

56:9-9

LEGISLATIVE HISTORY CHECKLIST

NJSA: 56:9-9 (Anti-trust practices—changes investigation procedures)

LAWS OF: 1983

CHAPTER: 25

Bill No.: A563

Sponsor(s): Gormley, Kern and Herman

Date Introduced: Pre-filed

Committee: Assembly: Judiciary, Law, Public Safety and Defense

Senate: Judiciary

Amended during passage: /// No

Date of Passage: Assembly: March 1, 1982

Senate: Nov. 29, 1982

Date of Approval: Jan. 25, 1983

Following statements are attached if available:

Sponsor statement: Yes ///

Committee statement: Assembly Yes ///

Senate Yes ///

Fiscal Note: /// No

Veto Message: /// No

Message on Signing: Yes /// ~~No~~

Following were printed:

Reports: /// No

Hearings: /// No

Prior bill during 1981 - Legislative session, as mentioned in Assembly committee statement: A2372

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ASSEMBLY, No. 563

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1982 SESSION

By Assemblymen GORMLEY, KERN and HERMAN

AN ACT concerning investigations of antitrust practices and amending the "New Jersey Antitrust Act," approved May 21, 1970 (P. L. 1970, c. 73).

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. Section 9 of P. L. 1970, c. 73 (C. 56:9-9) is amended to read
2 as follows:

3 9. a. [Whenever it shall appear to the Attorney General, either
4 upon complaint or otherwise, that any person shall have engaged
5 in or engages in or is about to engage in any act or practice by this
6 act prohibited or declared to be illegal, or that any person has
7 assisted or participated in any plan, scheme, agreement or com-
8 bination of the nature described herein, or whenever he believes
9 it to be in the public interest that an investigation be made, he may
10 in his discretion either require or permit such person to file with
11 him a statement in writing under oath or otherwise as to all the
12 facts and circumstances concerning the subject matter which he
13 believes is to be to the public interest to investigate. The Attorney
14 General may also require such other data and information as he
15 may deem relevant and may make such special and independent
16 investigations as he may deem necessary in connection with the
17 matter. In connection with any such investigation the Attorney
18 General, his deputy or other officer designated by him, is empowered
19 to subpoena witnesses, compel their attendance, examine them under
20 oath before himself or a court of record, and require the production
21 of any books or papers which he deems relevant or material to the
22 inquiry. Such power of subpoena and examination shall not abate
23 or terminate by reason of any action or proceeding brought by the
24 Attorney General under this act. No person shall be excused from
25 attending such inquiry in pursuance to the mandates of a subpoena,

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

26 or from producing a paper or book, document or any other record,
27 or from being examined or required to answer questions on the
28 ground of failure to tender or pay a witness fee or mileage unless
29 demand therefor is made at the time testimony is about to be taken
30 and as a condition precedent to offering such production or testi-
31 mony and unless payment thereof be not thereupon made. The pro-
32 visions for payment of witness fee or mileage shall not apply to
33 any officer, director or person in the employ of any person whose
34 conduct or practices are being investigated.】

35 *(1) Whenever the Attorney General, by his own inquiry or as*
36 *the result of a complaint, suspects that a violation of this act or of*
37 *the federal anti-trust laws is occurring, has occurred or is about*
38 *to occur, or, whenever the Attorney General believes it to be in*
38A *the public interest that an investigation be made, the Attorney*
39 *General or his designee may prior to the institution of a criminal or*
40 *civil action thereon, issue in writing and cause to be served upon*
41 *any person who may have information relevant to such investiga-*
42 *tion a subpoena to appear and be examined under oath before the*
43 *Attorney General, his designee or a court of record; answer written*
44 *interrogatories under oath; or produce documents or any other*
45 *information or materials for inspection or copying.*

46 *(2) Any subpoena issued pursuant to this subsection shall:*

47 *(a) Contain a general statement concerning the subject matter*
48 *of the investigation;*

49 *(b) Contain a statement advising the person subpoenaed that he*
50 *has the right, at any time before the return date of the subpoena*
51 *to seek a court order determining the validity of the subpoena;*

52 *(c) Contain a statement advising the person subpoenaed that he*
53 *may have an attorney present when he appears and testifies or*
54 *otherwise responds to the subpoena:*

55 *(d) Describe the classes of documentary material to be produced*
56 *thereunder with sufficient particularity to permit such materials*
57 *to be reasonably identified;*

58 *(e) Prescribe a date and time at which the person subpoenaed*
59 *shall appear to testify, under oath, or by which the person shall*
60 *answer written interrogatories or produce the documents or other*
61 *information or materials for inspection or copying; provided that*
62 *such date shall not be less than 15 days from the date of service of*
63 *the subpoena; and*

64 *(f) Specify a place for the taking of testimony or for the sub-*
65 *mission of answers or for the production of documents or other in-*
66 *formation or materials and identify the persons who are authorized*
67 *to receive the return of the subpoena.*

68 (3) *The powers of subpoena and examination contained in this*
69 *subsection shall not abate or terminate by reason of any action or*
70 *proceeding brought by the Attorney General under this act.*

71 b. [If a person subpoenaed to attend such inquiry shall fail to
72 obey the command of the subpoena without good cause, he shall be
73 guilty of a misdemeanor] (1) If a person in attendance upon such
74 [inquiry] investigation pursuant to subpoena, or if a person re-
75 quired to [file with] provide the Attorney General [a statement]
76 answer in writing under oath or otherwise, personally refuses to
77 answer a question or produce evidence of any other kind or make
78 the required [statement in writing under oath or otherwise] answers
79 on the ground that he may be incriminated thereby, and if the
80 Attorney General or his designee, in a writing directed to the per-
81 son [being questioned] orders that person to answer the question
82 or produce the evidence [or the statement in writing under oath
83 or otherwise], that person shall comply with the order. After
84 complying therewith, and if but for this section he would have
85 been privileged to withhold the answer given or the evidence pro-
86 duced [or the statement in writing under oath or otherwise given,
87 such testimony, evidence or statement], such answer, testimony or
88 evidence or any evidence, directly or indirectly derived therefrom,
89 may not be used against the person in any prosecution for a crime
90 or offense concerning which he gave answer or produced evidence
91 [or submitted a written statement under the order of the Attorney
92 General]; provided that the answer, testimony or evidence is re-
93 sponsive to the question propounded. However, he may neverthe-
94 less be prosecuted or subjected to penalty or forfeiture for any
95 perjury, false swearing or contempt committed in answering, or
96 failing to answer, or in producing evidence or failing to produce
97 evidence [or in presenting a written statement] or failing to do
98 so in accordance with the order. [If a person refuses to testify
99 after being granted immunity from prosecution and after being
100 ordered to testify as aforesaid, he may be adjudged in contempt
101 and committed to the county jail until such time as he purges him-
102 self of contempt by testifying, producing evidence or presenting
103 a written statement as ordered. The foregoing shall not prevent
104 the Attorney General from instituting civil contempt proceedings
105 against any person who violates any of the above provisions.

106 c. It shall be the duty of all public officers, their deputies, as-
107 sistants, clerks, subordinates or employees, and all other persons
108 to render and furnish to the Attorney General, his deputy or other
109 designated representative, when so requested, all information and
110 assistance in their possession or within their power. Any officer

111 participating in such inquiry and any person examined as a witness
112 upon such inquiry who shall disclose to any person other than the
113 Attorney General the name of any witness examined or any other
114 information obtained upon such inquiry, except as so directed by
115 the Attorney General shall be guilty of a misdemeanor. Such
116 inquiry may upon written authorization of the Attorney General
117 be made public.】

118 (2) *Any person who fails to obey the command of a subpoena*
119 *after being ordered to do so by a court of competent jurisdiction, is*
120 *guilty of a crime of the fourth degree. In the alternative, if a person*
121 *fails to obey a subpoena after being ordered to do so by a court of*
122 *competent jurisdiction, the Attorney General may apply to that*
123 *court to have that person adjudged in contempt and to commit him*
124 *to jail until such time as he purges himself of contempt by respon-*
125 *sively answering, testifying or producing evidence as ordered.*

126 (3) *A person shall not be excused from complying with the terms*
127 *of a subpoena on the ground of failure to tender or pay a witness fee*
127A *for mileage unless demand therefor is made at the time compliance*
127B *is about to be made. Payment of a witness fee or mileage shall not*
128 *apply to any officer, director or person in the employ of any person*
129 *whose conduct or practices are being investigated.*

130 c. (1) *Except as otherwise provided in this subsection, no ma-*
131 *terial produced pursuant to this section or information derived*
132 *therefrom shall be available for examination, without the consent*
133 *of the person who produced the material, by any person other than*
134 *the Attorney General or his designee in connection with the enforce-*
135 *ment of this act. However, nothing contained herein shall prevent*
136 *the legitimate use of such information or materials by the Attorney*
137 *General or his designee, without the consent of the person who pro-*
138 *duced the materials, for investigational purposes.*

139 (2) *The Attorney General or his designee may disclose, without*
140 *the consent of the person who produced the material, the material*
141 *produced pursuant to this section or information derived therefrom*
142 *to officers and employees of appropriate federal or State law en-*
143 *forcement agencies upon the prior certification of an officer of the*
144 *federal or State law enforcement agency that the information will*
145 *be maintained in confidence and will be used only for official law*
146 *enforcement purposes; provided, however, the Attorney General or*
147 *his designee shall advise such person of his intent to disclose such*
148 *material or information derived therefrom 10 days prior to the*
149 *disclosure.*

150 (3) *The Attorney General or his designee may disclose, without*
151 *the consent of the person who produced the material, material pro-*

152 *duced pursuant to this section or information derived therefrom*
153 *to any court or grand jury.*

154 *d. Service of a subpoena pursuant to this section, shall be by any*
155 *of those methods specified in the New Jersey Rules of Court for*
156 *service of a summons and complaint in a civil action.*

1 2. This act shall take effect immediately.

STATEMENT

Presently, under the "New Jersey Anti-Trust Act," P. L. 1970, c. 23 (C. 56:9-1 et seq.), the Attorney General is empowered to issue investigatory subpoenas requiring oral testimony or the production of documentary material. The purpose of this bill is to establish procedures which provide a reasonable degree of protection to the persons being investigated and to safeguard against potential abuses by the Attorney General in this type of investigation.

A 563 (1982)

ASSEMBLY JUDICIARY, LAW, PUBLIC SAFETY AND
DEFENSE COMMITTEE

STATEMENT TO
ASSEMBLY, No. 563

STATE OF NEW JERSEY

DATED: FEBRUARY 22, 1982

Presently, under the New Jersey Anti-Trust Act (N. J. S. A. 56:9-1 et seq.), the Attorney General is empowered to issue investigatory subpoenas requiring oral testimony or the production of documentary material. The purpose of this bill is to establish procedures which provide a reasonable degree of protection to the persons being investigated and to safeguard against potential abuses by the Attorney General in this type of investigation.

The major provisions of this bill are as follows:

1. Each subpoena would be required to state the subject matter of the investigation; advise the person of his right to legal counsel and his right to seek a court order determining the validity of the subpoena; describe the classes of documentary material required; and proscribe a return date.

2. Clarify that if a person is directed by the Attorney General to testify or produce evidence and that testimony or evidence is determined to be privileged that not only the testimony or evidence but also any other evidence derived from that testimony or evidence may not be used against that person.

3. That a person who fails to comply with a subpoena is guilty of a crime of the fourth degree or in the alternative may be held in contempt.

The procedures established under this bill for the issuance of investigatory subpoenas in anti-trust cases are intended to parallel the procedures established for the issuance of investigatory subpoenas under the Racketeering Act.

This bill was released from the committee during the 1981 session. It passed the Assembly and after being released from the Senate Judiciary Committee it was not voted on by the full Senate.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 563

STATE OF NEW JERSEY

DATED: OCTOBER 25, 1982

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The major provisions of this bill are as follows:

1. Each subpoena would be required to state the subject matter of the investigation; advise the person of his right to legal counsel and his right to seek a court order determining the validity of the subpoena; describe the classes of documentary material required; and proscribe a return date.

2. Clarify that if a person is directed by the Attorney General to testify or produce evidence and that testimony or evidence is determined to be privileged that not only the testimony or evidence but also any other evidence derived from that testimony or evidence may not be used against that person.

3. That a person who fails to comply with a subpoena is guilty of a crime of the fourth degree or in the alternative may be held in contempt.

The procedures established under this bill for the issuance of investigatory subpoenas in antitrust cases are intended to parallel the procedures established for the issuance of investigatory subpoenas under the Racketeering Act.

RELEASE: IMMEDIATE

CONTACT: CARL GOLDEN

TUESDAY, JANUARY 25, 1983

Governor Thomas H. Kean yesterday signed legislation to establish a legal presumption that the owner of a vehicle shall be held liable for a violation of the law requiring that vehicles come to a full stop while a school bus is loading or unloading.

The bill, A-865, sponsored by Assemblyman Elliot Smith, R-Somerset, also requires that vehicles stop 25 feet away from a halted school bus, rather than the existing 10 foot requirement.

The legislation will make it simpler to issue a summons to violators since it will permit the bus driver or any other individual to obtain the license number of a vehicle which failed to stop.

The law establishes a rebuttable presumption, which will permit the owner of the vehicle to offer proof in court that he was not the driver at the time the violation occurred.

The Governor also signed the following bills:

A-563, sponsored by Senator William Gormley, R-Atlantic, to provide that all subpoenas issued by the Attorney General in anti-trust cases must summarize the subject of the investigation, the documents requested, inform the individual of the right to an attorney, and indicate a time and place for the taking of testimony, the submission of answers, and the production of documents.

A-1061, sponsored by Assemblyman David Schwartz, D-Middlesex, to require that health care facilities providing medical or surgical care provide for the use of the facility and the privileges of the facility to licensed podiatrists.

~~TOP SECRET~~