stifle or
10 kill legitimate business in this state; will prevent
11 additional businesses from coming into this state; will
12 result in innumerable law suits for many years to come
13 to define the meaning and intent of this legislation
14 and will provide full employment for anti-trust lawyers
15 for the next twenty years, will in many other ways be
16 extremely disruptive to all business and agriculture
17 and will be a burden upon the entire population of the
18 State of Iowa.

H-3704 FILED, LOST (1497)
APRIL 30, 1975

BY KREAMER of Polk
WELDEN of Hardin
EVANS of Grundy
MCELROY of Fremont
MILLEN of VanBuren
BROCKETT of Marshall
ROBERT of Madison

H-3708

1 Amend the amendment H-3569, to House File 584, as
2 follows:

3 1. Page 1, by striking lines 8 through 12 and
4 inserting in lieu thereof the following:

5 " Page 3, by striking lines 27 through 34."

6 2. Page 1, by striking lines 22 through 30 and
7 inserting in lieu thereof the following:

8 "Persons engaged in the production of agricultural
9 or horticultural products for the purpose of mutual
10 help and not conducted for profit may act together
11 in associations, corporate or otherwise, with or
12 without capital stock, in collectively affecting
13 production, processing, preparing for market,
14 handling, and marketing of their products, and in
15 manufacturing, acquiring, purchasing, providing or
16 selling agricultural or horticultural supplies and
17 services. Such associations may require membership
18 and may have marketing, transportation, procuring,
19 processing, manufacturing and handling agencies in
20 common, and such associations and their members may
21 make the necessary contracts and agreements to carry
22 out their legitimate objects."

H-3708 FILED - *Withdrawn 5/1 (1475)*
APRIL 30, 1975 *3714 submitted*

BY KOGLER of Mahaska
HULLINGER of Decatur

H-3714

1 Amend the amendment H-3569, to House File 584, as
 2 follows:
 3 1. Page 1, by striking lines 8 through 12 and
 4 inserting in lieu thereof the following:
 5 " Page 3, by striking lines 27 through 34." *a*
 6 2. Page 1, by striking lines 22 through 30 and *b*
 7 inserting in lieu thereof the following:
 8 "Persons engaged in the production of agricultural
 9 or horticultural products may act together in assoc-
 10 iations, corporate or otherwise, with or without
 11 capital stock for the purpose of mutual help and not
 12 conducted for profit in collectively affecting
 13 production, processing, preparing for market, hand-
 14 ling, and marketing of their products, and in manu-
 15 facturing, acquiring, purchasing, providing or
 16 selling agricultural or horticultural supplies and
 17 services. Such associations may require membership
 18 and may have marketing, transportation, procuring,
 19 processing, manufacturing and handling agencies in
 20 common, and such associations and their members may
 21 make the necessary contracts and agreements to carry
 22 out their legitimate objects."

H-3714 FILED *A. Wickham* BY KOOGLER of Mahaska
 APRIL 30, 1975 *B. Adopted 4/1 (476)* HULLINGER of Decatur

H-3719

1 Amend House File 584 as follows:
 2 1. Page 4, by inserting after line 16, the
 3 following new section:
 4 "Sec. . NEW SECTION. CONSISTENCY WITH FEDERAL
 5 EXEMPTIONS. Such exemptions from the application of
 6 the federal antitrust statutes as are now or are
 7 hereinafter provided by federal statutes shall be
 8 deemed exemptions to the provisions of this Act,
 9 it being the purpose with regard to exemptions that
 10 consistency between federal and state law be main-
 11 tained."
 12 2. By renumbering the remaining sections and
 13 internal references to accord with this amendment.

H-3719 FILED - *Lost 5/1 (1489)* BY BITTLE of Polk
 APRIL 30, 1975

SENATE AMENDMENT TO HOUSE AMENDMENT
 TO SENATE AMENDMENT TO
 HOUSE FILE 584

H-6740

1 Amend the House amendment, S-5783, to the Senate
 2 amendment, H-5733, to House File 584, as amended,
 3 passed and reprinted, as follows:
 4 1. Page 1, by striking lines 19 through 26.
 5 2. Page 1, by striking lines 31 through 50.
 6 3. Page 2, by striking lines 1 through 5.
 7 4. Page 2, by striking lines 16 through 19.
 8 5. Page 2, by striking line 20.

H-6740 FILED, HOUSE REFUSED TO CONCUR (2885)
 RECEIVED FROM SENATE
 MAY 19, 1976

Senate insisted 5/20

1 Amend the Bittle et al. amendment H- 3680 to
2 House File 584 as follows:

3 1. Page 1 by striking lines 7 through 50.

4 2. By striking pages 2 through 9 and inserting
5 in lieu thereof the following:

6 "Sec. 2. NEW SECTION. DEFINITIONS. As used in
7 this Act, unless the context otherwise requires:

8 1. "Person" means an individual, corporation,
9 business trust, partnership, association, or any other
10 legal entity.

11 2. "Relevant market" means the geographical area
12 of actual or potential competition in a line of
13 commerce, all or any part of which is within this
14 state.

15 Sec. 3. NEW SECTION. CONTRACT, COMBINATION, OR
16 CONSPIRACY TO RESTRAIN OR MONOPOLIZE TRADE. A
17 contract, combination, or conspiracy between two or
18 more persons in restraint of, or to monopolize, trade
19 or commerce in a relevant market is unlawful.

20 Sec. 4. NEW SECTION. ESTABLISHMENT, MAINTENANCE,
21 OR USE OF A MONOPOLY. The establishment, maintenance,
22 or use of a monopoly, or an attempt to establish a
23 monopoly, of trade or commerce in a relevant market
24 by any person, for the purpose of excluding competition
25 or controlling, fixing, or maintaining prices, is
26 unlawful.

27 Sec. 5. NEW SECTION. EXCLUSIONS.

28 1. Labor of a human being is not a commodity or
29 an article of commerce.

30 2. Nothing in this Act shall be construed to
31 forbid the existence and operation of any labor,
32 agricultural, or horticultural organization instituted
33 for the purpose of mutual help, while lawfully carrying
34 out its legitimate objects.

35 Sec. 6. NEW SECTION. JUDICIAL JURISDICTION.

36 An action for violation of this Act shall be brought
37 in the district court.

38 Sec. 7. NEW SECTION. OFFICIAL INVESTIGATION.

39 1. If the attorney general has reasonable cause
40 to believe that a person has information or is in
41 possession, custody, or control of any document or
42 other tangible object relevant to an investigation
43 for violation of this Act, he may serve upon the
44 person, before bringing any action in the district
45 court, a written demand to appear and be examined
46 under oath, to answer written interrogatories under
47 oath, and to produce the document or object for
48 inspection and copying. The demand shall:

49 a. Be served upon the person in the manner required
50 for service of process in this state.

1 b. Describe the nature of the conduct constituting
2 the violation under investigation.
3 c. Describe the document or object with sufficient
4 definiteness to permit it to be fairly identified.
5 d. Contain a copy of the written interrogatories.
6 e. Prescribe a reasonable time at which the person
7 must appear to testify, within which to answer the
8 written interrogatories, and within which the document
9 or object must be produced, and advise the person
10 that objections to or reasons for not complying with
11 the demand may be filed with the attorney general
12 on or before that time.
13 f. Specify a place for the taking of testimony
14 or for production and designate a person who shall
15 be custodian of the document or object.
16 g. Contain a copy of subsection two (2), of this
17 section.
18 2. If a person objects to or otherwise fails to
19 comply with the written demand served upon him under
20 subsection one (1) of this section the attorney general
21 may file in the district court of the county in which
22 the person resides or in which he maintains a principal
23 place of business within this state a petition for
24 an order to enforce the demand. Notice of hearing
25 the petition and a copy of the petition shall be
26 served upon the person, who may appear in opposition
27 to the petition. If the court finds that the demand
28 is proper, there is reasonable cause to believe there
29 has been a violation of this Act, and the information
30 sought or document or object demanded is relevant
31 to the violation, it shall order the person to comply
32 with the demand, subject to modification the court
33 may prescribe. Upon motion by the person and for
34 good cause shown, the court may make any further order
35 in the proceedings that justice requires to protect
36 the person from unreasonable annoyance, embarrassment,
37 oppression, burden, or expense.
38 3. Any procedure, testimony taken, or material
39 produced under this section shall be kept confidential
40 by the attorney general before bringing an action
41 against a person under this Act for the violation
42 under investigation, unless confidentiality is waived
43 by the person being investigated and the person who
44 has testified, answered interrogatories, or produced
45 material, or disclosure is authorized by the court.
46 Sec. 8. NEW SECTION. CIVIL PENALTY AND INJUNCTIVE
47 ENFORCEMENT BY STATE. The attorney general, or a
48 county attorney with the permission or at the request
49 of the attorney general, may bring an action for
50 appropriate injunctive relief and civil penalties

1 in the name of the state for a violation of this Act.
2 The court may assess for the benefit of the state
3 a civil penalty of not more than fifty thousand dollars
4 for each violation of this Act.

5 Sec. 9. NEW SECTION. DAMAGES AND INJUNCTIVE
6 RELIEF.

7 1. The state or any of its political subdivisions
8 threatened with injury or injured in its business
9 or property by a violation of this Act may bring an
10 action for appropriate injunctive relief, damages
11 sustained and, as determined by the court, taxable
12 costs and reasonable attorney's fees.

13 2. A person threatened with injury or injured
14 in his business or property by a violation of this
15 Act may bring an action for appropriate injunctive
16 relief, damages sustained and, as determined by the
17 court, taxable costs and reasonable attorney's fees.
18 If the trier of fact finds that the violation is
19 flagrant, it may increase recovery to an amount not
20 in excess of three times the damages sustained.

21 Sec. 10. NEW SECTION. JUDGMENT IN FAVOR OF STATE
22 AS PRIMA FACIE EVIDENCE. A final judgment or decree
23 determining that a person has violated this Act in
24 an action brought by the state under section eight
25 (8) or section nine (9), subsection one (1) of this
26 Act, other than a consent judgment or decree entered
27 before any testimony has been taken, is prima facie
28 evidence against him in any other action against him
29 under section nine (9) of this Act as to all matters
30 with respect to which the judgment or decree would
31 be an estoppel between the parties thereto. This
32 section does not affect the application of collateral
33 estoppel or issue preclusion.

34 Sec. 11. NEW SECTION. LIMITATIONS OF ACTIONS.

35 1. An action under section eight (8) of this Act
36 to recover a civil penalty is barred if it is not
37 commenced within four years after the cause of action
38 accrues.

39 2. An action under section eight (8) of this Act
40 to recover damages is barred if it is not commenced
41 within four years after the cause of action accrues,
42 or within one year after the conclusion of any timely
43 action brought by the state under section eight (8)
44 or section nine (9), subsection one (1) of this Act
45 based in whole or in part on any matter complained
46 of in the action for damages, whichever is later.

47 Sec. 12. NEW SECTION. UNIFORMITY OF APPLICATION
48 AND CONSTRUCTION. The Act shall be applied and
49 construed to effectuate its general purpose to make
50 uniform the law with respect to the subject of this

1 Act among those states that enact it.
2 Sec. 13. Chapter five hundred fifty-three (553),
3 Code 1975, is repealed."

H-3681

1 Amend House File 584 as follows:

2 1. Page 4, by striking lines 23 through 35.

3 2. Page 5, by striking lines 1 through 34 and
4 inserting in lieu thereof the following new section:

5 "Sec. __. NEW SECTION. CIVIL INVESTIGATIVE DEMAND.

6 1. Whenever the attorney general has reason to
7 believe that a person under investigation may be in
8 possession, custody, or control of any books,
9 documents, records, writings or tangible things,
10 hereinafter referred to as "documentary material"
11 relevant to a civil investigation of a violation of
12 section three (3) of this Act, he may, prior to the
13 institution of a civil or criminal proceeding thereon,
14 issue in writing, and cause to be served upon such
15 person, a civil investigative demand requiring such
16 person to produce such documentary material for
17 examination.

18 2. Each such demand shall contain all of the
19 following:

20 a. State the nature of the conduct constituting
21 the alleged antitrust violation which is under
22 investigation and the provision of law applicable
23 thereto.

24 b. Describe the class or classes of documentary
25 material to be produced thereunder with such
26 definiteness and certainty as to permit such
27 documentary material to be fairly identified.

28 c. Prescribe a return date which will provide
29 a reasonable period of time within which the
30 documentary material so demanded may be assembled
31 and made available for inspection and copying or
32 reproduction.

33 d. Identify the custodian to whom such documentary
34 material shall be made available.

35 3. No such demand shall:

36 a. Contain any requirement which would be held
37 to be unreasonable if contained in a subpoena duces
38 tecum issued by a court of this state in aid of a
39 grand jury investigation of such alleged violation;
40 or

41 b. Require the production of any documentary
42 material which would be privileged from disclosure
43 if demanded by a subpoena duces tecum issued by a
44 court of this state in aid of a grand jury
45 investigation of such alleged violation.

46 4. Service of a demand by the attorney general
47 as provided herein may be made by either of the
48 following:

49 a. Delivery of a duly executed copy thereof to
50 the place of business of the persons to be served

1 in this state or if the person has no place of business
2 in this state to his principal place of business or
3 to the residence of the person to be served.

4 b. Mailing by certified mail, return receipt
5 requested and signed by the person to whom service
6 is directed, a duly executed copy thereof addressed
7 to the person to be served at his place of business
8 in this state, or if the person has no place of
9 business in this state, to his principal place of
10 business or to the residence of the person to be
11 served.

12 5. A verified return by the individual serving
13 any such demand or petition setting forth the manner
14 of such service shall be proof of such service. In
15 the case of service by certified mail, such return
16 shall be accompanied by the return post office receipt
17 of delivery of such demand signed by the person to
18 whom service is directed.

19 6. The attorney general shall designate a member
20 of his staff as document custodian.

21 7. Any person upon whom any civil investigative
22 demand issued under this section has been duly served
23 shall make such documentary material available for
24 inspection and copying or reproduction to the custodian
25 designated therein at the principal place of business
26 of such person or at such other place as such custodian
27 and such person thereafter may agree and prescribe
28 in writing or as the court may direct on the return
29 date specified in such demand or on such latter date
30 as such custodian may prescribe in writing. Such
31 person may upon written agreement between such person
32 and the custodian substitute for copies of all or
33 any part of such documentary material originals
34 thereof.

35 8. The custodian to whom any documentary material
36 is so delivered shall take physical possession thereof,
37 and shall be responsible for the use made thereof
38 and for the return thereof pursuant to this section.
39 The custodian may cause the preparation of such copies
40 of such documentary material as may be required for
41 official use. While in the possession of the
42 custodian, no documentary material so produced or
43 copies thereof shall be available for examination,
44 without the consent of the person who produced such
45 documentary material, by any individual other than
46 the attorney general or a duly authorized member of
47 his staff. Under such reasonable terms and conditions
48 as the attorney general shall prescribe, documentary
49 material while in the possession of the custodian
50 shall be available for examination by the person who

1 produced such material or any duly authorized
2 representative of such person.

3 9. Whenever any attorney has been designated to
4 appear on behalf of the state, before any court or
5 grand jury in any case or proceeding involving any
6 alleged antitrust violation, the custodian may deliver
7 to such attorney such documentary material in the
8 possession of the custodian as such attorney determines
9 to be required for use in the presentation of such
10 case or proceeding on behalf of the state. Upon the
11 conclusion of any such case or proceeding, such
12 attorney shall return to the custodian any documentary
13 material so withdrawn and copies thereof which has
14 not passed into the control of such court or grand
15 jury through the introduction thereof into the record
16 of such case or proceeding.

17 10. Upon the completion of the investigation for
18 which any documentary material was produced under
19 this section and any case or proceeding arising from
20 such investigation, the custodian shall return to
21 the person who produced such documentary material
22 all such documentary material and copies thereof which
23 has not passed into the control of any court or grand
24 jury through the introduction thereof into the record
25 of such case or proceeding.

26 11. When any documentary material has been produced
27 by any person under this section for use in any
28 antitrust investigation, and no such case or proceeding
29 arising therefrom has been instituted within a
30 reasonable time after completion of the examination
31 and analysis of all evidence assembled in the course
32 of such investigation, such person shall be entitled,
33 upon written demand made upon the attorney general,
34 to the return of all documentary material and copies
35 thereof so produced by such person.

36 12. In the event of the death, disability, or
37 separation from service of the custodian of any
38 documentary material produced under any demand issued
39 under this section, or the official relief of such
40 custodian from the responsibility for the custody
41 and control of such documentary material, the attorney
42 general shall promptly designate another official
43 to serve as custodian thereof, and transmit notice
44 in writing to the person who produced such documentary
45 material as to the identity and address of the
46 successor so designated. Any successor so designated
47 shall have with regards to such materials all duties
48 and responsibilities imposed by this section upon
49 his predecessor in office with regard thereto except
50 that he shall not be held responsible for any default

1 or dereliction which occurred before his designation
2 as custodian.

3 13. Whenever any person fails to comply with any
4 civil investigative demand duly served upon him under
5 this section or whenever satisfactory copying or
6 reproduction of any such material cannot be done and
7 such person refuses to surrender such documentary
8 material, the attorney general, through such officers
9 or attorneys as he may designate, may file, in the
10 district court of the county in which such person
11 resides, is found, or transacts business, and serve
12 upon such person a petition for an order of such court
13 for the enforcement of this section, except that if
14 such person transacts business in more than one such
15 county such petition may be filed in any such county,
16 or in such other county in which such person transacts
17 business as may be agreed upon by the parties to such
18 petition.

19 14. Within twenty days after the service of any
20 such demand upon any persons, or at any time specified
21 in the demand, whichever period is shorter, such
22 person may file, in the district court of the county
23 within which such person resides, is found, or
24 transacts business in this state, or if such person
25 does not reside in or transact business in this state
26 in the district court within which the office of the
27 custodian is situated and serve upon such custodian
28 a petition for an order of such court modifying or
29 setting aside such demand. The time allowed for
30 compliance with the demand in whole or in part as
31 deemed proper and ordered by the court shall not run
32 during the pendency of such petition in the court.
33 Such petition shall specify each ground upon which
34 the petitioner relies in seeking such relief, and
35 may be based upon any failure of such demand to comply
36 with the provisions of this section or upon any
37 constitutional or other legal right or privilege of
38 such person.

39 15. At any time during which any custodian is
40 in custody or control of any documentary material
41 delivered by any person in compliance with any such
42 demand, such person may file in the district court
43 of the county within which the office of such custodian
44 is situated, and serve upon such custodian a petition
45 for an order of such court requiring the performance
46 by such custodian of any duty imposed upon him by
47 this section.

48 16. Whenever any petition is filed in any court
49 under this section, such court shall have jurisdiction
50 to hear and determine the matter so presented, and

1 to enter such order or orders as may be required to
2 carry into effect the provisions of this section.
3 Any final order so entered shall be subject to appeal
4 by writ of prohibition. Any disobedience of any final
5 order entered under this section by any court shall
6 be punished as a contempt thereof."

H-3680

1 Amend House File 584 by striking everything after
2 the enacting clause and inserting in lieu thereof
3 the following new sections:

4 "Section 1. NEW SECTION. SHORT TITLE. This Act
5 may be known and shall be cited as the "Iowa Antitrust
6 Law".

7 Sec. 2. NEW SECTION. DEFINITIONS. As used in
8 this Act, unless the context otherwise requires:

9 1. "Commodity" means any kind of real, personal
10 or mixed property, but does not include the labor
11 of a human being.

12 2. "Person" means any individual, corporation,
13 firm, partnership, incorporated or unincorporated
14 association or any other legal or commercial entity.

15 3. "Service" means any kind of activity performed
16 in whole or in part for financial gain but does not
17 include labor which is performed by individuals as
18 employees of others.

19 4. "Trade or commerce" means any economic activity
20 involving or relating to any commodity or service.

21 Sec. 3. NEW SECTION. RESTRAINTS, MONOPOLIES,
22 AND EXCLUSIVE DEALINGS.

23 1. Every contract, combination or conspiracy in
24 restraint of trade or commerce in this state is unlaw-
25 ful.

26 2. It is unlawful to monopolize, attempt to monop-
27 olize, or conspire to monopolize trade or commerce
28 in this state.

29 3. It is unlawful for any persons engaged in trade
30 or commerce in this state, in the course of such trade
31 or commerce, to lease or make a sale or contract for
32 sale of any commodity, whether patented or unpatented,
33 for use, consumption, or resale within this state,
34 or fix a price charged therefor, or discount from,
35 or rebate upon, such price, on the condition,
36 agreement, or understanding that the lessee or
37 purchaser thereof shall not use or deal in the
38 commodities of a competitor or competitors of the
39 lessor or seller, where the effect of such lease,
40 sale, or contract for such sale or such condition,
41 agreement, or understanding may be to substantially
42 lessen competition or tend to create a monopoly in
43 any line of trade or commerce in this state.

44 Sec. 4. NEW SECTION. EXEMPTIONS.

45 1. Nothing contained in this Act shall be construed
46 to forbid the existence or operation of:

47 a. Any labor organization, instituted for the
48 purpose of mutual help and not conducted for profit,
49 or of individual members thereof as to any activities
50 which are directed solely to labor objectives which

1 activities are lawful under the laws of either this
2 state or the United States.

3 b. Any agricultural or horticultural organization
4 instituted for the purpose of mutual help and not
5 conducted for profit, or of individual members thereof
6 as to any activities which are directed solely to
7 activities of such organizations which activities
8 are lawful under the laws of either this state or
9 the United States.

10 2. Nothing contained in this Act shall be con-
11 strued to apply to activities or arrangements expressly
12 approved or regulated by any regulatory body or officer
13 acting under statutory authority of this state or
14 of the United States.

15 Sec. 5. NEW SECTION. FINES, IMPRISONMENT, AND
16 ENFORCEMENT.

17 1. Any person who violates any of the provisions
18 of section three (3), subsections one (1) and two
19 (2), of this Act shall upon conviction be guilty of
20 a misdemeanor and shall be fined not to exceed fifty
21 thousand dollars or be imprisoned in the county jail
22 for not to exceed one year, or be subject to both
23 such fine and imprisonment. The attorney general
24 shall not commence prosecutions under this section
25 against any defendant who, at the time, is a defendant
26 with regard to any current information or indictment
27 filed by the United States for violation, or alleged
28 violation, of the federal antitrust statutes involving
29 substantially the same subject matter.

30 2. The attorney general, with such assistance
31 as he may require from the appropriate county attorney,
32 shall investigate suspected criminal violations of
33 this Act and shall commence and try all criminal
34 prosecutions under this Act. Prosecutions under this
35 Act may be commenced by information or indictment.
36 With regard to the investigation, commencement and
37 trial of such prosecutions, the attorney general shall
38 have all the powers and duties vested in him by law
39 with respect to criminal investigations and
40 prosecutions generally.

41 3. Any person who is found to be in contempt of
42 any court order issued to enforce the provisions of
43 section three (3) of this Act arising out of any
44 proceeding brought by the attorney general shall
45 forfeit and pay to the state a civil penalty of not
46 more than twenty thousand dollars. For the purposes
47 of this section, the court issuing any such court
48 order enforcing the provisions of section three (3)
49 of this Act shall retain jurisdiction, and the cause
50 shall be continued, and in such cases the attorney

1 general acting in the name of the state may petition
2 for recovery of civil penalties.

3 Sec. 6. NEW SECTION. ATTORNEY GENERAL, DECREE
4 AS EVIDENCE.

5 1. It shall be the duty of the attorney general
6 to enforce the provisions of this Act. It shall be
7 the duty of the attorney general to institute civil
8 proceedings to prevent and restrain violations of
9 this Act. The attorney general may employ special
10 counsel in suits to enforce the provisions of this
11 Act or in actions on behalf of the state or in his
12 representative capacity under subsection two (2) of
13 this section in the federal courts brought under
14 federal statutes pertaining to antitrust, trade
15 regulations, restraint of trade or price fixing
16 activities. The attorney general, at his discre-
17 tion, may direct the county attorney of any county
18 in which any proceeding is instituted or brought by
19 the state under this Act or in which any investigation
20 of a violation of this Act is occurring to aid and
21 assist him in the conduct of such investigations and
22 proceedings.

23 2. The attorney general may represent, besides
24 the state and any of its political subdivisions in
25 suits to enforce the provisions of this Act or in
26 actions brought in the federal courts under any federal
27 statute pertaining to antitrust, trade regulation,
28 restraint of trade or price fixing activities.

29 3. The attorney general is authorized to enter
30 into consent judgments or decrees with any party
31 defendant in an action brought under this Act. How-
32 ever, no such consent judgment or decree shall become
33 final until approved by the court where filed or until
34 a period of sixty days has elapsed since the filing
35 of the consent judgment or decree whichever occurs
36 first; provided, however, that no such approval may
37 be entered by the court until the thirty-first day
38 after the filing of the consent judgment or decree.

39 4. A final judgment or decree rendered in any
40 civil or criminal proceeding brought by the state
41 under this Act shall be prima facie evidence against
42 the defendant in any action or proceeding brought
43 by any other party under this Act against the defendant
44 as to all matters respecting which the judgment or
45 decree would be an estoppel between the parties
46 thereto, provided that any such action is maintained
47 within one year of the date the judgment of decree
48 is entered. This subsection does not apply to consent
49 judgments or decrees entered before the taking of
50 any testimony in the case or to judgments or decrees

1 entered in actions brought in the state courts under
2 section ten (10) of this Act.

3 Sec. 7. NEW SECTION. INJUNCTIVE RELIEF.

4 1. In addition to all other remedies provided
5 by this Act the court is invested with jurisdiction
6 to grant such preliminary or permanent injunctive
7 relief and to issue such temporary restraining orders
8 as necessary to prevent and restrain violations of
9 section three (3) of this Act.

10 2. In any civil action brought under this Act,
11 in addition to granting such prohibitory injunctions
12 and other restraints as it deems expedient to deter
13 the defendant from, and secure against, his committing
14 a future violation of this Act, the court may grant
15 such mandatory relief as is reasonably necessary to
16 restore or preserve fair competition in the trade
17 or commerce affected by the violation.

18 Sec. 8. NEW SECTION. CIVIL INVESTIGATIVE DEMAND.

19 1. Whenever the attorney general has reason to
20 believe that a person under investigation may be in
21 possession, custody, or control of any books,
22 documents, records, writings or tangible things,
23 hereinafter referred to as "documentary material"
24 relevant to a civil investigation of a violation of
25 section three (3) of this Act, he may, prior to the
26 institution of a civil or criminal proceeding thereon,
27 issue in writing, and cause to be served upon such
28 person, a civil investigative demand requiring such
29 person to produce such documentary material for
30 examination.

31 2. Each such demand shall contain all of the
32 following:

33 a. State the nature of the conduct constituting
34 the alleged antitrust violation which is under
35 investigation and the provision of law applicable
36 thereto.

37 b. Describe the class or classes of documentary
38 material to be produced thereunder with such
39 definiteness and certainty as to permit such
40 documentary material to be fairly identified.

41 c. Prescribe a return date which will provide
42 a reasonable period of time within which the
43 documentary material so demanded may be assembled
44 and made available for inspection and copying or
45 reproduction.

46 d. Identify the custodian to whom such documentary
47 material shall be made available.

48 3. No such demand shall:

49 a. Contain any requirement which would be held
50 to be unreasonable if contained in a subpoena duces

1 tecum issued by a court of this state in aid of a
2 grand jury investigation of such alleged violation;
3 or
4 b. Require the production of any documentary
5 material which would be privileged from disclosure
6 if demanded by a subpoena duces tecum issued by a
7 court of this state in aid of a grand jury
8 investigation of such alleged violation.
9 4. Service of a demand by the attorney general
10 as provided herein may be made by either of the
11 following:
12 a. Delivery of a duly executed copy thereof to
13 the place of business of the persons to be served
14 in this state or if the person has no place of business
15 in this state to his principal place of business or
16 to the residence of the person to be served.
17 b. Mailing by certified mail, return receipt
18 requested and signed by the person to whom service
19 is directed, a duly executed copy thereof addressed
20 to the person to be served at his place of business
21 in this state, or if the person has no place of
22 business in this state, to his principal place of
23 business or to the residence of the person to be
24 served.
25 5. A verified return by the individual serving
26 any such demand or petition setting forth the manner
27 of such service shall be proof of such service. In
28 the case of service by certified mail, such return
29 shall be accompanied by the return post office receipt
30 of delivery of such demand signed by the person to
31 whom service is directed.
32 6. The attorney general shall designate a member
33 of his staff as document custodian.
34 7. Any person upon whom any civil investigative
35 demand issued under this section has been duly served
36 shall make such documentary material available for
37 inspection and copying or reproduction to the custodian
38 designated therein at the principal place of business
39 of such person or at such other place as such custodian
40 and such person thereafter may agree and prescribe
41 in writing or as the court may direct on the return
42 date specified in such demand or on such latter date
43 as such custodian may prescribe in writing. Such
44 person may upon written agreement between such person
45 and the custodian substitute for copies of all or
46 any part of such documentary material originals
47 thereof.
48 8. The custodian to whom any documentary material
49 is so delivered shall take physical possession thereof,
50 and shall be responsible for the use made thereof

1 and for the return thereof pursuant to this section.
2 The custodian may cause the preparation of such copies
3 of such documentary material as may be required for
4 official use. While in the possession of the
5 custodian, no documentary material so produced or
6 copies thereof shall be available for examination,
7 without the consent of the person who produced such
8 documentary material, by any individual other than
9 the attorney general or a duly authorized member of
10 his staff. Under such reasonable terms and conditions
11 as the attorney general shall prescribe, documentary
12 material while in the possession of the custodian
13 shall be available for examination by the person who
14 produced such material or any duly authorized
15 representative of such person.

16 9. Whenever any attorney has been designated to
17 appear on behalf of the state, before any court or
18 grand jury in any case or proceeding involving any
19 alleged antitrust violation, the custodian may deliver
20 to such attorney such documentary material in the
21 possession of the custodian as such attorney determines
22 to be required for use in the presentation of such
23 case or proceeding on behalf of the state. Upon the
24 conclusion of any such case or proceeding, such
25 attorney shall return to the custodian any documentary
26 material so withdrawn and copies thereof which has
27 not passed into the control of such court or grand
28 jury through the introduction thereof into the record
29 of such case or proceeding.

30 10. Upon the completion of the investigation for
31 which any documentary material was produced under
32 this section and any case or proceeding arising from
33 such investigation, the custodian shall return to
34 the person who produced such documentary material
35 all such documentary material and copies thereof which
36 has not passed into the control of any court or grand
37 jury through the introduction thereof into the record
38 of such case or proceeding.

39 11. When any documentary material has been produced
40 by any person under this section for use in any
41 antitrust investigation, and no such case or proceeding
42 arising therefrom has been instituted within a
43 reasonable time after completion of the examination
44 and analysis of all evidence assembled in the course
45 of such investigation, such person shall be entitled,
46 upon written demand made upon the attorney general,
47 to the return of all documentary material and copies
48 thereof so produced by such person.

49 12. In the event of the death, disability, or
50 separation from service of the custodian of any

1 documentary material produced under any demand issued
2 under this section, or the official relief of such
3 custodian from the responsibility for the custody
4 and control of such documentary material, the attorney
5 general shall promptly designate another official
6 to serve as custodian thereof, and transmit notice
7 in writing to the person who produced such documentary
8 material as to the identity and address of the
9 successor so designated. Any successor so designated
10 shall have with regards to such materials all duties
11 and responsibilities imposed by this section upon
12 his predecessor in office with regard thereto except
13 that he shall not be held responsible for any default
14 or dereliction which occurred before his designation
15 as custodian.

16 13. Whenever any person fails to comply with any
17 civil investigative demand duly served upon him under
18 this section or whenever satisfactory copying or
19 reproduction of any such material cannot be done and
20 such person refuses to surrender such documentary
21 material, the attorney general, through such officers
22 or attorneys as he may designate, may file, in the
23 district court of the county in which such person
24 resides, is found, or transacts business, and serve
25 upon such person a petition for an order of such court
26 for the enforcement of this section, except that if
27 such person transacts business in more than one such
28 county such petition may be filed in any such county,
29 or in such other county in which such person transacts
30 business as may be agreed upon by the parties to such
31 petition.

32 14. Within twenty days after the service of any
33 such demand upon any persons, or at any time specified
34 in the demand, whichever period is shorter, such
35 person may file, in the district court of the county
36 within which such person resides, is found, or
37 transacts business in this state, or if such person
38 does not reside in or transact business in this state
39 in the district court within which the office of the
40 custodian is situated and serve upon such custodian
41 a petition for an order of such court modifying or
42 setting aside such demand. The time allowed for
43 compliance with the demand in whole or in part as
44 deemed proper and ordered by the court shall not run
45 during the pendency of such petition in the court.
46 Such petition shall specify each ground upon which
47 the petitioner relies in seeking such relief, and
48 may be based upon any failure of such demand to comply
49 with the provisions of this section or upon any
50 constitutional or other legal right or privilege of

1 such person.

2 15. At any time during which any custodian is
3 in custody or control of any documentary material
4 delivered by any person in compliance with any such
5 demand, such person may file in the district court
6 of the county within which the office of such custodian
7 is situated, and serve upon such custodian a petition
8 for an order of such court requiring the performance
9 by such custodian of any duty imposed upon him by
10 this section.

11 16. Whenever any petition is filed in any court
12 under this section, such court shall have jurisdiction
13 to hear and determine the matter so presented, and
14 to enter such order or orders as may be required to
15 carry into effect the provisions of this section.
16 Any final order so entered shall be subject to appeal
17 by writ of prohibition. Any disobedience of any final
18 order entered under this section by any court shall
19 be punished as a contempt thereof.

20 Sec. 9. NEW SECTION. SELF INCRIMINATION. In
21 any investigation or proceeding brought to enforce
22 the provisions of this Act, no individual shall be
23 permitted to refuse to answer any question material
24 to the matter in controversy or to refuse to produce
25 documentary material on the ground that the testimony
26 or documentary material required of him may tend to
27 incriminate him or subject him to a penalty; but no
28 such person shall be subject to criminal prosecution
29 or to any action for a criminal penalty or forfeiture
30 on account of any transaction, matter or thing
31 concerning which he may testify or produce documentary
32 material.

33 Sec. 10. NEW SECTION. PRIVATE SUITS. Any person,
34 including the state, who is injured in his business
35 or property by reason of anything forbidden or declared
36 unlawful by this Act may sue therefor in any county
37 in which the defendant or defendants, or any of them,
38 reside, or have any officer, agent or representative,
39 or in which any such defendant, or any agent, officer
40 or representative may be found. Such person may:

41 1. Sue for damages sustained by him, and if the
42 judgment is for the plaintiff he shall be awarded
43 threefold damages by him sustained and reasonable
44 attorneys' fees as determined by the court, together
45 with the costs of suit; and

46 2. Bring proceedings to enjoin the unlawful
47 practices, and if decree is for the plaintiff he shall
48 be awarded reasonable attorneys' fees as determined
49 by the court, together with the costs of the suit.

50 Sec. 11. NEW SECTION. VENUE, LIMITATIONS, AND

1 COMMERCE.

2 1. Any action or proceeding, civil or criminal,
3 authorized by this Act, shall be brought in the
4 district court of the county in which any defendant
5 resides, engages in business or has an agent, unless
6 otherwise specifically provided herein.

7 2. Any action brought under this Act shall be
8 barred unless commenced within four years after the
9 cause of action accrued. No cause of action barred
10 under existing law on the effective date of this Act
11 shall be revived by this Act.

12 3. Whenever any civil or criminal proceeding is
13 commenced by the state to prevent, restrain or punish
14 violations of this Act, but not including an action
15 under section ten (10) of this Act, brought by the
16 state, the running of the statute of limitations in
17 respect to every private right of action arising under
18 this Act based in whole or in part on any matter
19 complained of in such proceedings shall be suspended
20 during the pendency thereof and for one year
21 thereafter, except, however, that whenever the running
22 of the statute of limitations in respect of a private
23 cause of action arising under this Act is suspended
24 hereunder, any action to enforce such cause of action
25 shall be forever barred unless commenced either within
26 the period of suspension or within four years after
27 the cause of action accrued.

28 4. No action under this Act shall be barred on
29 the ground that the activity or conduct complained
30 of in any manner affects or involves interstate or
31 foreign commerce.

32 Sec. 12. NEW SECTION. CONSTRUCTION. This Act
33 shall be construed in harmony with ruling judicial
34 interpretations of comparable federal antitrust
35 statutes.

36 Sec. 13. Chapter five hundred fifty-three (553),
37 Code 1975, is repealed."

H-3680 FILED - *Last 4/30 (1458)*
APRIL 29, 1975

BY BITTLE of Polk
MIDDLETON of Black Hawk
VARLEY of Adair
LIPSKY of Linn
EVANS of Grundy
KREAMER of Polk

1 Amend House File 584 as follows:

2 1. Page 1, lines 23 and 24, by striking the word
3 "effective" and inserting in lieu thereof the words
4 "actual or potential".

a

5 2. Page 2, line 34, by inserting after the word
6 "unreasonable" the words ", as defined in section
7 four (4) of this Act,".

B

8 3. Page 3, lines 30, 31, and 32, by striking the
9 words "and shall be presumed, subject to rebuttal,
10 if such monopolization is achieved or sought to be
11 achieved through" and by inserting in lieu thereof
12 the words "including but not limited to".

c

13 4. Page 4, by striking lines 6 through 16 and
14 inserting in lieu thereof the following new sections:

d

15 "Sec. . NEW SECTION. REGULATED INDUSTRIES
16 EXEMPT. Nothing contained in this Act shall be con-
17 strued to apply to the activities or arrangements
18 expressly approved or regulated by any regulatory
19 body or officer acting under statutory authority of
20 this state or of the United States.

21 Sec. . NEW SECTION. AGRICULTURAL EXEMPTION.
22 Persons engaged in the production of agricultural
23 or horticultural products may act together in as-
24 sociations, corporate or otherwise, with or without
25 capital stock, in collectively processing, preparing
26 for market, handling, and marketing of such products.
27 Such associations may have marketing agencies in
28 common and such associations and their members may
29 make the necessary contracts and agreements to carry
30 out its legitimate objects."

31 5. Page 5, by inserting after line 34 the follow-
32 ing new subsection:

e

33 " . Nothing in this Act shall be construed to
34 limit or abridge statutory or constitutional limita-
35 tions on self-incrimination, unless immunity is granted
36 pursuant to sections seven hundred eighty-two point
37 nine (782.9) through seven hundred eighty-two point
38 eleven (782.11) of the Code."

39 6. Page 6, line 34, by inserting after the period
40 the sentence "The return of an indictment shall con-
41 stitute an election of remedies and a petition may
42 not be filed pursuant to section seventeen (17) of
43 this Act arising out of the same conduct."

f

44 7. Page 6, by striking line 35.

45 8. Page 7, by striking lines 1 through 5.

46 9. Page 7, lines 7, 8, and 9, by striking the
47 words ", in addition to the penalties contained in
48 section sixteen (16) of this Act,".

49 10. Page 7, line 15, by inserting after the period
50 the sentence "The filing of a petition pursuant to

Page 2

1 this section shall constitute an election of
2 remedies and an action may not be commenced under
3 section sixteen (16) of this Act arising out of
4 the same conduct."

5 11. Page 9, by striking lines 9 and 10.

6 12. By renumbering the remaining sections, sub-
7 sections, and internal references to accord with this
8 amendment.

SENATE AMENDMENT TO HOUSE FILE 584

H-5733

1 Amend House File 584, as amended and passed by
2 the House and reprinted, by striking everything after
3 the enacting clause and inserting in lieu thereof
4 the following:

5 "Section 1. NEW SECTION. SHORT TITLE. This Act
6 shall be known and may be cited as the "Iowa
7 Competition Law".

8 Sec. 2. NEW SECTION. CONSTRUCTION. This Act
9 shall be construed to complement and be harmonized
10 with the applied laws of the United States which have
11 the same or similar purpose as this Act. This
12 construction shall not be made in such a way as to
13 constitute a delegation of state authority to the
14 federal government, but shall be made to achieve
15 uniform application of the state and federal laws
16 prohibiting restraints of economic activity and
17 monopolistic practices.

18 Sec. 3. NEW SECTION. DEFINITIONS. As used in
19 this Act, unless the context otherwise requires:

20 1. "Commodity" means tangible or intangible
21 property, real, personal, or mixed.

22 2. "Enterprise" means a business, commercial or
23 professional entity, including a corporation,
24 partnership, limited partnership, professional
25 corporation, proprietorship, incorporated or
26 unincorporated association, or other form of
27 organization.

28 3. "Government agency" means the state, its
29 political subdivisions, and any public agency supported
30 in whole or in part by taxation.

31 4. "Person" means a natural person, estate, trust,
32 enterprise or government agency.

33 5. "Price" includes the terms and conditions of
34 sale, rental, rate, fee, or any other form of payment
35 for a commodity or service.

36 6. "Relevant market" means the geographical area
37 of actual or potential competition in a line of
38 commerce, all or any part of which is within this
39 state.

40 7. "Service" means any activity which is performed
41 in whole or part for financial gain.

42 8. "Trade or commerce" means any economic activity
43 involving or relating to any commodity, service, or
44 business activity.

45 Sec. 4. NEW SECTION. RESTRAINT PROHIBITED. A
46 contract, combination, or conspiracy between two or
47 more persons shall not restrain or monopolize trade
48 or commerce in a relevant market.

49 Sec. 5. NEW SECTION. MONOPOLY PROHIBITED. A
50 person shall not attempt to establish or establish,

1 maintain, or use a monopoly of trade or commerce in
2 a relevant market for the purpose of excluding
3 competition or of controlling, fixing, or maintaining
4 prices.

5 Sec. 6. NEW SECTION. EXEMPTIONS. This Act shall
6 not be construed to prohibit:

7 1. The activities of any labor organization,
8 individual members of such an organization, or group
9 of such organizations, of any employer or group of
10 employers, or of any groups of employees, if these
11 activities are directed solely to legitimate labor
12 objectives which are permitted under the laws of
13 either this state or the United States.

14 2. The activities of any agricultural or
15 horticultural organization, whether incorporated or
16 unincorporated, or of the individual members of such
17 organizations, if these activities carry out the
18 legitimate objectives of such organizations, to the
19 extent permitted under the laws of either this state
20 or the United States.

21 3. The activities of persons engaged in the
22 production of agricultural products when these persons
23 act together in associations, corporate or otherwise,
24 with or without capital stock, in collectively
25 processing, preparing for market, handling, and
26 marketing the products of these persons, to the extent
27 permitted under the laws of either this state or the
28 United States. Activities included under this
29 subsection are the maintaining of marketing and
30 purchasing agencies in common and the making of
31 necessary contracts and agreements to effect such
32 purposes. However, such associations must be operated
33 for the mutual benefit of these persons acting as
34 producers to qualify under this subsection.

35 4. The activities or arrangements expressly
36 approved or regulated by any regulatory body or officer
37 acting under authority of this state or of the United
38 States.

39 Sec. 7. NEW SECTION. ATTORNEY GENERAL TO ENFORCE.
40 The attorney general, with such assistance as may
41 be required from time to time of the county attorneys
42 in their respective counties, shall institute all
43 civil actions and proceedings brought under this Act
44 in the name of the state.

45 Sec. 8. NEW SECTION. VENUE. A suit or proceeding
46 brought under this Act may be brought in the county
47 where the cause of action arose, where any defendant
48 resides or transacts business, or where an act in
49 furtherance of the conduct prohibited by this Act
50 occurred.

Sec. 9. NEW SECTION. INVESTIGATION.

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

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

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

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

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

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

25 d. Upon an order of a district court, impound
26 a document or other tangible item produced pursuant
27 to this section and retain possession of it until
28 the completion of all proceedings arising out of the
29 investigation.

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

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

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

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

42 3. Any procedure, testimony taken, or material
43 produced under this section shall be sealed by the
44 court and be kept confidential by the attorney general,
45 until an action is filed against a person under this
46 Act for the violation under investigation, unless
47 confidentiality is waived by the person being
48 investigated and the person who has testified, answered
49 interrogatories, or produced material, or unless
50 disclosure is authorized by the court. However, the

1 attorney general may, at any time, transmit information
2 collected under this section to the antitrust division
3 of the United States department of justice and to
4 the attorney general's office of any other state.

5 4. This Act shall not be construed to limit or
6 abridge statutory or constitutional limitations on
7 self-incrimination.

8 Sec. 10. NEW SECTION. INVESTIGATION ENFORCEMENT.

9 If a person objects or otherwise fails to obey a
10 written demand or court order issued under section
11 nine (9) of this Act, the attorney general may file
12 in the district court of the county in which the
13 person resides or maintains a principal place of
14 business within this state an application for an order
15 to enforce the demand or order. Notice of hearing
16 and a copy of the application shall be served upon
17 the person, who may appear in opposition to the
18 application. If the court finds that the demand or
19 order is proper, that there is reasonable cause to
20 believe there has been a violation of this Act, and
21 that the information sought or document or object
22 demanded is relevant to the violation, it shall order
23 the person to comply with the demand or order, subject
24 to such modification as the court may prescribe.
25 Upon motion by the person and for good cause shown,
26 the court may make any further order in the proceedings
27 which justice requires to protect the person from
28 unreasonable annoyance, embarrassment, oppression,
29 burden, or expense.

30 Sec. 11. NEW SECTION. PROTECTIVE ORDERS. Upon
31 application of any person who was served a written
32 demand or court order under section nine (9) of this
33 Act, upon notice and hearing, and for good cause
34 shown, the district court may make any order which
35 justice requires to protect the person from annoyance,
36 embarrassment, oppression, or undue burden of expense,
37 including the following:

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

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

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

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

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

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

7 Sec. 12. NEW SECTION. REMEDIES. The state or
8 a person who is injured or threatened with injury
9 by conduct prohibited under this Act may bring suit
10 to:

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

20 2. Recover actual damages resulting from conduct
21 prohibited under this Act.

22 3. Recover, at the court's discretion, exemplary
23 damages which do not exceed twice the actual damages
24 awarded under subsection two (2) of this section if:

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

27 b. The person bringing suit is not the state.

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

31 Sec. 13. NEW SECTION. CIVIL PENALTY. In addition
32 to suit under section twelve (12) of this Act, the
33 state may bring suit to assess a civil penalty against
34 an enterprise whose conduct is prohibited under this
35 Act. The suit may be tried to the jury and the civil
36 penalty provided for in this section shall be imposed
37 by the court. The civil penalty assessed shall not
38 exceed ten percent of the total value of the specific
39 commodities by their brand, make, and size or of
40 services either of which were the subject of the
41 prohibited conduct sold in the relevant market in
42 this state by the enterprise in each year in which
43 this conduct occurred, but this penalty shall not
44 exceed one hundred fifty thousand (150,000) dollars.
45 In computing this penalty, only the four most recent
46 years in which the prohibited conduct occurred, as
47 of commencement of suit under this section, shall be
48 used in the computation.

49 Sec. 14. NEW SECTION. LIMITATIONS.

50 1. Suit by the state under section thirteen (13)

1 of this Act must be commenced within four years after
 2 the cause of action accrues or, if there is fraudulent
 3 concealment of this cause of action, within four years
 4 after the cause of action becomes known, whichever
 5 period is later.
 6 2. Suit by any person under section twelve (12)
 7 of this Act must be commenced within four years after
 8 the cause of action accrues. However, if this cause
 9 is based, in whole or part, on the same set of facts
 10 as alleged in a suit brought under section thirteen
 11 (13) of this Act, this period shall be extended until
 12 one year after the suit brought under section thirteen
 13 (13) of this Act is concluded.

14 Sec. 15. NEW SECTION. PRIMA FACIE EVIDENCE.
 15 A final decree or judgment, other than a consent
 16 decree or consent judgment entered before trial, in
 17 a suit brought by the state under sections twelve
 18 (12) and thirteen (13) of this Act, is prima facie
 19 evidence against the defendant in a suit brought by
 20 any person other than the state under section twelve
 21 (12) of this Act as to all matters respecting which
 22 this decree or judgment would be an estoppel between
 23 the state and the defendant. This section shall not
 24 affect the application of collateral estoppel or issue
 25 preclusion.

26 Sec. 16. Chapter five hundred fifty-three (553),
 27 Code 1975, is repealed.

28 Sec. 17. NEW SECTION. EFFECTIVE DATE. This Act
 29 shall take effect on January 1, 1977."

H-5733 FILED
 RECEIVED FROM SENATE
 MARCH 11, 1976

House concurred as amended by 6523 5/4

HOUSE FILE 584

H-6454

1 Amend the Senate amendment, H-5733, to House File
 2 584, as amended, passed and reprinted by the House,
 3 page 5, by inserting after line 48 the following:
 4 "Sec. _____. COSTS OF UNSUCCESSFUL SUIT. A.
 5 1. If a person against whom a suit is brought
 6 under sections twelve (12) or thirteen (13) of this
 7 Act prevails in the action, the court may permit this
 8 person to recover the necessary costs or part of the
 9 costs of defending in the action, including a
 10 reasonable attorney fee, from the state or person
 11 bringing the suit.
 12 2. There is appropriated from the general fund B
 13 of the state from moneys not otherwise appropriated
 14 an amount sufficient to pay any costs recovered from
 15 the state under subsection one (1) of this section."

H-6454 FILED A- *Cost B- withdrawn* BY BROCKETT of Marshall
 APRIL 28, 1976 *5/4 (5423)*

H-6523

1 Amend the Senate amendment, H-5733, to House File
2 584, as amended, passed, and reprinted by the House,
3 as follows:

4 1. Page 2, by striking lines 28 through 31 and
5 inserting in lieu thereof the following: "United
6 States. These associations may have marketing and
7 purchasing agencies in common and their members may
8 make the necessary contracts and agreements to effect
9 such".

10 2. Page 2, line 33, by striking the words "these
A11 persons" and inserting in lieu thereof the words "the
12 members of these associations".

13 3. Page 3, line 50, by striking the words "
14 However, the" and inserting in lieu thereof the words
15 "for the purposes of interstate cooperation in
16 enforcing this Act and similar state and federal
17 laws."

18 4. Page 4, by striking lines 1 through 4.

19 5. Page 4, by inserting after line 7 the following:

20 "5. Evidence obtained from a natural person
21 pursuant to the provisions of this section shall not
B22 be introduced in a subsequent criminal prosecution
23 of this person. However, evidence obtained from a
24 natural person pursuant to a grand jury proceeding
25 may be so introduced."

26 6. Page 4, line 30, by striking the word "Upon"
27 and inserting in lieu thereof the words "Before the
A28 attorney general files an application under section
29 ten (10) of this Act and upon".

30 7. Page 5, by inserting after line 48 the
31 following:

32 "Sec. ____ . NEW SECTION. CRIMINAL PENALTIES.
33 A person or a natural person having substantial control
34 over an enterprise who knowingly and willfully engages
35 in conduct prohibited by this Act shall be, upon
36 conviction, fined not to exceed fifty thousand,
37 imprisoned in the county jail for not more than one
38 year, or both so fined and imprisoned.

B39 Sec. ____ . NEW SECTION. ELECTION OF REMEDIES.
40 The bringing of suit to assess a civil penalty against
41 a person by filing a petition shall be an election
42 of remedies to not bring a criminal prosecution against
43 this person. The bringing of a criminal prosecution
44 against a person by filing an information or returning
45 an indictment shall be an election of remedies to
46 not bring suit to assess a civil penalty against this
47 person."

48 8. Page 5, line 50, by striking the words "under
49 section thirteen (13)" and inserting in lieu thereof
50 the words "to assess a civil penalty or to obtain

H-6523

Page 2

- 1 a criminal conviction under".
2 9. Page 6, line 1, by striking the word "of".
3 10. Page 6, line 6, by striking the words "by
4 any person".
5 11. Page 6, line 8, by inserting after the word
6 "accrues" the words "or, if there is a fraudulent
7 concealment of this cause of action, within four years
8 after the cause of action becomes known, whichever
9 period is later".
10 12. Page 6, line 11, by striking the word
11 "extended" and inserting in lieu thereof the word
12 "suspended".
13 13. Page 6, line 17, by striking the words "under
14 sections twelve".
15 14. Page 6, line 18, by striking the words "(12)
16 and thirteen (13) of this Act".
17 15. Page 6, by striking lines 28 and 29.

H-6523 FILED, H-6523A and BY JESSE of Polk
H-6523B ADOPTED, H-6523C, ADOPTED (2421, 2422)
MAY 4, 1976

HOUSE FILE 584

H-6524

- 1 Amend amendment H-6523 to Senate amendment
2 H-5733, to House File 584, as passed and reprinted,
3 as follows:
4 1. Page 1, line 36, by inserting after the
5 word "thousand" the following: "(50,000) dollars".

H-6524 FILED, ADOPTED BY BY JESSE of Polk
UNANIMOUS CONSENT (2421)
MAY 4, 1976

House File 584

H-3656

- 1 Amend the Committee on Judiciary and Law Enforce-
2 ment amendment H-3569, to page 4 of House File 584 as
3 follows:
4 1. Line 25, after the word "stock," insert the
5 following: "in collectively affecting production and".

H-3656 FILED - *Withdrawn 5/1 (1477)* BY DYRLAND of Clayton
APRIL 24, 1975

Son. Judiciary 5/7, Pass per 5234 2/27

House File 584
Judiciary
Redmond, Chairman
Shaw
Willits

HOUSE FILE 584

By COMMITTEE ON JUDICIARY AND
LAW ENFORCEMENT

(As Amended and Passed by the House)

House File 584
Judiciary
Redmond, Chairperson
Kelly
Willits
Shaw
Rodgers

*per Senate
amendment
is amended*

Passed House, Date 5-4-76 (p. 2424) Passed Senate, Date 3/9/76 (p. 804)

Vote: Ayes 63 Nays 22 Vote: Ayes 37 Nays 11

Approved June 28, 1976

*Passed Senate per House amendment as amended
5-18-76 (2028)*

35-12

A BILL FOR

1 An Act relating to competition between business, commercial,
2 or professional entities, prohibiting unreasonable restraints
3 of economic activities, providing for enforcement, and pro-
4 viding criminal and civil penalties.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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Conference Committee

*Representatives Jessor, Small, Monroe, Egan, Varley 5/21 (2002)
Senators Redmond, Carr, Coleman, Shaw, Hill of Paul 5/20 (2127)*

Second Conference Committee

*Representatives Jessor, etc. as above 5/25 (2170)
Senators Redmond, etc. as above 5/26*

House Amendments

Passed per Second Conference Committee Report

*House 5-27-76 (p. 3244)
71-23*

*Senate 5-28-76 (p. 2438)
26-24*

1 Section 1. NEW SECTION. SHORT TITLE. This Act shall
2 be known and may be cited as the "Iowa Competition Law".
3 Sec. 2. NEW SECTION. DEFINITIONS. As used in this Act,
4 unless the context otherwise requires:
5 1. "Agreement" means any contract, combination, conspir-
6 acy, understanding, or arrangement, express or implied.
7 2. "Commodity" means tangible or intangible property,
8 real, personal, or mixed.
9 3. "Economic activity" means business, trade or commerce,
10 or other activity performed for economic gain.
11 4. "Enterprise" means a business, commercial or profes-
12 sional entity, including a corporation, partnership, limited
13 partnership, professional corporation, proprietorship, incor-
14 porated or unincorporated association, or other form of or-
15 ganization.
16 5. "Government agency" includes this state, the politi-
17 cal subdivisions thereof, and any public agency supported
18 in whole or in part by taxation.
19 6. "Person" means a natural person, estate, trust, en-
20 terprise or government agency.
21 7. "Price" includes rental, rate, fee or any other form
22 of payment for a commodity or service.
23 8. "Relevant market" means the geographical area of ef-
24 fective competition between competing products or services,
25 wholly or partially within this state.
26 9. "Service" means an activity performed or benefit con-
27 ferred for the purpose of economic gain.
28 Sec. 3. NEW SECTION. RESTRAINT OF ECONOMIC ACTIVITY.
29 An agreement which unreasonably restrains economic activity
30 in this state is unlawful.
31 Sec. 4. NEW SECTION. DETERMINATION OF UNREASONABLENESS.
32 An agreement affecting economic activity in this state is
33 unreasonable if its purpose or effect is substantially to
34 lessen, limit or suppress competition or to create or main-
35 tain a monopoly in a relevant market.

1 Sec. 5. NEW SECTION. ANCILLARY RESTRAINTS. An agree-
2 ment which restrains economic activity is not unreasonable
3 if it is ancillary to an otherwise lawful objective, and les-
4 sens, limits or suppresses competition no more than is rea-
5 sonably necessary to achieve that objective.

6 Sec. 6. NEW SECTION. AGREEMENTS UNREASONABLE PER SE.

7 1. An agreement between two or more persons who are in
8 competition is conclusively presumed to be unreasonable if,
9 with respect to a commodity or service bought, rented, or
10 sold to or from others by such persons or any of them, it
11 has the purpose or effect of:

12 a. Establishing, maintaining, or regulating the price
13 of such commodity or service;

14 b. Establishing, maintaining, or regulating the quantity
15 of such commodity or service produced, bought, rented, or
16 sold;

17 c. Establishing, maintaining, or regulating the share
18 or portion of the total supply or demand for such commodity
19 or service produced, bought, rented, or sold by any person;

20 d. Establishing, limiting, or allocating the geographi-
21 cal area in which any person may produce, buy, rent, or sell
22 such commodity or service; or

23 e. Limiting, or allocating the identity or number of
24 producers, purchasers, renters, or suppliers, actual or
25 potential, with whom any person may deal, or of transactions
26 in which any person may participate.

27 2. An agreement between a person who sells a commodity
28 or service and a person by whom such commodity or service
29 is bought for resale is conclusively presumed to be unrea-
30 sonable if such agreement has the purpose of establishing,
31 maintaining, or regulating the price at which such commodity
32 is resold.

33 Sec. 7. NEW SECTION. UNREASONABLE AGREEMENTS.

34 An agreement between two or more persons is unreasonable,
35 as defined in section four (4) of this Act,

1 if it has the purpose or effect of:

2 1. Conditioning the purchase, rental, or sale of a com-
3 modity or service produced, rented, bought or sold by such
4 persons or any of them, or the price or other contract term,
5 upon an agreement that a person party to such agreement shall
6 purchase an additional commodity or service;

7 2. Conditioning the purchase, rental, or sale of a com-
8 modity or service produced, bought, rented, or sold by such
9 persons or any of them, or the price or other contract term,
10 upon the understanding that a person party to such agree-
11 ment shall not purchase, rent or sell a commodity or service
12 to or from another person;

13 3. Conditioning the purchase, rental, or sale of a com-
14 modity or service produced, bought, rented, or sold by such
15 persons or any of them, or the price or other contract term,
16 upon an agreement that a person party to such agreement shall
17 not purchase, rent, or sell a commodity or service in a geo-
18 graphical area;

19 4. Making a person a director, officer or partner, in
20 two or more otherwise unaffiliated enterprises which are in
21 competition.

22 Sec. 8. NEW SECTION. MONOPOLIZATION. It is unlawful
23 for a person to monopolize, attempt to monopolize or agree
24 with another person to monopolize the sale or rental of com-
25 modity or service in a relevant market, with the intent of
26 excluding or suppressing competition or of committing any
27 of the acts specified in section six (6) of this Act.

28 Sec. 9. NEW SECTION. LABOR ORGANIZATIONS EXEMPT. This
29 Act shall not prohibit the existence of any labor organiza-
30 tion instituted for the purpose of mutual help and not for
31 profit, nor shall it prohibit the conduct of such organiza-
32 tion or any member thereof in collectively bargaining over
33 wages, hours or other terms and conditions of employment, nor
34 shall provisions of this Act impose any liability on any
35 employer for any activity arising out of or in connection with

1 a collective bargaining agreement, its negotiation, administra-
2 tion or enforcement.

3 Sec. 10. NEW SECTION. REGULATED INDUSTRIES EXEMPT.
4 Nothing contained in this Act shall be construed to apply
5 to the activities or arrangements expressly approved or
6 regulated by any regulatory body or officer acting under
7 statutory authority of this state or of the United States.

8 Sec. 11. NEW SECTION. AGRICULTURAL EXEMPTION. Persons
9 engaged in the production of agricultural or horticultural
10 products may act together in associations, corporate or
11 otherwise, with or without capital stock for the purpose
12 of mutual help and not conducted for profit in collectively
13 affecting production, processing, preparing for market,
14 handling, and marketing of their products, and in manu-
15 facturing, acquiring, purchasing, providing or selling
16 agricultural or horticultural supplies and services. Such
17 associations may require membership and may have marketing,
18 transportation, procuring, processing, manufacturing and
19 handling agencies in common, and such associations and their
20 members may make the necessary contracts and agreements
21 to carry out their legitimate objects.

22 Sec. 12. NEW SECTION. ATTORNEY GENERAL TO ENFORCE. The
23 attorney general, with such assistance as he may from time
24 to time require of the county attorneys in their respective
25 counties, shall prosecute criminal violations of this Act
26 and shall institute all civil actions and proceedings brought
27 hereunder in the name of the state.

28 Sec. 13. NEW SECTION. INVESTIGATION.

29 1. If the attorney general has reasonable cause to believe
30 that a person has engaged in, is engaging in, or is about
31 to engage in conduct prohibited by this Act, or if he believes
32 it to be in the public interest that an investigation be made
33 to ascertain whether a person has engaged in, is engaging
34 in, or is about to engage in such conduct, he shall make such
35 investigation as he deems necessary and may, prior to the

1 commencement of an action against such person under this Act:

2 a. Subpoena such person, its officers, directors, part-
3 ners, fiduciaries, or employees, compel their attendance
4 before him and examine them under oath;

5 b. Require the production of, examine and copy a docu-
6 ment or tangible thing in the possession of such person or
7 its officers, directors, partners, or fiduciaries;

8 c. Pursuant to order of a district court, upon a show-
9 ing that such is reasonably necessary to an investigation
10 being conducted under this section:

11 (1) Subpoena any other person, compel his attendance
12 before him and examine him under oath;

13 (2) Require the production of, examine and a copy of docu-
14 ment or other tangible thing in the possession of such per-
15 son; and

16 d. Pursuant to order of a district court, impound a docu-
17 ment or other tangible thing produced pursuant to this sec-
18 tion, and retain it in his possession until the completion
19 of all proceedings arising out of such investigation.

20 2. A subpoena issued pursuant to this section shall con-
21 tain the following information:

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

24 b. The date, time and place at which the person subpoenaed
25 is to appear or to produce documents or other tangible things;

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

29 3. Any procedure, testimony taken, or material produced
30 under this section shall be sealed by the court and be kept
31 confidential by the attorney general except that the attorney
32 general may transmit such information to the antitrust division
33 of the United States department of justice and to the attorney
34 general's office of any other state, until an action is filed
35 against a person under this Act for the violation under inves-

1 tigation, unless confidentiality is waived by the person being
2 investigated and the person who has testified, answered inter-
3 rogatories, or produced material, or disclosed is authorized
4 by the court.

5 No information or evidence provided the attorney general
6 by a person pursuant to this section shall be admitted in
7 evidence, or used in any manner whatsoever, in any criminal
8 prosecution. If a criminal prosecution under the provisions
9 of this Act is initiated in a state court against a person
10 who has provided information pursuant to this section, the
11 state shall have the burden of proof that the information so
12 provided was not used in any manner to further the criminal
13 investigation or prosecution.

14 4. Nothing in this Act shall be construed to limit or
15 abridge statutory or constitutional limitations on self-
16 incrimination, unless immunity is granted pursuant to
17 sections seven hundred eighty-two point nine (782.9),
18 through seven hundred eighty-two point eleven (782.11) of
19 the Code.

20 Sec. 14. NEW SECTION. EFFECT OF SUBPOENA OR DEMAND.
21 If a person objects to or otherwise fails to obey a subpoena
22 or a demand to produce documents served upon him, the
23 attorney general may file in the district court of the county
24 in which the person resides or in which he maintains a
25 principal place of business within this state a petition for
26 an order to enforce the subpoena or demand. Notice of hearing
27 the petition and a copy of the petition shall be served upon
28 the person, who may appear in opposition to the petition. If
29 the court finds that the subpoena or demand is proper, there
30 is reasonable cause to believe there has been a violation
31 of this Act, and the information sought or document or object
32 demand is relevant to the violation, it shall order the
33 person to comply with the subpoena or demand, subject to such
34 modification as the court may prescribe. Upon motion by the
35 person and for good cause shown, the court may make any

1 further order in the proceedings that justice requires to
2 protect the person from unreasonable annoyance, embarrassment,
3 oppression, burden, or expense.

4 Sec. 15. NEW SECTION. PROTECTIVE ORDERS. Upon petition
5 of any person subpoenaed pursuant to section thirteen (13)
6 of this Act and upon notice and for good cause shown the dis-
7 trict court may make any order which justice requires to
8 protect such person from annoyance, embarrassment, oppres-
9 sion, or undue burden of expense, including but not limited
10 to one or more of the following:

11 1. That the examination of such person not be taken or
12 that documents or other tangible things not be produced for
13 inspection and copying;

14 2. That the examination or production of documents or
15 other tangible things be had only on specified terms and con-
16 ditions, including a change in the time or place;

17 3. That certain matters not be inquired into, or that
18 the scope of the examination or production be limited to
19 certain matters;

20 4. That the examination or production and inspection be
21 conducted with no one present except persons designated by
22 the court;

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

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

28 Sec. 16. NEW SECTION. CRIMINAL VIOLATIONS.

29 1. A person who engages in conduct prohibited by section
30 six (6) of this Act is guilty of a misdemeanor and shall be
31 punished by a fine not to exceed fifty thousand dollars or
32 by imprisonment in the county jail for not more than one year,
33 or by both such fine and imprisonment. The return of
34 an indictment shall constitute an election of remedies and
35 a petition may not be filed pursuant to section seventeen

1 (17) of this Act arising out of the same conduct.

2 Sec. 17. NEW SECTION. CIVIL PENALTY. An enterprise which
3 engages in conduct prohibited by this Act shall,
4 be liable at the suit of the state to a civil penalty
5 in an amount not to exceed five percent of the total value
6 of the commodities or services sold by it in this state in
7 each year in which such conduct occurred. In computing the
8 foregoing penalty, only the four most recent years in which
9 such conduct occurred, as of the date of the commencement
10 of an action under this section, shall be taken into account.
11 The filing of a petition pursuant to this section shall
12 constitute an election of remedies and an action may not be
13 commenced under section sixteen (16) of this Act arising
14 out of the same conduct.

15 Sec. 18. NEW SECTION. EQUITABLE RELIEF. The district
16 court shall at the suit of the state enter such judgment or
17 decree as may be necessary to prevent, restrain the con-
18 tinuance or renewal of, or remove the effects of any con-
19 duct prohibited by this Act and may exercise all the powers
20 of a court of equity, including but not limited to injunc-
21 tion, divestiture, divorcement, dissolution of domestic en-
22 terprises to do business in this state, and compelling the
23 forfeiture of, or restraining the issuance of certificates
24 of incorporation, permits to transact business, licenses or
25 franchises.

26 Sec. 19. NEW SECTION. LIMITATIONS. An action or prose-
27 cution commenced under sections sixteen (16), and seventeen
28 (17) of this Act shall be barred unless com-
29 menced within four years after the cause of action accrues,
30 or, where there is fraudulent concealment of said cause of
31 action, when said cause of action becomes known.

32 Sec. 20. NEW SECTION. EQUITABLE RELIEF. A person in-
33 jured or threatened with injury by conduct prohibited by this
34 Act may institute a suit in equity for relief when and under
35 the same conditions and principles as equitable relief is

1 granted in other cases.

2 Sec. 21. NEW SECTION. DAMAGES. A person injured by
3 conduct prohibited by this Act may recover the actual dam-
4 ages sustained, the costs of suit and reasonable attorney's
5 fees. If the conduct complained of is willful or flagrant
6 and is specified in section six (6) of this Act, the court
7 may in addition award punitive damages to any such person
8 not a government agency, in an amount not to exceed twice
9 the actual damages sustained.

10 Sec. 22. NEW SECTION. PRIMA FACIE EFFECT OF JUDGMENT
11 OR DECREE. A final judgment or decree, other than a consent
12 judgment or decree entered before any testimony has been
13 taken, in an action or proceeding brought under sections
14 sixteen (16), seventeen (17) or eighteen (18)
15 of this Act shall be prima facie evidence against the defendant
16 therein in any action brought under section twenty-one (21)
17 of this Act as to all matters respecting which such judgment
18 or decree would be an estoppel as between the parties thereto.

19 Sec. 23. NEW SECTION. LIMITATIONS. An action brought
20 under section twenty-one (21) of this Act is barred unless
21 commenced within four years after the cause of action ac-
22 crued; provided, that the running of such period of limita-
23 tions shall be suspended during the pendency of and for one
24 year after the termination of an action or proceeding brought
25 under sections sixteen (16), seventeen (17) and eighteen (18)
26 of this Act, and based in whole or part
27 on any matter complained of in the action brought under sec-
28 tion twenty-one (21) of this Act.

29 Sec. 24. NEW SECTION. VENUE. An action or proceeding
30 brought under this Act may be brought in the county where
31 the cause of action arose, where any defendant resides or
32 transacts business, or where an act in furtherance of the
33 conduct prohibited by this Act occurred.

34 Sec. 25. Chapter five hundred fifty-three (553), Code
35 1975, is repealed.

S-5307

1 Amend the Committee on Judiciary amendment, S-5234,
2 to House File 584, as amended and passed by the House
3 and reprinted, as follows:

4 1. Page 4, by inserting after line 7 the following:

5 "5. Information or evidence obtained from a natural
6 person pursuant to the provisions of this section
7 shall not be admitted into evidence or otherwise used
8 in a criminal prosecution of this person under this
9 Act. If a criminal prosecution under this Act is
10 brought against a natural person who has given
11 information or evidence pursuant to the provisions
12 of this section, the state shall have the burden to
13 prove that this information or evidence was not used
14 in any manner to further this criminal prosecution
15 or the investigation in preparation for it."

16 2. Page 5, by inserting after line 46 the
17 following:

18 "Sec. ____ . NEW SECTION. CRIMINAL PENALTIES.

19 1. A natural person who engages in conduct
20 prohibited by this Act shall be, upon conviction,
21 punished by a fine not to exceed ten thousand dollars,
22 by imprisonment in the county jail not to exceed six
23 months, or by both such fine and imprisonment.

24 2. A natural person who willfully and knowingly
25 engages in conduct prohibited by this Act shall be,
26 upon conviction, punished by a fine not to exceed
27 fifty thousand dollars, by imprisonment in the state
28 penitentiary not to exceed two years, or by both such
29 fine and imprisonment.

30 Sec. ____ . NEW SECTION. ELECTION OF REMEDIES.

31 The bringing of suit to assess a civil penalty against
32 a person by filing a petition shall be an election
33 of remedies to not bring a criminal prosecution against
34 this person. The bringing of a criminal prosecution
35 against a person by filing an information or returning
36 an indictment shall be an election of remedies to
37 not bring suit to assess a civil penalty against this
38 person."

39 3. Page 5, lines 48 and 49, by striking the words
40 "under section thirteen (13) of" and inserting in
41 lieu thereof the words "to assess a civil penalty
42 or to obtain a criminal conviction under".

43 4. Page 6, lines 15 and 16, by striking the words
44 "sections twelve (12) and thirteen (13) of".

S-5307 FILED & LOST (801)

MARCH 9, 1976 14-29

BY JAMES M. REDMOND

S-5296

1 Amend the Committee on Judiciary amendment, S-5234,
2 to House File 584, as amended and passed by the House
3 and reprinted, as follows:

4 1. Page 4, by inserting after line 7 the following:

5 "5. No information or evidence provided the attorney
6 general by a person pursuant to this section shall be
7 admitted in evidence, or used in any manner whatsoever,
8 in any criminal prosecution. If a criminal prosecution
9 under the provisions of this Act is initiated in a state
10 court against a person who has provided information
11 pursuant to this section, the state shall have the burden
12 of proof that the information so provided was not used in
13 any manner to further the criminal investigation or
14 prosecution."

15 2. Page 5, by inserting after line 46 the following:

16 "Sec. _____. NEW SECTION. CRIMINAL PENALTIES -- FINES
17 AND IMPRISONMENT.

18 (1) Any natural person who shall violate any of the
19 provisions of this Act is guilty of a misdemeanor and shall
20 be punished by a fine not to exceed ten thousand dollars or
21 by imprisonment in the county jail for not more than six
22 months, or by both such fine and imprisonment.

23 (2) Any natural person who shall willfully and know-
24 ingly violate any of the provisions of this Act is guilty
25 of a misdemeanor and shall be punished by a fine not to
26 exceed fifty thousand dollars or by imprisonment in the
27 state penitentiary for not more than two years, or by both
28 such fine and imprisonment.

29 Sec. _____. NEW SECTION. ELECTION OF REMEDIES.

30 The bringing of suit to assess a civil penalty against a
31 person by filing a petition shall be an election of remedies
32 to not bring a criminal prosecution against this person.
33 The bringing of a criminal prosecution against a person by
34 filing an information or returning an indictment shall be
35 an election of remedies to not bring suit to assess a civil
36 penalty against this person."

37 3. Page 5, lines 48 and 49, by striking the words
38 "under section thirteen (13) of" and inserting in lieu
39 thereof the words "to assess a civil penalty or to obtain
40 a criminal conviction under".

41 4. Page 6, lines 15 and 16, by striking the words
42 "sections twelve (12) and thirteen (13) of".

S-5294

1 Amend the Committee on Judiciary amendment, S-5234,
2 to House File 584, as amended and passed by the House
3 and reprinted, as follows:

4 1. Page 1, by striking lines 20 through 50 and
5 inserting in lieu thereof the following:

6 "1. "Agreement" means any contract, combination,
7 conspiracy, understanding, or arrangement, express
8 or implied.

9 2. "Commodity" means tangible or intangible prop-
10 erty, real, personal, or mixed.

11 3. "Economic activity" means business, trade or
12 commerce, or other activity performed for economic
13 gain.

14 4. "Enterprise" means a business, commercial,
15 or professional entity, including a corporation,
16 partnership, limited partnership, professional
17 corporation, proprietorship, incorporated or
18 unincorporated association, or other form of
19 organization.

20 5. "Government agency" means the state, its poli-
21 tical subdivisions, and any public agency supported
22 in whole or in part by taxation.

23 6. "Person" means a natural person, estate, trust,
24 enterprise or government agency.

25 7. "Price" includes the terms and conditions of
26 sale, rental, rate, fee, or any other form of payment
27 for a commodity or service.

28 8. "Relevant market" means the geographical area
29 of effective competition between competing products
30 or services, wholly or partially within this state.

31 9. "Service" means an activity performed or benefit
32 conferred for the purpose of economic gain.

33 Sec. . NEW SECTION. RESTRAINT OF ECONOMIC AC-
34 TIVITY PROHIBITED--UNREASONABLENESS.

35 1. An agreement shall not unreasonably restrain
36 economic activity in the state. An agreement affecting
37 economic activity in this state is unreasonable if
38 its purpose or effect in a relevant market is
39 substantially to lessen, limit, or suppress competition
40 or to create or maintain a monopoly.

41 2. The following agreements are examples of ac-
42 tivities that generally have the purpose or effect
43 stated in subsection one (1) of this section when
44 they affect economic activity in this state:

45 a. Conditioning the purchase, rental, or sale
46 of a commodity or service produced, rented, bought,
47 or sold by these persons or the price or other contract
48 term upon an agreement that a person party to this
49 agreement shall purchase an additional commodity or
50 service;

1 b. Conditioning the purchase, rental, or sale
 2 of a commodity or service produced, bought, rented,
 3 or sold by these persons or the price or other contract
 4 term upon the agreement that a person party to this
 5 agreement shall not purchase, rent or sell a commodity
 6 or service to or from another person;

7 c. Conditioning the purchase, rental, or sale
 8 of a commodity or service produced, bought, rented,
 9 or sold by these persons or the price or other contract
 10 term upon an agreement that a person party to this
 11 agreement shall not purchase, rent, or sell a commodity
 12 or service in a geographical area;

13 Sec. __. NEW SECTION. AGREEMENTS UNREASONABLE
 14 PER SE.

15 1. An agreement between two or more persons who
 16 are in competition is conclusively presumed to be
 17 unreasonable if, with respect to a commodity or service
 18 bought, rented, or sold to or from others by these
 19 persons, it has the purpose or effect of:

20 a. Establishing, maintaining, or regulating the
 21 price of this commodity or service;

22 b. Establishing, maintaining, or regulating the
 23 quantity of this commodity or service produced, bought,
 24 rented, or sold;

25 c. Establishing, maintaining, or regulating the
 26 share or portion of the total supply or demand for
 27 this commodity or service produced, bought, rented,
 28 or sold by any person;

29 d. Establishing, limiting, or allocating the geo-
 30 graphical area in which any person may produce, buy,
 31 rent, or sell this commodity or service; or

32 e. Limiting or allocating the identity or number
 33 of producers, purchasers, renters, or suppliers, ac-
 34 tual or potential with whom any person may deal, or
 35 of transactions in which any person may participate.

36 2. An agreement between a person who sells a com-
 37 modity or service and a person by whom this commodity
 38 or service is bought for resale is conclusively pre-
 39 sumed to be unreasonable if this agreement has the
 40 purpose of establishing, maintaining, or regulating
 41 the price at which this commodity is resold.

42 Sec. __. NEW SECTION. MONOPOLIES PROHIBITED.
 43 A person shall not attempt to establish or establish,
 44 maintain, or use a monopoly of economic activity in
 45 a relevant market for the purpose of excluding competi-
 46 tion or of controlling, fixing, or maintaining prices.

47 Sec. __. NEW SECTION. ANCILLARY RESTRAINTS.
 48 Notwithstanding the provisions of sections four (4),
 49 five (5), and six (6) of this Act, an agreement which
 50 restrains economic activity is not unreasonable if

PAGE 3

1 it is ancillary to an otherwise lawful objective,
 2 and lessens, limits or suppresses competition no more
 3 than is reasonably necessary to achieve that
 4 objective."

5 2. Page 2, by striking lines 1 through 4.

6 3. Renumber the bill sections accordingly.

S-5234

1 Amend House File 584, as amended and passed by
2 the House and reprinted, by striking everything after
3 the enacting clause and inserting in lieu thereof
4 the following:

5 "Section 1. NEW SECTION. SHORT TITLE. This Act
6 shall be known and may be cited as the "Iowa
7 Competition Law".

8 Sec. 2. NEW SECTION. CONSTRUCTION. This Act
9 shall be construed to complement and be harmonized
10 with the applied laws of the United States which have
11 the same or similar purpose as this Act. This
12 construction shall not be made in such a way as to
13 constitute a delegation of state authority to the
14 federal government, but shall be made to achieve
15 uniform application of the state and federal laws
16 prohibiting restraints of economic activity and
17 monopolistic practices.

18 Sec. 3. NEW SECTION. DEFINITIONS. As used in
19 this Act, unless the context otherwise requires:

20 1. "Commodity" means tangible or intangible
21 property, real, personal, or mixed.

22 2. "Enterprise" means a business, commercial or
23 professional entity, including a corporation,
24 partnership, limited partnership, professional
25 corporation, proprietorship, incorporated or
26 unincorporated association, or other form of
27 organization.

28 3. "Government agency" means the state, its
29 political subdivisions, and any public agency supported
30 in whole or in part by taxation.

31 4. "Person" means a natural person, estate, trust,
32 enterprise or government agency.

33 5. "Price" includes the terms and conditions of
34 sale, rental, rate, fee, or any other form of payment
35 for a commodity or service.

36 6. "Relevant market" means the geographical area
37 of actual or potential competition in a line of
38 commerce, all or any part of which is within this
39 state.

40 7. "Service" means any activity which is performed
41 in whole or part for financial gain.

42 8. "Trade or commerce" means any economic activity
43 involving or relating to any commodity, service, or
44 business activity.

45 Sec. 4. NEW SECTION. RESTRAINT PROHIBITED. A
46 contract, combination, or conspiracy between two or
47 more persons shall not restrain or monopolize trade
48 or commerce in a relevant market.

49 Sec. 5. NEW SECTION. MONOPOLY PROHIBITED. A
50 person shall not attempt to establish or establish,

1 maintain, or use a monopoly of trade or commerce in
2 a relevant market for the purpose of excluding
3 competition or of controlling, fixing, or maintaining
4 prices.

5 Sec. 6. NEW SECTION. EXEMPTIONS. This Act shall
6 not be construed to prohibit:

7 1. The activities of any labor organization,
8 individual members of such an organization, or group
9 of such organizations, of any employer or group of
10 employers, or of any groups of employees, if these
11 activities are directed solely to legitimate labor
12 objectives which are permitted under the laws of
13 either this state or the United States.

14 2. The activities of any agricultural or
15 horticultural organization, whether incorporated or
16 unincorporated, or of the individual members of such
17 organizations, if these activities carry out the
18 legitimate objectives of such organizations, to the
19 extent permitted under the laws of either this state
20 or the United States.

21 3. The activities of persons engaged in the
22 production of agricultural products when these persons
23 act together in associations, corporate or otherwise,
24 with or without capital stock, in collectively
25 processing, preparing for market, handling, and
26 marketing the products of these persons, to the extent
27 permitted under the laws of either this state or the
28 United States. Activities included under this
29 subsection are the maintaining of marketing and
30 purchasing agencies in common and the making of
31 necessary contracts and agreements to effect such
32 purposes. However, such associations must be operated
33 for the mutual benefit of these persons acting as
34 producers to qualify under this subsection.

35 4. The activities or arrangements expressly
36 approved or regulated by any regulatory body or officer
37 acting under authority of this state or of the United
38 States.

39 Sec. 7. NEW SECTION. ATTORNEY GENERAL TO ENFORCE.
40 The attorney general, with such assistance as may
41 be required from time to time of the county attorneys
42 in their respective counties, shall institute all
43 civil actions and proceedings brought under this Act
44 in the name of the state.

45 Sec. 8. NEW SECTION. VENUE. A suit or proceeding
46 brought under this Act may be brought in the county
47 where the cause of action arose, where any defendant
48 resides or transacts business, or where an act in
49 furtherance of the conduct prohibited by this Act
50 occurred.

1 **Sec. 9. NEW SECTION. INVESTIGATION.**

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

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

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

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

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

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

25 d. Upon an order of a district court, impound
26 a document or other tangible item produced pursuant
27 to this section and retain possession of it until
28 the completion of all proceedings arising out of the
29 investigation.

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

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

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

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

42 3. Any procedure, testimony taken, or material
43 produced under this section shall be sealed by the
44 court and be kept confidential by the attorney general,
45 until an action is filed against a person under this
46 Act for the violation under investigation, unless
47 confidentiality is waived by the person being
48 investigated and the person who has testified, answered
49 interrogatories, or produced material, or unless
50 disclosure is authorized by the court. However, the

1 attorney general may, at any time, transmit information
2 collected under this section to the antitrust division
3 of the United States department of justice and to
4 the attorney general's office of any other state.

5 4. This Act shall not be construed to limit or
6 abridge statutory or constitutional limitations on
7 self-incrimination.

8 Sec. 10. NEW SECTION. INVESTIGATION ENFORCEMENT.

9 If a person objects or otherwise fails to obey a
10 written demand or court order issued under section
11 nine (9) of this Act, the attorney general may file
12 in the district court of the county in which the
13 person resides or maintains a principal place of
14 business within this state an application for an order
15 to enforce the demand or order. Notice of hearing
16 and a copy of the application shall be served upon
17 the person, who may appear in opposition to the
18 application. If the court finds that the demand or
19 order is proper, that there is reasonable cause to
20 believe there has been a violation of this Act, and
21 that the information sought or document or object
22 demanded is relevant to the violation, it shall order
23 the person to comply with the demand or order, subject
24 to such modification as the court may prescribe.
25 Upon motion by the person and for good cause shown,
26 the court may make any further order in the proceedings
27 which justice requires to protect the person from
28 unreasonable annoyance, embarrassment, oppression,
29 burden, or expense.

30 Sec. 11. NEW SECTION. PROTECTIVE ORDERS. Upon
31 application of any person who was served a written
32 demand or court order under section nine (9) of this
33 Act, upon notice and hearing, and for good cause
34 shown, the district court may make any order which
35 justice requires to protect the person from annoyance,
36 embarrassment, oppression, or undue burden of expense,
37 including the following:

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

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

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

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

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

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

7 Sec. 12. NEW SECTION. REMEDIALS. The state or
8 a person who is injured or threatened with injury
9 by conduct prohibited under this Act may bring suit
10 to:

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

20 2. Recover actual damages resulting from conduct
21 prohibited under this Act.

22 3. Recover, at the court's discretion, exemplary
23 damages which do not exceed twice the actual damages
24 awarded under subsection two (2) of this section if:

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

27 b. The person bringing suit is not the state.

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

31 Sec. 13. NEW SECTION. CIVIL PENALTY. In addition
32 to suit under section twelve (12) of this Act, the
33 state may bring suit to assess a civil penalty against
34 an enterprise whose conduct is prohibited under this
35 Act. The civil penalty assessed shall not exceed
36 twenty-five percent of the total value of the specific
37 commodities by their brand, make, and size or of
38 services either of which were the subject of the
39 prohibited conduct sold in the relevant market in
40 this state by the enterprise in each year in which
41 this conduct occurred, but this penalty shall not
42 exceed one hundred fifty (150,000) dollars. In
43 computing this penalty, only the four most recent
44 years in which the prohibited conduct occurred, as
45 of commencement of suit under this section, shall be
46 used in the computation.

47 Sec. 14. NEW SECTION. LIMITATIONS.

48 1. Suit by the state under section thirteen (13)
49 of this Act must be commenced within four years after
50 the cause of action accrues or, if there is fraudulent

1 concealment of this cause of action, within four years
2 after the cause of action becomes known, whichever
3 period is later.

4 2. Suit by any person under section twelve (12)
5 of this Act must be commenced within four years after
6 the cause of action accrues. However, if this cause
7 is based, in whole or part, on the same set of facts
8 as alleged in a suit brought under section thirteen
9 (13) of this Act, this period shall be extended until
10 one year after the suit brought under section thirteen
11 (13) of this Act is concluded.

12 Sec. 15. NEW SECTION. PRIMA FACIE EVIDENCE.
13 A final decree or judgment, other than a consent
14 decree or consent judgment entered before trial, in
15 a suit brought by the state under sections twelve
16 (12) and thirteen (13) of this Act, is prima facie
17 evidence against the defendant in a suit brought by
18 any person other than the state under section twelve
19 (12) of this Act as to all matters respecting which
20 this decree or judgment would be an estoppel between
21 the state and the defendant. This section shall not
22 affect the application of collateral estoppel or issue
23 preclusion.

24 Sec. 16. Chapter five hundred fifty-three (553),
25 Code 1975, is repealed."

S-5234 FILED - *adopted as amended*
FEBRUARY 27, 1976 ^{3/9} (804)

BY COMMITTEE ON JUDICIARY

S-5243

1 Amend the Judiciary Committee amendment, S-5234,
2 to House File 584, as amended and passed by the
3 House, as follows:
4 1. Page 5, line 42, by inserting after the
5 word "fifty" the word "thousand".

S-5243 FILED - *Adopted 3/9 (778)*
MARCH 1, 1976

BY GENE W. GLENN

S-5259

1 Amend the Committee on Judiciary amendment, S-5234,
2 to House File 584, as amended and passed by the House
3 and reprinted, as follows:
4 1. Page 3, line 50, by striking the words "However,
5 the".
6 2. Page 4, by striking lines 1 through 4.

S-5259 FILED - *Lost 23-23 3/8 (778)*
MARCH 2, 1976 *Motion to reconsider filed 3-8 (781)* BY ELIZABETH SHAW
" Lost 21-26 3/9 (804)

S-5292

1 Amend the Committee on Judiciary amendment, S-5234,
2 to House File 584, as amended and passed by the House
3 and reprinted, as follows:
4 1. Page 5, by striking lines 12 through 19 and
5 inserting in lieu thereof the following: "this Act
6 and remove the conduct's effect by:
7 a. Injunction.
8 b. Divestiture.
9 c. Divorcement.
10 d. Dissolution of a domestic enterprise.
11 e. Forfeiture or restraint of:
12 (1) The issuance of a certificate of incorporation.
13 (2) A permit to transact business.
14 (3) A license.
15 (4) A franchise.
16 f. Other appropriate equitable relief."
17 2. Page 5, by inserting after line 30 the
18 following:
19 "The state may bring suit under this section with-
20 out posting bond."

S-5292 FILED - *Withdrawn 2/8 (779)*
MARCH 5, 1976

BY JAMES M. REDMOND

S-5299

1 Amend the Committee on Judiciary amendment, S-5234,
2 to House File 584, as amended and passed by the House
3 and reprinted, page 5, line 42, by striking the word
4 and figure "fifty (150,000)" and inserting in lieu
5 thereof the word and figure "thousand (100,000)".

S-5299 FILED - *Lost 21-24 (798)*
MARCH 8, 1976

BY PHILIP B. HILL
NORMAN G. RODGERS

S-5301

1 Amend the Committee on Judiciary amendment, S-5234,
2 to House File 584, as amended and passed by the
3 House and reprinted, as follows:
4 1. Page 5, line 36, by striking the words
5 "twenty-five" and inserting in lieu thereof the
6 word "ten".

S-5301 FILED & ADOPTED (780)
MARCH 8, 1976 *27-19*

BY NORMAN RODGERS

S-5303

1 Amend the Committee on Judiciary amendment, S-5234,
2 to House File 584, as amended and passed by the House
3 and reprinted, as follows:
4 1. Page 5, line 14, after word "enterprises", insert
5 word "right".
6 2. Page 5, line 35 by adding after the word "Act" the
7 following: "The suit may be tried to the jury and the
8 civil penalty provided for in this section shall be
9 imposed by the court."

S-5303 FILED & ADOPTED (780)
MARCH 8, 1976

BY JAMES M. REDMOND

HOUSE AMENDMENT TO SENATE
AMENDMENT TO HOUSE FILE 584

S-5783

1 Amend the Senate amendment, H-5733, to House
2 File 584, as amended, passed, and reprinted by
3 the House, as follows:

4 1. Page 2, by striking lines 28 through 31 and
5 inserting in lieu thereof the following: "United
6 States. These associations may have marketing
7 and purchasing agencies in common and their
8 members may make the necessary contracts and
9 agreements to effect such".

10 2. Page 2, line 33, by striking the words
11 "these persons" and inserting in lieu thereof the
12 words "the members of these associations".

13 3. Page 3, line 50, by striking the words "
14 However, the" and inserting in lieu thereof the
15 words "for the purposes of interstate cooperation
16 in enforcing this Act and similar state and
17 federal laws."

18 4. Page 4, by striking lines 1 through 4.

19 5. Page 4, by inserting after line 7 the
20 following:

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

27 6. Page 4, line 30, by striking the word
28 "Upon" and inserting in lieu thereof the words
29 "Before the attorney general files an application
30 under section ten (10) of this Act and upon".

31 7. Page 5, by inserting after line 48 the
32 following:

33 "Sec. _____. NEW SECTION. CRIMINAL PENALTIES.
34 A person or a natural person having substantial
35 control over an enterprise who knowingly and
36 willfully engages in conduct prohibited by this
37 Act shall be, upon conviction, fined not to exceed
38 fifty thousand (50,000) dollars, imprisoned in
39 the county jail for not more than one year, or
40 both so fined and imprisoned.

41 Sec. _____. NEW SECTION. ELECTION OF REMEDIES.
42 The bringing of suit to assess a civil penalty
43 against a person by filing a petition shall be
44 an election of remedies to not bring a criminal
45 prosecution against this person. The bringing
46 of a criminal prosecution against a person by
47 filing an information or returning an indictment
48 shall be an election of remedies to not bring suit
49 to assess a civil penalty against this person."

50 8. Page 5, line 50, by striking the words "under

SENATE 10
MAY 14, 1976

S-5783
PAGE 2

- 1 section thirteen (13)" and inserting in lieu
- 2 thereof the words "to assess a civil penalty or
- 3 to obtain a criminal conviction under".
- 4 9. Page 6, line 1, by striking the word
- 5 "of".
- 6 10. Page 6, line 6, by striking the words
- 7 "by any person".
- 8 11. Page 6, line 8, by inserting after the
- 9 word "accrues" the words "or, if there is a
- 10 fraudulent concealment of this cause of action,
- 11 within four years after the cause of action
- 12 becomes known, whichever period is later".
- 13 12. Page 6, line 11, by striking the word
- 14 "extended" and inserting in lieu thereof the
- 15 word "suspended".
- 16 13. Page 6, line 17, by striking the words
- 17 "under sections twelve".
- 18 14. Page 6, line 18, by striking the words
- 19 "(12) and thirteen (13) of this Act,".
- 20 15. Page 6, by striking lines 28 and 29.

S-5783 FILED
MAY 13, 1976

RECEIVED FROM THE HOUSE

Senate concurred as amended 5/15 (2028)

S-5808

- 1 Amend the House amendment, S-5783, to the Senate
- 2 amendment, H-5733, to House File 584, as amended,
- 3 passed, and reprinted, as follows:
- 4 1. Page 1, by striking lines 19 through 26.
- 5 2. Page 1, by striking lines 31 through 50.
- 6 3. Page 2, by striking lines 1 through 5.
- 7 4. Page 2, by striking lines 16 through 20.

S-5808 FILED
MAY 17, 1976

*Adopted as amended
by 5815 5/18 (2027)*

BY ELIZABETH SHAW
E. KEVIN KELLY

S-5815

1 Amend the Shaw and Kelly amendment, S-5808, to
2 the House amendment, S-5783, to the Senate amendment,
3 H-5733, to House File 584 as amended, passed and re-
4 printed as follows:

5 1. Page 1, line 7, by striking the figure "20"
6 and inserting in lieu thereof the figure "19".

S-5815 FILED & ADOPTED (2026)
MAY 18, 1976

BY EARL M. WILLITS
ELIZABETH SHAW

HOUSE FILE 584

S-5816

1 Amend the House amendment, S-5783, to the Senate
2 amendment, H-5733, to House File 584, as amended, pass-
3 ed, and reprinted, as follows:

4 1. Page 2, by striking line 20.

S-5816 FILED & ADOPTED (2028)
MAY 18, 1976

BY ELIZABETH SHAW
E. KEVIN KELLY

S-5308

1 Amend the Committee on Judiciary amendment S-5234,
2 to House File 584, as amended and passed by the House
3 and reprinted, as follows:

4 1. Page 6, by inserting after line 23 the
5 following:

6 "Sec. NEW SECTION. DUTY OF ATTORNEY GENERAL.
7 The Attorney General shall prepare a synopsis and
8 explanation of this Act as soon as practicable and,
9 not less than six months prior to the effective date
10 of this Act, cause a copy of this Act, its synopsis
11 and explanation to be mailed to each person holding
12 a permit pursuant to Section four hundred twenty-two
13 point fifty-three (422.53), Code 1975, to each
14 domestic corporation, and to each foreign corpora-
15 tion authorized to transact business in this state."

S-5308A
LOST
11-31

16 2. Page 6, by inserting after line 25 the
17 following:

S-5308B
WITHDRAWN

18 "Sec. NEW SECTION. EFFECTIVE DATE. This Act
19 shall take effect on July 1, 1977."

20 3. By renumbering sections and internal references
21 as necessary.

S-5308A
LOST

S-5308 FILED A. Lost, B. Withdrawn 3/9 (799)
MARCH 9, 1976

BY NORMAN RODGERS

S-5309

1 Amend the committee on judiciary amendment S-5234,
2 to House File 584, as amended and passed by the
3 House and reprinted, as follows:

4 1. Page 2, line 41, by striking the word
5 "required" and inserting in lieu thereof the word
6 "requested".

S-5309 FILED & LOST (800)
MARCH 9, 1976 11-28

BY NORMAN RODGERS

S-5310

1 Amend the Committee on Judiciary amendment,
2 S-5234, to House File 584 as amended and passed by
3 the House and reprinted as follows:
4 1. Page 6, by inserting after line 25 the
5 following:
6 "Sec. ____ . NEW SECTION. EFFECTIVE DATE. This
7 Act shall take effect on January 1, 1977."

S-5310 FILED & ADOPTED (803)
MARCH 9, 1976 26-19

BY PHILIP B. HILL
CLIFTON C. LAMBORN
NORMAN RODGERS
CALVIN O. HULTMAN

H-3682

1 Amend House File 584 as follows:
2 1. Page 2, by inserting after line 32 the
3 following new subsection:
4 " ____ . Notwithstanding any of the terms or provi-
5 sions of this section, an enterprise or person shall
6 not be held liable for any antitrust violation under
7 this Act unless it shall first be determined that the
8 conduct constitutes a violation of federal antitrust
9 law."

H-3682 FILED - *Withdrawn 5/1 (1457)*
APRIL 29, 1975

BY BITTLE of Polk

House File 584

H-3683

1 Amend House File 584 as follows:
2 1. Page 7, line 10, by striking the words "five
3 percent of the total value" and inserting in lieu
4 thereof the words "fifty thousand dollars".
5 2. Page 7, by striking lines 11 through 15.

H-3683 FILED - *Lost 5/1 (1495)*
APRIL 29, 1975

BY BITTLE of Polk

H-3695

1 Amend House File 584 as follows:
2 1. Page 7, by striking lines 16 through 24.
3 2. By renumbering the remaining sections and
4 internal references to accord with this amendment.

H-3695 FILED - *Adopted 5/1 (1496)*
APRIL 30, 1975

BY GENTLEMAN of Polk
TAUKE of Dubuque
BENNETT of Ida
EGENES of Story

REPORT OF THE SECOND CONFERENCE COMMITTEE
ON HOUSE FILE 584

To the President of the Senate and Speaker of the House
of Representatives:

We, the undersigned members of the second conference committee appointed to consider the differences between the Senate and the House of Representatives on House File 584, a bill for an Act relating to competition between business, commercial, or professional entities, prohibiting unreasonable restraints of economic activities, providing for enforcement, and providing criminal and civil penalties, respectfully make the following report:

1. That the Senate recede from its amendment, H-6740, to the House amendment, S-5783, to the Senate amendment, H-5733, to House File 584, as amended, passed, and reprinted.

2. That the House amendment, S-5783, to the Senate amendment, H-5733, to House File 584, as amended, passed, and reprinted, be amended as follows:

1. Page 1, by inserting after line 12 the following:

"___ . Page 2, line 42, by inserting after the word "all" the words "criminal and" and by renumbering the amendment sections accordingly."

2. Page 1, line 38, by striking the words "fifty thousand (50,000)" and inserting in lieu thereof the words "twenty-five thousand (25,000)".

3. Page 1, line 39, by striking the words "one year" and inserting in lieu thereof the words "six months".

4. Page 2, by striking line 20.

ON THE PART OF THE HOUSE:

Norman G. Jesse, Chair
W. R. Monroe, Jr.
Arthur A. Small, Jr.

ON THE PART OF THE SENATE:

James M. Redmond, Chair
Robert M. Carr
Earl M. Willits

FILED
MAY 26, 1976

House adopted 5/27/76 (p. 3243)
Senate adopted 5/28/76 (p. 2428)

REPORT OF THE CONFERENCE COMMITTEE
ON HOUSE FILE 584

To the President of the Senate and the Speaker of the House
of Representatives:

We, the undersigned members of the first conference committee appointed to consider the differences between the Senate and the House of Representatives on House File 584, a bill for an Act relating to competition between business, commercial, or professional entities, prohibiting unreasonable restraints of economic activities, providing for enforcement, and providing criminal and civil penalties, respectfully make the following report:

1. That the Senate and House conferees have failed to reach an agreement.

ON THE PART OF THE HOUSE:

Norman G. Jesse, Chair
Sonja Egenes
W. R. Monroe
Arthur A. Small, Jr.
Andrew Varley

ON THE PART OF THE SENATE:

James M. Redmond, Chair
Robert M. Carr
C. Joseph Coleman

FILED
MAY 26, 1976

AN ACT

RELATING TO COMPETITION BETWEEN BUSINESS, COMMERCIAL, OR PROFESSIONAL ENTITIES, PROHIBITING UNREASONABLE RESTRAINTS OF ECONOMIC ACTIVITIES, PROVIDING FOR ENFORCEMENT, AND PROVIDING CRIMINAL AND CIVIL PENALTIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. NEW SECTION. SHORT TITLE. This Act shall be known and may be cited as the "Iowa Competition Law".

Sec. 2. NEW SECTION. CONSTRUCTION. This Act shall be construed to compliment and be harmonized with the applied laws of the United States which have the same or similar purpose as this Act. 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.

Sec. 3. NEW SECTION. DEFINITIONS. As used in this Act, 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.

Sec. 4. NEW SECTION. RESTRAINT PROHIBITED. A contract, combination, or conspiracy between two or more persons shall not restrain or monopolize trade or commerce in a relevant market.

Sec. 5. NEW SECTION. 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.

Sec. 6. NEW SECTION. EXEMPTIONS. This Act 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.

Sec. 7. NEW SECTION. 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.

Sec. 8. NEW SECTION. VENUE. A suit or proceeding brought under this Act 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 Act occurred.

Sec. 9. NEW SECTION. 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 Act, 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 Act:

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 Act 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 Act 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 Act and similar state and federal laws.

4. This Act 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.

Sec. 10. NEW SECTION. INVESTIGATION ENFORCEMENT. If a person objects or otherwise fails to obey a written demand or court order issued under section nine (9) of this Act, 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 Act, 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.

Sec. 11. NEW SECTION. PROTECTIVE ORDERS. Before the attorney general files an application under section ten (10) of this Act and upon application of any person who was served a written demand or court order under section nine (9) of this Act, 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.

Sec. 12. NEW SECTION. REMEDIES. The state or a person who is injured or threatened with injury by conduct prohibited under this Act may bring suit to:

1. Prevent or restrain conduct prohibited under this Act 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 Act.

3. Recover, at the court's discretion, exemplary damages which do not exceed twice the actual damages awarded under subsection two (2) of this section 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.

Sec. 13. NEW SECTION. CIVIL PENALTY. In addition to suit under section twelve (12) of this Act, the state may bring suit to assess a civil penalty against an enterprise whose conduct is prohibited under this Act. 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 (150,000) 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.

Sec. 14. NEW SECTION. CRIMINAL PENALTIES. A person or a natural person having substantial control over an enterprise who knowingly and willfully engages in conduct prohibited by this Act shall be, upon conviction, fined not to exceed twenty-five thousand (25,000) dollars, imprisoned in the county jail for not more than six months, or both so fined and imprisoned.

Sec. 15. NEW SECTION. 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.

Sec. 16. NEW SECTION. LIMITATIONS.

1. Suit by the state to assess a civil penalty or to obtain a criminal conviction under this Act 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 twelve (12) of this Act 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 thirteen (13) of this Act, this period shall be suspended until one year after the suit brought under section thirteen (13) of this Act is concluded.

Sec. 17. NEW SECTION. 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 twelve (12) of this Act 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.

Sec. 18. Chapter five hundred fifty-three (553), Code 1975, is repealed.

Sec. 19. NEW SECTION. EFFECTIVE DATE. This Act shall take effect on January 1, 1977.

DALE M. COCHRAN
Speaker of the House

ARTHUR A. NEU
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 584, Sixty-sixth General Assembly.

DAVID L. WRAY
Chief Clerk of the House

Approved June 28th, 1976

ROBERT D. RAY
Governor