



# Senate

General Assembly

**File No. 713**

January Session, 2009

Senate Bill No. 964

*Senate, April 20, 2009*

The Committee on Judiciary reported through SEN. MCDONALD of the 27th Dist., Chairperson of the Committee on the part of the Senate, that the bill ought to pass.

## ***AN ACT CONCERNING THE CONNECTICUT ANTITRUST ACT.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 35-42 of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective July 1, 2009*):

3 (a) Whenever the Attorney General, his or her deputy [ ] or any  
4 assistant attorney general designated by the Attorney General, has  
5 reason to believe that any person has violated any of the provisions of  
6 this chapter, he or she may, prior to instituting any action or  
7 proceeding against such person, issue in writing and cause to be  
8 served upon any person, by subpoena duces tecum, a demand  
9 requiring such person to submit to him or her documentary material  
10 relevant to the scope of the alleged violation. For the purposes of this  
11 section, "documentary material" includes, but is not limited to, any  
12 information in a written, recorded or electronic form.

13 (b) Such demand shall (1) state the nature of the alleged violation,  
14 [and] (2) describe the class or classes of documentary material to be

15 reproduced thereunder with such definiteness and certainty as to be  
16 accurately identified, and (3) prescribe a date which would allow a  
17 reasonable time to assemble such [documents] documentary material  
18 for compliance.

19 (c) (1) All [documents] documentary material furnished to the  
20 Attorney General, his or her deputy [,] or any assistant attorney  
21 general designated by the Attorney General, pursuant to a demand  
22 issued under subsection (a) of this section, shall be held in the custody  
23 of the Attorney General, or [his] the Attorney General's designee, and  
24 shall not be available to the public. [, and] Such documentary material  
25 shall be returned to the person [at] furnishing such documentary  
26 material upon the termination of the [attorney general's] Attorney  
27 General's investigation or final determination of any action or  
28 proceeding commenced thereunder.

29 (2) All documentary material or other information furnished  
30 voluntarily to the Attorney General, his or her deputy or any assistant  
31 attorney general designated by the Attorney General, for suspected  
32 violations of the provisions of this chapter, and the identity of the  
33 person furnishing such documentary material or other information,  
34 shall be held in the custody of the Attorney General, or the Attorney  
35 General's designee, and shall not be available to the public. Such  
36 documentary material or other information shall be returned to the  
37 person furnishing such documentary material or other information  
38 upon the termination of the Attorney General's investigation or final  
39 determination of any action or proceeding commenced thereunder.

40 (d) No such demand shall require the submission of any  
41 documentary material, the contents of which would be privileged, or  
42 precluded from disclosure if demanded in a grand jury investigation.

43 (e) The Attorney General, his or her deputy [,] or any assistant  
44 attorney general designated by the Attorney General, may during the  
45 course of an investigation of any violations of the provisions of this  
46 chapter by any person (1) issue in writing and cause to be served upon  
47 any person, by subpoena, a demand that such person appear before

48 him or her and give testimony as to any matters relevant to the scope  
49 of the alleged violations. Such appearance shall be under oath and a  
50 written transcript made of the same, a copy of which shall be furnished  
51 to [said] such person appearing, and shall not be available for public  
52 disclosure; and (2) issue written interrogatories prescribing a return  
53 date which would allow a reasonable time to respond, which  
54 responses shall be under oath and shall not be available for public  
55 disclosure.

56 (f) In the event any person [shall fail] fails to comply with the  
57 provisions of this section, (1) the Attorney General, his or her deputy  
58 [.] or any assistant attorney general designated by the Attorney  
59 General, may apply to the superior court for the judicial district of  
60 Hartford for compliance, which court may, upon notice to such person,  
61 issue an order requiring such compliance, which shall be served upon  
62 such person; (2) the Attorney General, his or her deputy [.] or any  
63 assistant attorney general designated by the Attorney General, may  
64 also apply to the superior court for the judicial district of Hartford for  
65 an order, which court may, after notice to such person and hearing  
66 thereon, issue an order requiring the payment of civil penalties to the  
67 state in an amount not to exceed [five hundred] two thousand dollars.

68 (g) The Attorney General shall cooperate with officials of the federal  
69 government and the several states, including but not limited to the  
70 sharing and disclosure of information and evidence obtained under  
71 the purview of this chapter.

72 (h) Service of subpoenas ad testificandum, subpoenas duces tecum,  
73 notices of deposition [.] and written interrogatories, as provided  
74 [herein] in this section, may be made by: (1) Personal service or service  
75 at the usual place of abode; or (2) [by] registered or certified mail,  
76 return receipt requested, a duly executed copy thereof addressed to the  
77 person to be served at [his] such person's principal place of business in  
78 this state, or, if [said] such person has no principal place of business in  
79 this state, [to his] at such person's principal office [.] or [to his] such  
80 person's residence.

81      Sec. 2. Section 35-38 of the general statutes is repealed and the  
82 following is substituted in lieu thereof (*Effective October 1, 2009*):

83      In any action instituted by the Attorney General, any individual  
84 who has been held to have violated this chapter shall forfeit and pay to  
85 the state a civil penalty of not more than [twenty-five] one hundred  
86 thousand dollars. Any other person who has been held to have  
87 violated any of the provisions of this chapter shall forfeit and pay to  
88 the state a civil penalty of not more than [two hundred fifty thousand]  
89 one million dollars.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2009</i>	35-42
Sec. 2	<i>October 1, 2009</i>	35-38

**JUD**      *Joint Favorable*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

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**OFA Fiscal Note**

**State Impact:**

<b>Agency Affected</b>	<b>Fund-Effect</b>	<b>FY 10 \$</b>	<b>FY 11 \$</b>
Attorney General, Judicial Department	GF - Revenue Gain	Potential	Potential

Note: GF=General Fund

**Municipal Impact:** None

**Explanation**

The bill results in a potential revenue gain to the state by increasing civil penalties in antitrust cases. The potential revenue increase is dependent upon the number of such cases brought and successful adjudication.

**The Out Years**

The annualized ongoing fiscal impact identified above would continue into the future subject to the number of cases.

**OLR Bill Analysis****SB 964*****AN ACT CONCERNING THE CONNECTICUT ANTITRUST ACT.*****SUMMARY:**

This bill increases the maximum civil penalty that courts may impose on violators of the Connecticut antitrust act in cases the attorney general brings against (1) an individual, from \$25,000 to \$100,000, and (2) a corporation, limited liability company, partnership, or any other legal or commercial entity, from \$250,000 to \$1,000,000. The bill imposes the same confidentiality requirements on documentary material and other information voluntarily revealed to the attorney general in an anti-trust investigation as currently apply to material and information subpoenaed by the attorney general. The bill specifies that "documentary material" includes information that is written, recorded, or in electronic form.

Finally, the bill increases from \$500 to \$2,000, the maximum civil penalty that a court may award, for failing to comply with a subpoena, interrogatory, or other demand for documentary material made by the attorney general in connection with an antitrust violation investigation.

EFFECTIVE DATE: October 1, 2009 except the provision concerning documentary materials and other information becomes effective July 1, 2009.

**DOCUMENTARY MATERIAL OR OTHER INFORMATION VOLUNTARILY FURNISHED**

The bill requires that the attorney general keep in his custody all documentary material or other information furnished voluntarily for suspected violations of the antitrust act. It makes the material and other information and the identity of the person furnishing the

information unavailable to the public. The bill requires that the material or other information must be returned to the person furnishing it when the attorney general ends his investigation or any related anti-trust action or proceeding is terminated.

## **BACKGROUND**

### ***Related Case***

The scope of the protection provided by the confidentiality provision contained in existing law is not clear (See *Brown and Brown Inc. v. Blumenthal* 288 Conn. 646 (2008)).

## **COMMITTEE ACTION**

Judiciary Committee

Joint Favorable

Yea 40      Nay 0      (03/31/2009)