

ACT 190

A Bill for an Act Relating to the Regulation of the Conduct of Trade and Commerce.

Be it Enacted by the Legislature of the State of Hawaii:

SECTION 1. Definitions. As used in this Act.

(1) "Commodity" shall include, but not be restricted to, goods, merchandise, produce, choses in action and any other article of commerce. It also includes trade or business in service trades, transportation, insurance, banking, lending, advertising, bonding and any other business.

(2) "Person" or "persons" includes individuals, corporations, firms, trusts, partnerships and incorporated or unincorporated associations, existing under or authorized by the laws of this State, or any other state, or any foreign country.

(3) "Purchase" or "buy" includes, "contract to buy", "lease", "contract to lease", "acquire a license" and "contract to acquire a license".

(4) "Purchaser" includes the equivalent terms of "purchase" and "buy".

(5) "Sale" or "sell" includes "contract to sell", "lease", "contract to lease", "license" and "contract to license".

(6) "Seller" includes the equivalent terms of "sale" and "sell".

SECTION 2. Combinations in Restraint of Trade, Price-Fixing and Limitation of Production Prohibited.

(1) Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce in the State, or in any section of this State is declared illegal.

(2) Without limiting the generality of the foregoing no person, exclusive of members of a single business entity consisting of a sole proprietorship, partnership, trust or corporation, shall agree, combine, or conspire with any other person or persons, or enter into, become a member of, or

participate in, any understanding, arrangement, pool, or trust, to do, directly or indirectly, any of the following acts, in the State or any section of the State:

- (a) fix, control, or maintain, the price of any commodity;
- (b) limit, control, or discontinue, the production, manufacture, or sale of any commodity for the purpose or with the result of fixing, controlling or maintaining its price;
- (c) fix, control, or maintain, any standard of quality of any commodity for the purpose or with the result of fixing, controlling or maintaining its price;
- (d) refuse to deal with any other person or persons for the purpose of effecting any of the acts described in (a) to (c) of this subsection.

(3) Notwithstanding the foregoing subsection (2) and without limiting the application of the foregoing subsection (1), it shall be lawful for a person to enter into any of the following restrictive covenants or agreements ancillary to a legitimate purpose not violative of this Act, unless the effect thereof may be substantially to lessen competition or to tend to create a monopoly in any line of commerce in any section of the State:

(a) A covenant or agreement by the transferor of a business not to compete within a reasonable area and within a reasonable period of time in connection with the sale of said business;

(b) A covenant or agreement between partners not to compete with the partnership within a reasonable area and for a reasonable period of time upon the withdrawal of a partner from the partnership;

(c) A covenant or agreement of the lessee to be restricted in the use of the leased premises to certain business or agricultural uses, or covenant or agreement of the lessee to be restricted in the use of the leased premises to certain business uses and of the lessor to be restricted in the use of premises reasonably proximate to any such leased premises to certain business uses;

(d) A covenant or agreement by an employee or agent not to use the trade secrets of the employer or principal in competition with his employer or principal, during the term of the agency or thereafter, or after the termination of employment, within such time as may be reasonably necessary for the protection of the employer or principal, without imposing undue hardship on the employee or agent.

(4) Any price-fixing arrangement authorized under sections 205-20 through 205-26, Revised Laws of Hawaii 1955, as amended, shall be excluded from the prohibition of this section.

SECTION 3. Requirements and output contracts: tying agreements. No person shall sell or buy any commodity, or fix a price or discount from, or rebate upon, such price, on the condition, agreement, or understanding that the other person or persons shall not deal in the commodity of a competitor of the seller, or shall not deal with the competitor of the purchaser, as the case may be, when the effect of the sale or purchase or the condition, agreement, or understanding, may be to substantially lessen competition or tend to create a monopoly in any line of commerce in any section of the State.

SECTION 4. Refusal to deal. No person shall refuse to sell any commodity to, or to buy any commodity from, any other person or persons, when the refusal is for the purpose of compelling or inducing the other person or persons to agree to or engage in acts which, if acceded to, are prohibited by other sections of this Act.

SECTION 5. Mergers, Acquisitions, Holdings and Divestitures. (1) No corporation shall acquire and hold, directly or indirectly, from and after the effective date of this Act, the whole or any part of the stock or other share capital of any other corporation, or the whole or any part of the assets of any other corporation where the effect of such acquisition and holding may be substantially to lessen competition or to tend to create a monopoly in any line of commerce in any section of the State. Provided that this subsection shall not apply to corporations purchasing such stock solely for investment and not using the same by voting or otherwise to bring about, or in attempting to bring about, the substantial lessening of competition. Nor shall anything contained in this subsection prevent a corporation from causing the formation of subsidiary corporations for the actual carrying on of their immediate lawful business, or the natural and legitimate branches or extensions thereof, or from owning and holding all or a part of the stock of such subsidiary corporation, when the effect of such formation is not substantially to lessen competition.

(2) No corporation shall hold directly or indirectly the whole or any part of the stock or other share capital of any other corporation, or the whole or any part of the assets of any other corporation, acquired prior to the effective date of this Act, where the effect of such holding is substantially to lessen competition or to tend to create a monopoly in any line of commerce in any section of the State. Where the Court shall find that the holding of such stock, share capital, or assets is substantially to lessen competition or tend to create a monopoly, and is therefore not in the public interest, then the Court shall order the divestiture or other disposition of such stocks, share capital, or assets of such corporation, and shall prescribe a reasonable time, manner and degree of such divestiture or other disposition thereof, provided that the court shall not order the divestiture or other disposition of the assets of such corporation unless it is necessary to eliminate the lessening of competition or the tendency to create a monopoly, and the assets are reasonably identifiable and separable, and it can be done without causing undue hardship on the economic entity.

SECTION 6. Interlocking Directorates and Relationships. (1) That from and after six months from the effective date of this Act no person shall be at the same time a director, officer, partner, or trustee in any two or more firms, partnerships, trusts, associations or corporations or any combination thereof, engaged in whole or in part in commerce, if such firms, partnerships, trusts, associations or corporations or any combination thereof, are or shall have been theretofore, by virtue of their business and location of operation, competitors, so that the elimination of competition by agreement between them would constitute a violation of any of the provisions of this Act.

(2) From and after six months from the effective date of this Act, no person shall be at the same time a director, officer, partner, or trustee in any two or more non-competing firms, trusts, partnerships or corporations or any combination thereof, any one of which has a total net worth aggregating more than \$100,000, or a total net worth of all of the business entities aggregating more than \$300,000, engaged in whole or in part in trade or commerce in this State where the effect of a merger between such business entities whether legally possible or not may be substantially to lessen competition or to tend to create a monopoly in any line of commerce in any section

of the State. The total net worth herein mentioned with reference to a corporation shall consist of the capital, surplus and undivided profits; the total net worth with reference to a firm or partnership shall consist of the capital account; and the total net worth with reference to a trust shall consist of the principal of the trust.

This subsection shall not apply to an interlocking directorship between a bank doing a banking business and any other business firm or entity.

(3) No person shall by the use of a representative or representatives effectuate the result prohibited in the preceding subsections where the act or acts of such representative or representatives acting in their capacities as directors, officers, partners or trustees of such business entities indicate an attempt directly or indirectly to manipulate the conduct of the business entities to the detriment of any of such entities and to the benefit of any other entity in which such person has an interest.

(4) The validity or invalidity of any act of any director, officer or trustee done by such director, officer or trustee while occupying such position in violation of the provisions of this section shall be determined by the statutory and common law of the State of Hawaii relating to corporations, trust or associations as the case may be except that it shall not be affected by the provisions of Section 1-9, Revised Laws of Hawaii 1955. The non-applicability of Section 1-9, Revised Laws of Hawaii 1955 shall be limited to this section only.

The state attorney general may bring an action at any time to cause a director, officer or trustee who may be occupying such position in violation of this section, to vacate the office or offices to effectuate the termination of the prohibited interlocking relationship. The state attorney general or any person affected by any act or acts of such director, officer or trustee may move to cause such director, officer or trustee who may be occupying such position in violation of this section to vacate the office or offices to effectuate the termination of the prohibited interlocking relationship, in any action or proceeding in which the person affected, and any such director, officer or trustee, or the legal entities in which such director, officer or trustee holds office are parties to the action or proceeding, without the necessity of bringing a separate action to try title to office. The court upon finding that a director, officer or trustee is holding office in contravention of this section shall order such person to terminate the interlocking relationship, and in the case of a trustee, the court may, when it deems appropriate, order the state attorney general to institute proceedings for the removal of such trustee from his office, and the findings of the court of such violation of this section by such trustee shall be a sufficient cause of action to maintain such proceeding. Any remedy provided in this section shall not limit and is in addition and cumulative to any other remedy available under any other section of this Act or any other law.

SECTION 7. Monopolization. No person shall monopolize, or attempt to monopolize or combine or conspire with any other person to monopolize any part of the trade or commerce in any commodity in any section of the State.

SECTION 8. Exemption of Labor Organizations. The labor of a human being is not a commodity or article of commerce. Nothing contained in this Act shall be construed to forbid the existence and operation of labor organizations, instituted for the purpose of mutual help, and not having

capital stock or conducted for profits, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, lawfully carrying out the legitimate objects thereof be held or construed to be illegal combinations or conspiracies in restraint of trade under this Act.

The provisions of this Act shall not apply to the conduct or activities of labor organizations or their members which conduct or activities are regulated by federal or state legislation or over which the National Labor Relations Board or the Hawaii Employment Relations Board have jurisdiction.

SECTION 9. Exemption of certain cooperative organizations; insurance transactions; approved mergers of federally regulated companies. (1) Nothing contained in this Act shall be construed to forbid the existence and operation of fishery or agricultural cooperative organizations or associations instituted for the purpose of mutual help, and which are organized and operating under Chapters 175A or 176, Revised Laws of Hawaii 1955, as amended, or which conform and continue to conform to the requirements of the Capper-Volstead Act (7 U.S.C. 291 and 292), provided that if any such organization or association monopolizes or restrains trade or commerce in any section of this State to such an extent that the price of any fishery or agricultural product is unduly enhanced by reason thereof the provisions of this Act shall apply to such acts.

(2) This Act shall not apply to any transaction in the business of insurance which is in violation of any section of this Act if such transaction is expressly permitted by the insurance laws of this State; and provided further that nothing contained in this section shall render this Act inapplicable to any agreement to boycott, coerce, or intimidate or act of boycott, coercion or intimidation.

(3) This Act shall not apply to mergers of companies where such mergers are approved by the federal regulatory agency which has jurisdiction and control over such mergers.

SECTION 10. Contracts void. Any contract or agreement in violation of this Act is void and is not enforceable at law or in equity.

SECTION 11. Suits by persons injured; amount of recovery, injunctions. (1) Any person who is injured in his business or property by reason of anything forbidden or declared unlawful by this Act:

(a) may sue for damages sustained by him, and, if the judgment is for the plaintiff, he shall be awarded threefold damages by him sustained and reasonable attorneys' fees together with the costs of suit; and

(b) may bring proceedings to enjoin the unlawful practices, and if the decree is for the plaintiff, he shall be awarded reasonable attorneys' fees together with the cost of suit.

(2) The remedies provided in this section are cumulative and may be sought in one action.

SECTION 12. Suits by the State; amount of recovery. Whenever the State of Hawaii, any county, or city and county is injured in its business or property by reason of anything forbidden or declared unlawful by this Act, it may sue to recover actual damages sustained by it. The attorney general may bring an action on behalf of the State or any of its political subdivisions or governmental agencies to recover the damages provided for by this section, or by any comparable provisions of federal law.

SECTION 13. Injunction by attorney general. The attorney general may bring proceeding to enjoin any violation of the provisions of this Act.

SECTION 14. Violation a misdemeanor. (1) Any person who violates any of the provisions of Sections 2, 4, 7 or 15 of this Act, including any principal, manager, director, officer, agent, servant or employee, who had engaged in or has participated in the determination to engage in an activity that has been engaged in by any association, firm, partnership, trust, or corporation, which activity is a violation of any provision of Sections 2, 4, 7 or 15 of this Act, is punishable if a natural person by a fine not exceeding \$10,000 or by imprisonment not exceeding one year, or by both such fine and imprisonment, in the discretion of the court; if such person is not a natural person then by a fine not exceeding \$20,000.

(2) The actions authorized by this section and Section 16 shall be brought in the circuit court of the circuit where the offense occurred.

SECTION 15. Individual liability for corporate act. Whenever a corporation violates any of the penal provisions of this Act, such violation shall be deemed to be also that of the individual directors, officers, or agents of such corporation who have authorized, ordered or done any of the acts constituting in whole or in part such violation.

SECTION 16. Investigation. (1) Whenever it appears to the attorney general, either upon complaint or otherwise, that any person or persons, has engaged in or engages in or is about to engage in any act or practice by this Act prohibited or declared to be illegal, or that any person or persons, has assisted or participated in any plan, scheme, agreement or combination of the nature described herein, or whenever he believes it to be in the public interest that an investigation be made, he may in his discretion either require or permit such complainant to file with him a statement in writing under oath or otherwise as to all the facts and circumstances concerning the subject matter which he believes to be in the public interest to investigate. The attorney general may also require such other data and information from such complainant as he may deem relevant and may make such special and independent investigations as he may deem necessary in connection with the matter.

(2) Whenever the attorney general has reason to believe that any person may be in possession, custody, or control of any documentary material, objects, tangible things or information (hereinafter referred to as "documentary evidence") pertinent to any investigation of a possible violation of this Act and before the filing of any complaint in court, he may issue in writing, and cause to be served upon such person, an investigative demand requiring such person to produce such documentary evidence for examination.

(3) Each such demand shall:

(a) state that an alleged violation of the section or sections of this Act which are under investigation;

(b) describe and fairly identify the documentary evidence to be produced, or to be answered;

(c) prescribe a return date within a reasonable period of time during which the documentary evidence demanded may be assembled and produced;

(d) identify the custodian to whom such documentary evidence are to be delivered; and

(e) specify a place at which such delivery is to be made.

(4) No such demand shall :

(a) contain any requirement which would be held to be unreasonable if contained in a subpoena duces tecum issued by a court of this State in aid of a grand jury investigation of such possible violation; or

(b) require the production of any documentary evidence which would be privileged from disclosure if demanded by a subpoena duces tecum issued by a court of this State in aid of a grand jury investigation of such possible violation.

(5) Any such demand may be served by any attorney employed by or other authorized employee of this State at any place within the territorial jurisdiction of any court of this State.

(6) Service of any such demand or of any petition filed under subsection 15 of this section, may be made upon a partnership, trust, corporation, association, or other legal entity by :

(a) delivering a duly executed copy thereof to any partner, trustee, executive officer, managing agent, or general agent thereof, or to any agent, thereof authorized by appointment or by law to receive service or process on behalf of such partnership, trust, corporation, association, or entity ; or

(b) delivering a duly executed copy thereof to the principal office or place of business in this State of the partnership, trust, corporation, association, or entity to be served ; or

(c) depositing such copy in the United States mails, by registered or certified mail duly addressed to such partnership, trust, corporation, association or entity at its principal office or place of business in this State.

(7) A verified return by the individual serving any such demand or petition setting forth the manner of such service shall be proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand or petition.

(8) The attorney general shall designate a representative to serve as custodian of any documentary evidence, and such additional representatives as he shall determine from time to time to be necessary to serve as deputies to such officer.

(9) Any person upon whom any demand issued under subsection (2) has been duly served shall deliver such documentary evidence to the custodian designated therein at the place specified therein (or at such other place as such custodian thereafter may prescribe in writing) on the return date specified in such demand (or on such later date as such custodian may prescribe in writing). No such demand or custodian may require delivery of any documentary evidence to be made :

(a) at any place outside the territorial jurisdiction of this State without the consent of the person upon whom such demand was served ; or

(b) at any place other than the place at which such documentary evidence is situated at the time of service of such demand until the custodian has tendered to such person a sum sufficient to defray the cost of transporting such material to the place prescribed for delivery or the transportation thereof to such place at government expense.

(10) The custodian to whom any documentary evidence is so delivered shall take physical possession thereof, and shall be responsible for the use made thereof and for the return thereof pursuant to this section. The custodian shall issue a receipt for such evidence received. The custodian may cause the preparation of such copies of such documentary evidence as may

be required for official use by any individual who is entitled, under regulations which shall be promulgated by the attorney general, to have access to such evidence for examination. While in the possession of the custodian, no such evidence so produced shall be available for examination, without the consent of the person who produced such evidence, by any individual other than a duly authorized representative of the office of the attorney general. Under such reasonable terms and conditions as the attorney general shall prescribe, documentary evidence while in the possession of the custodian shall be available for examination by the person who produced such evidence or any duly authorized representative of such person.

(11) Whenever any attorney has been designated to appear on behalf of this State before any court or grand jury in any case or proceeding involving any alleged violation of this Act, the custodian may deliver to such attorney such documentary evidence in the possession of the custodian as such attorney determines to be required for use in the presentation of such case or proceeding on behalf of this State. Upon the conclusion of any such case or proceeding, such attorney shall return to the custodian any documentary evidence so withdrawn which has not passed into the control of such court or grand jury through the introduction thereof into the record of such case or proceeding.

(12) Upon the completion of the investigation for which any documentary evidence was produced under this section, and any case or proceeding arising from such investigation, the custodian shall return to the person who produced such evidence all such evidence (other than copies thereof made by the attorney general or his representative pursuant to subsection (10) of this section) which has not passed into the control of any court or grand jury through the introduction thereof into the record of such case or proceeding.

(13) When any documentary evidence has been produced by any person under this section for use in any investigation, and no such case or proceeding arising therefrom has been instituted within a reasonable time after completion of the examination and analysis of all evidence assembled in the court of such investigation, such person shall be entitled, upon written demand made upon the attorney general to the return of all documentary evidence (other than copies thereof made by the attorney general or his representative pursuant to subsection (10) of this section) so produced by such person.

(14) In the event of the death, disability, or separation from service in the office of the attorney general of the custodian of any documentary evidence produced under any demand issued under this section, or the official relief of such custodian from responsibility for the custody and control of such evidence, the attorney general shall promptly designate another representative to serve as custodian thereof, and transmit notice in writing to the person who produced such evidence as to the identity and address of the successor so designated. Any successor so designated shall have with regard to such evidence all duties and responsibilities imposed by this section upon his predecessor in office with regard thereto, except that he shall not be held responsible for any default or dereliction which occurred before his designation as custodian.

(15) Whenever any person fails to comply with any investigative demand duly served upon him under subsection (6) of this section, the attorney

general, through such officers or attorneys as he may designate, may file, in the district court of any county in which such person resides, is found, or transacts business, and serve upon such person a petition for an order of such court for the enforcement of such demand, except that if such person transacts business in more than one such county such petition shall be filed in the county in which such person maintains his principal place of business, or in such other county in which such person transacts business as may be agreed upon by the parties to such petition. Such person shall be entitled to be heard in opposition to the granting of any such petition.

(16) Within twenty days after the service of any such demand upon any person, or at any time before the return date specified in the demand, whichever period is shorter, such person may file, in the district court of the county within which the office of the custodian designated therein is situated, and serve upon such custodian a petition for an order of such court modifying or setting aside such demand. Such petition shall specify each ground upon which the petitioner relies in seeking such relief, and may be based upon any failure of such demand to comply with the provisions of this section, or upon any constitutional right or privilege of such person.

If the court does not set aside such demand, such person shall be assessed court cost and reasonable attorneys' fees and such other penalties not greater than those specified under Section 14 of this Act. If the Court sets aside such demand, such person shall be given the total cost of such petition.

(17) At any time during which any custodian is in custody or control of any documentary evidence delivered by any person in compliance with any such demand, such person may file, in the district court of the county within which the office of such custodian is situated, and serve upon such custodian a petition for an order of such court requiring the performance by such custodian of any duty imposed upon him by this section.

(18) Whenever the attorney general has reason to believe that any person has information pertinent to any investigation of a possible violation of this Act and before the filing of any complaint in court, he may seek a subpoena from the clerk of the district court in the county where such person resides, is found or transacts business, requiring his presence to appear before a district magistrate licensed to practice law in the Supreme Court of this State to give oral testimony under oath on a specified date, time and place. The clerk of the district court may also issue a subpoena duces tecum under like conditions at the request of the attorney general. Any witness subpoenaed shall be entitled to be represented by counsel and any subpoena shall state the alleged violation of the section or sections of this Act. The scope and manner of examination shall be in accordance with the rules governing depositions as provided in the Hawaii Rules of Civil Procedure. The person subpoenaed may at any time before the date specified for the taking of the oral testimony, move to quash any subpoena before said district magistrate from whose court any subpoena was issued for such grounds as may be provided for quashing a subpoena in accordance with the rules governing depositions as set forth in the Hawaii Rules of Civil Procedure.

(19) No person shall be excused from attending an inquiry pursuant to the mandates of a subpoena, or from producing any documentary evidence, or from being examined or required to answer questions on the ground of failure to tender or pay a witness fee or mileage unless demand therefor is made at the time testimony is about to be taken and as a condition precedent to offering such production or testimony and unless payment thereof be not thereupon

made. The provisions for payment of witness fee and mileage do not apply to any officer, director or person in the employ of any person or persons whose conduct or practices are being investigated. No person who is subpoenaed to attend such inquiry, while in attendance upon such inquiry, shall, without reasonable cause, refuse to be sworn or to answer any question or to produce any book, paper, document, or other record when ordered to do so by the officer conducting such inquiry, or fail to perform any act hereunder required to be performed.

(20) Whoever, with intent to avoid, evade, prevent, or obstruct compliance in whole or in part, by any person with any investigative demand made under this section, wilfully removes from any place, conceals, withholds, destroys, mutilates, alters, or by any other means falsifies any documentary evidence in the possession, custody or control of any person which is the subject of any such demand duly served upon any person shall be fined not more than \$5,000.00 or imprisoned not more than one year, or both. Any person wilfully failing to comply with a subpoena issued pursuant to subsection (18) of this section shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

(21) Nothing contained in this section shall impair the authority of the attorney general or his representatives to lay before any grand jury impaneled before any circuit court of this State any evidence concerning any alleged violation of this Act, invoke the power of any such court to compel the production of any evidence before any such grand jury, or institute any proceeding for the enforcement of any order or process issued in execution of such power, or to punish disobedience of any such order or process by any person.

(22) As used in this section the term "documentary material" includes the original or any copy of any book, record, report, memorandum, paper, communication, tabulation, chart, or other document.

(23) It shall be the duty of all public officers, their deputies, assistants, clerks, subordinates and employees to render and furnish to the attorney general, his deputy or other designated representatives when so requested, all information and assistance in their possession or within their power.

(24) Any officer participating in such inquiry and any person examined as a witness upon such inquiry who shall wilfully disclose to any person other than the attorney general the name of any witness examined or any other information obtained upon such inquiry, except as so directed by the attorney general shall be punishable by a fine of not more than \$1,000 or imprisonment for not more than one year, or both.

(25) The enumeration and specification of various processes do not preclude or limit the use of processes under the Hawaii Rules of Civil Procedure but are deemed to be supplementary to said rules or the use of any other lawful investigative methods which are available.

SECTION 17. Additional parties defendant. Whenever it appears to the court before which any civil proceeding under this Act is pending that the ends of justice require that other parties be brought before the court, the court may cause them to be made parties defendant and summoned, whether or not they reside, engage in business, or have an agent, in the circuit where such action is pending.

SECTION 18. Duty of the attorney general; duty of county attorney, etc. (1) The attorney general shall enforce the criminal and civil provisions of this Act. The county attorney of any county, the prosecuting attorney

and the corporation counsel of the city and county shall investigate and report suspected violations of the provisions of this Act to the attorney general.

(2) Whenever the provisions of this Act authorize or require the attorney general to commence any action or proceeding, including proceedings under Section 16 of this Act, the attorney general may require the county attorney, prosecuting attorney, or corporation counsel, of any county or city and county, holding office in the circuit where the action or proceeding is to be commenced or maintained, to maintain the action or proceeding under the direction of the attorney general.

SECTION 19. Court and venue. Any action or proceeding, whether civil or criminal, authorized by the provisions of this Act shall be brought in the circuit court for the circuit in which the defendant resides, engages in business, or has an agent, unless otherwise specifically provided herein.

SECTION 20. Judgment in favor of the State as evidence in private action; suspension of limitation. (1) A final judgment or decree rendered in any civil or criminal proceeding brought by the State under the provisions of this Act shall be prima facie evidence against such defendant in any action or proceeding brought by any other party under the provisions of this Act, or by the State, county or city and county, under Section 12, against such defendant as to all matter respecting which said judgment or decree would be an estoppel as between the parties thereto. This section shall not apply to consent judgments or decrees entered before any complaint has been filed; provided, however, that when a consent judgment or decree is filed, the state attorney general shall set forth at the same time the alleged violations and reasons for entering into the consent judgment or decree. No such consent judgment or decree shall become final until sixty days from the filing of such consent judgment or decree or until the final determination of any exceptions filed, as hereinafter provided, whichever is later. During such sixty day period any interested party covered under Section 11 of this Act may file verified exceptions to the form and substance of said consent judgment or decree, and the court, upon a full hearing thereon may approve, refuse to enter, or may modify such consent judgment or decree.

(2) A plea of nolo contendere in any criminal action under this Act shall have the effect of admitting each and every material allegation in the complaint, and a final judgment or decree rendered pursuant to such plea shall be prima facie evidence against such defendant in any action or proceeding brought by any other party under the provisions of this Act, or by the State, county or city and county, under Section 12 against such defendant as to all matters respecting which said judgment or decree would be an estoppel as between the parties thereto.

(3) Whenever any civil or criminal proceeding is instituted by the State to prevent, restrain, or punish violations of any provisions of this Act, but not including an action under Section 12, the running of the statute of limitations in respect of every private right of action arising under said laws and based in whole or in part on any matter complained of in said proceeding shall be suspended during the pendency thereof and for one year thereafter.

SECTION 21. Immunity from prosecution. (1) In any investigation brought by the attorney general pursuant to Section 16 of this Act, no individual shall be excused from attending, testifying, or producing documentary materials, objects or tangible things in obedience to an investigative demand, subpoena or under order of court on the ground that the testimony

or evidence required of him may tend to incriminate him or subject him to any penalty.

(2) No individual shall be criminally prosecuted or subjected to any criminal penalty under this Act for or on account of any transaction, matter or thing concerning which he may so testify or produce evidence in any investigation brought by the attorney general pursuant to Section 16 of this Act, or any county attorney, prosecuting attorney, or corporation counsel of any county or city and county, provided no individual so testifying shall be exempt from prosecution or punishment for perjury committed in so testifying.

SECTION 22. Limitation of actions. Any action to enforce a cause of action arising under the provisions of this Act shall be barred unless commenced within four years after the cause of action accrues, except as otherwise provided in Section 20 of this Act. For the purpose of this section, a cause of action for a continuing violation is deemed to accrue at any time during the period of such violation.

SECTION 23. Severability. If any portion of this Act or its application to any person or circumstances is held to be invalid for any reason, then the remainder of this Act and each and every other provision thereof shall not be affected thereby.

SECTION 24. Effective Date. This Act shall take effect on August 21, 1961.

(Approved July 12, 1961.) **H.B. 27.**
