



# Senate

General Assembly

**File No. 151**

January Session, 2013

Senate Bill No. 879

*Senate, March 26, 2013*

The Committee on General Law reported through SEN. DOYLE of the 9th Dist., Chairperson of the Committee on the part of the Senate, that the bill ought to pass.

***AN ACT CONCERNING THE CONFIDENTIALITY OF INFORMATION OBTAINED BY THE ATTORNEY GENERAL DURING THE COURSE OF ANTITRUST INVESTIGATIONS.***

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 amended by adding  
2 subsection (i) as follows (*Effective October 1, 2013*):

3 (NEW) (i) Notwithstanding the prohibition against public disclosure  
4 of documentary material and other information provided in  
5 subsections (c) and (e) of this section, any confidential material may be  
6 used by the Attorney General, or the Attorney General's designee, in  
7 connection with the taking of oral testimony conducted pursuant to  
8 this section, when the Attorney General, or the Attorney General's  
9 designee, reasonably determines that it is necessary to disclose such  
10 confidential material to a person providing oral testimony in order to  
11 adduce evidence of a suspected violation of a provision of this chapter  
12 and reasonably believes that the person providing oral testimony: (1) Is  
13 an author or recipient of the confidential material, (2) has read the

14 confidential material, or (3) is otherwise aware of the substance of the  
15 confidential material. The permissible use of confidential material in  
16 connection with the taking of oral testimony provided under this  
17 subsection shall not apply to investigations of proposed mergers or  
18 acquisitions. No copy or original of the confidential material described  
19 or shown to a person providing oral testimony pursuant to this section  
20 shall be retained by such person. For purposes of this subsection,  
21 "confidential material" means documentary material, responses to  
22 interrogatories or written transcripts of oral testimony, or copies  
23 thereof, or other information produced pursuant to a demand made  
24 under this section or furnished voluntarily.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>October 1, 2013</i>	35-42
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**GL**      *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:*** None***Municipal Impact:*** None***Explanation***

The bill results in no fiscal impact as it only changes procedural actions by the Office of the Attorney General with regard to antitrust investigations.

***The Out Years******State Impact:*** None***Municipal Impact:*** None

**OLR Bill Analysis****SB 879*****AN ACT CONCERNING THE CONFIDENTIALITY OF INFORMATION OBTAINED BY THE ATTORNEY GENERAL DURING THE COURSE OF ANTITRUST INVESTIGATIONS.*****SUMMARY:**

This bill allows disclosure of confidential material to a person testifying in an antitrust investigation by the attorney general when the attorney general or his designee reasonably:

1. determines its use is necessary to bring out evidence of a suspected antitrust violation and
2. believes the person providing the testimony (a) is an author or recipient of the confidential material or (b) has read it and is aware of its substance.

By law, the attorney general's office can subpoena documents, subpoena people to testify and transcribe their testimony, and issue written interrogatories in an antitrust investigation. Current law prohibits any disclosure of these documents to the public, but allows the attorney general to share them with federal and other states' officials. Under the bill, confidential material refers to (1) original or copies of documents, responses to interrogatories, or written transcripts of oral testimony, or (2) other information produced after a demand or furnished voluntarily.

The bill prohibits the person providing testimony from keeping any of the confidential material.

The bill's authorized use of confidential material does not apply to investigations of proposed mergers or acquisitions.

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EFFECTIVE DATE: October 1, 2013

## **BACKGROUND**

### ***Related Case***

In 2010, the Connecticut Supreme Court ruled that the statutes bar disclosure of material and information gathered in an antitrust investigation to anyone outside the attorney general's office, with the exception of federal and other states' officials. The court stated that the material cannot be disclosed in connection with taking oral testimony as part of the antitrust investigation.

Regarding disclosure to federal or other states' officials, the court stated that the attorney general must obtain an agreement that the other officials will abide by Connecticut's statutory confidentiality provisions.

The court also stated that when materials are filed or entered into evidence in a court proceeding, the statutory confidentiality provisions must be balanced against the presumption that documents submitted in court related to an adjudication are publicly available. The court stated that court rules allow the party who provided the documents to seek to seal them or limit their disclosure, and the trial court must then determine whether (1) they involve trade secrets or sensitive information and (2) the need for confidentiality outweighs the public's interest in viewing them (*Brown and Brown, Inc. v. Blumenthal*, 297 Conn. 710 (2010)).

## **COMMITTEE ACTION**

General Law Committee

Joint Favorable

Yea 18    Nay 0    (03/12/2013)