


Council of the District of Columbia
COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY
COMMITTEE REPORT
1350 Pennsylvania Avenue, N.W., Washington, DC 20004

To: Members of the Council of the District of Columbia

From: Councilmember Charles Allen 
Chairperson, Committee on the Judiciary and Public Safety

Date: October 30, 2020

Subject: Report on B23-0300, the “Antitrust Remedies Amendment Act of 2020”

The Committee on the Judiciary and Public Safety, to which Bill 23-0300, the “Antitrust Remedies Amendment Act of 2020”, was referred, reports favorably thereon and recommends approval by the Council of the District of Columbia.¹

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¹ As introduced, the short title of B23-0300 was the “Antitrust Remedies Amendment Act of 2019”.

STATEMENT OF PURPOSE AND EFFECT

I. Purpose and Effect

Bill 23-0300, the “Antitrust Remedies Amendment Act of 2020”, was introduced on May 14, 2019 by Chairman Phil Mendelson at the request of Attorney General Karl Racine. The bill was referred to the Committee on the Judiciary and Public Safety on May 28, 2019, and the Committee held a public hearing on the bill on June 24, 2019.

As introduced, B23-0300 would amend the District of Columbia Antitrust Act of 1980, effective March 5, 1981 (D.C. Law 3-169; D.C. Official Code § 28-4501 *et seq.*) (“Antitrust Act”), to modernize the available civil remedies for violations. The Antitrust Act protects District residents, agencies, and businesses from anticompetitive practices, such as price-fixing, market allocation, and monopolization. These practices can “result in price inflation for products and services used by District residents, decreased supply or quality of these products or services, or the loss of innovation and competitive opportunity in the District’s markets”.² For example, the Office of the Attorney General (“OAG”) is currently pursuing litigation against pharmaceutical makers of opioid withdrawal drugs and corporate actors for alleged widespread price fixing in the drug industry.

Currently, civil remedies for violations of the Antitrust Act are limited. Importantly, OAG cannot seek civil *penalties*. B23-0300 closes this gap and brings the District into the company of forty-one other states in doing so, including Maryland and Virginia. As introduced, the bill proposed a maximum of \$50,000 for civil penalties for violations committed by individuals and \$500,000 for violations committed by other “persons”, such as corporations. The Committee has reviewed other jurisdictions’ civil penalties and finds caps of \$100,000 and \$1,000,000, respectively, to be more in line with similarly-situated schemes for individuals and corporations.

The introduced version of B23-0300 also proposed two other changes to the available civil remedies: it would (1) permit treble damages in cases where OAG is pursuing litigation on behalf of the District government, as is currently permitted for Antitrust Act suits by private parties and where OAG is acting as *parens patriae* on behalf of District resident individuals; and (2) provide that injunctive and equitable relief is available when OAG is acting as *parens patriae*, and that the equitable remedy of disgorgement – requiring defendants to remit their unlawful gains – is contemplated within that injunctive or equitable relief when OAG is acting on behalf of the District government or on behalf of individuals. The Committee has maintained these provisions in the Committee Print and added the equitable remedy of restitution.

² Committee on the Judiciary and Public Safety, *Public Hearing on B23-0300, the “Antitrust Remedies Amendment Act of 2020”* 1 (June 24, 2019) (written testimony of Catherine A. Jackson, Chief, Public Integrity Section, Public Advocacy Division, Office of the Attorney General for the District of Columbia), https://lims.dccouncil.us/downloads/LIMS/42599/Hearing_Record/B23-0300-HearingRecord1.pdf.

II. Background

a. *The Antitrust Act*

The Antitrust Act was passed by the Council in 1981 to “promote the unhampered freedom of commerce and industry throughout the District of Columbia by prohibiting restraints of trade and monopolistic practices”.³ It prohibits:⁴

- Contracts, “combinations” such as trusts, or conspiracies in restraints of trade or commerce within the District;⁵ and
- Persons from monopolizing, attempting to monopolize, or combining or conspiring with any other person or persons to monopolize any part of trade or commerce within the District.⁶

Criminal violations by “persons” are enforced by the Attorney General;⁷ a “person” is defined to include “an individual, corporation, business trust, partnership, business association, or any other legal entity”.⁸ Violations of the two substantive offenses in D.C. Official Code §§ 28-4502 and 28-4503, respectively, are misdemeanors punishable by no more than \$2,500, imprisonment not exceeding one year, or both.⁹ Individual directors, officers, and agents of violating corporations who intentionally authorized, ordered, or ratified the acts are subject to the same punishment.¹⁰

OAG is also authorized to bring civil enforcement actions, which are the subject of this bill. First, whenever the District government is “injured in its business or property”, OAG can seek (1) damages, (2) “appropriate injunctive or equitable relief”, or (3) both. The Court may also award the cost of the suit, including reasonable attorney’s fees, in addition to any other relief.¹¹ Second, OAG may also bring cases as *parens patriae* on behalf of District resident individuals for injuries sustained to the individual’s property; available remedies are (1) treble damages and (2) the cost of the suit, including reasonable attorney’s fees.¹² The Antitrust Act permits civil actions by private individuals, as well, authorizing (1) treble damages, (2) “appropriate injunctive or equitable relief”, or (3) both, and (4) the cost of the suit, including reasonable attorney’s fees.¹³ All criminal and civil remedies are illustrated in Table 1 below, including the amendments proposed in the introduced version and the Committee Print.

³ D.C. Official Code § 28-4501(b).

⁴ Activities of non-profit corporations, trusts, and organizations established exclusively for religious, charitable, literary, or educational purposes are not illegal if the activity is religious, charitable, literary, or educational. The activity of WMATA is also specifically exempted. D.C. Official Code § 28-4504.

⁵ D.C. Official Code § 28-4502.

⁶ D.C. Official Code § 28-4503.

⁷ D.C. Official Code § 28-4506.

⁸ D.C. Official Code § 28-4501(a).

⁹ *Supra* note 7.

¹⁰ *Id.*

¹¹ D.C. Official Code § 28-4507(a).

¹² *Id.* at (b).

¹³ D.C. Official Code § 28-4508.

**Table 1: Remedies under the Antitrust Act:
Current Law, Introduced Version, and Committee Print**

<i>Plaintiff</i>	<i>Criminal</i>	<i>Civil</i>		
		<i>Current Law</i>	<i>Change from Current Law in Introduced Version</i>	<i>Change from Introduced Version in Committee Print</i>
OAG – on behalf of the District	Against “persons”: fine of not more than \$2,500, imprisonment not exceeding one year, or both ¹⁴	<ul style="list-style-type: none"> • Damages • Appropriate injunctive or other equitable relief • Or both • Cost of the suit, including reasonable attorney’s fees¹⁵ 	<ul style="list-style-type: none"> • Single damages would be expanded to treble damages • Injunctive and equitable relief would expressly include “an order that any profits, gain, gross receipts, or other benefit derived from the violation be disgorged and paid to the District” • Adds civil penalties (cap of \$50,000 for individuals; \$500,000 for other “persons”) 	<ul style="list-style-type: none"> • Adds restitution • Civil penalty cap for individuals increased from \$50,000 to \$100,000; from \$500,000 to \$1,000,000 for other “persons”
OAG – as <i>parens patriae</i>	N/A	<ul style="list-style-type: none"> • Treble damages • Cost of the suit, including reasonable attorney’s fees¹⁶ 	<ul style="list-style-type: none"> • Adds injunctive and equitable relief, which would expressly include “an order that any profits, gain, gross receipts, or other benefit derived from the violation be disgorged and paid to the District” • Permits both treble damages <i>and</i> injunctive and equitable relief • Adds civil penalties (cap of \$50,000 for individuals; \$500,000 for other “persons”) 	<ul style="list-style-type: none"> • Adds restitution • Civil penalty cap for individuals increased from \$50,000 to \$100,000; from \$500,000 to \$1,000,000 for other “persons”
Individual ¹⁷	N/A	<ul style="list-style-type: none"> • Treble damages • Appropriate injunctive or other equitable relief • Or both • Cost of the suit, including reasonable attorney’s fees 	No change	No change

¹⁴ *Supra* note 7.

¹⁵ *Supra* note 11.

¹⁶ *Supra* note 12.

¹⁷ *Supra* note 13.

b. *Other Jurisdictions*

As stated above, forty-one other jurisdictions permit civil penalties in antitrust actions. Georgia, Indiana, Louisiana, Missouri, Montana, Oklahoma, Pennsylvania, Tennessee, and Wyoming do not. See Table 2 below.

Table 2: State Civil Penalties for Antitrust Violations

State	Statute	Penalty Provision	Statutory Penalty Amount	
			Corporation	Individual
AL	Ala.Code 1975 § 8-10-1 <i>et seq.</i>	Ala.Code 1975 § 8-10-1 <i>et seq.</i>	Not less than \$500 nor more than \$2,000 for each offense	Not less than \$500 nor more than \$2,000 for each offense
AK	Alaska Restraint of Trade Act (Alaska Stat. § 45.50.562 <i>et seq.</i>)	Alaska Stat. § 45.50.578(b)	Not more than \$50,000,000	Not more than \$1,000,000
AZ	Uniform State Antitrust Act (Ariz. Rev. Stat. Ann. § 44-1401 <i>et seq.</i>)	Ariz. Rev. Stat. Ann. § 44-1407	Not more than \$150,000 for each violation	Not more than \$150,000 for each violation
AR	Ark. Code Ann. § 4-75-301 <i>et seq.</i>	Ark. Code Ann. § 4-75-315(a)(4)	Up to \$1,000 per violation	Up to \$1,000 per violation
CA	Cal. Bus. & Prof. Code § 16700 <i>et seq.</i> (West)	Cal. Bus. & Prof. Code § 16755	Not more than \$1,000,000 or the applicable amount under paragraph (3), whichever is greater. (3) If any person derives pecuniary gain from a violation of this chapter, or the violation results in pecuniary loss to a person other than the violator, the violator may be fined not more than an amount equal to the amount of the gross gain multiplied by two or an amount equal to the amount of the gross loss multiplied by two, whichever is applicable.	Not more than the greater of \$250,000 and a fine of the applicable amount under paragraph (3). (3) If any person derives pecuniary gain from a violation of this chapter, or the violation results in pecuniary loss to a person other than the violator, the violator may be fined not more than an amount equal to the amount of the gross gain multiplied by two or an amount equal to the amount of the gross loss multiplied by two, whichever is applicable.
CO	Colorado Antitrust Act of 1992 (Colo. Rev. Stat. § 6-4-101 <i>et seq.</i>)	Colo. Rev. Stat. § 6-4-112	Not to exceed \$250,000 for each such violation	Not to exceed \$250,000 for each such violation
CT	Connecticut Antitrust Act (Conn. Gen. Stat. § 35-24 <i>et seq.</i>)	Conn. Gen. Stat. § 35-38	Not more than \$1,000,000	Not more than \$100,000

<i>State</i>	<i>Statute</i>	<i>Penalty Provision</i>	<i>Statutory Penalty Amount</i>	
			<i>Corporation</i>	<i>Individual</i>
DE	Delaware Antitrust Act (Del. Code tit. 6, § 2101 <i>et seq.</i>)	Del. Code tit. 6, § 2107	Not less than \$1,000 nor more than \$100,000 for each violation	Not less than \$1,000 nor more than \$100,000 for each violation
FL	Florida Antitrust Act of 1980 (Fla. Stat. Ann. §542.15 <i>et seq.</i>)	Fla. Stat. Ann. § 542.21	Not more than \$1,000,000	Not more than \$100,000
GA	No overarching statute			
HI	Hawaii Antitrust Act (Haw. Rev. Stat. § 480-1 <i>et seq.</i>)	Haw. Rev. Stat. § 480-3.1	Not less than \$500 nor more than \$10,000 for each violation. Each day the unfair competition occurs is a separate violation.	Not less than \$500 nor more than \$10,000 for each violation. Each day the unfair competition occurs is a separate violation.
ID	Idaho Competition Act (Idaho Code § 48-101 <i>et seq.</i>)	Idaho Code § 48-108(1)(d)	Up to \$50,000 per violation	Up to \$50,000 per violation
IL	Illinois Antitrust Act (740 Ill. Comp. Stat. 10/1 <i>et seq.</i>)	740 Ill. Comp. Stat. 10/7(4)	Not to exceed \$1,000,000	Not to exceed \$100,000
IN	Ind. Code Ann. § 24-1-2-1 <i>et seq.</i> (West)	Ind. Code Ann. § 24-1-2-7 (West)	No civil penalties. Treble damages and costs	No civil penalties. Treble damages and costs
IA	Iowa Competition Law (Iowa Code § 553.1 <i>et seq.</i>)	Iowa Code § 553.13	Shall not exceed 10% 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 \$150,000. 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	Shall not exceed 10% 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 \$150,000. 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
KS	Kansas Restraint of Trade Act (Kan. Stat. Ann. § 50-101 <i>et seq.</i>)	Kan. Stat. Ann. § 50-160	A sum of not less than \$100 nor more than \$5,000 for each day such violation shall have occurred	A sum of not less than \$100 nor more than \$5,000 for each day such violation shall have occurred

State	Statute	Penalty Provision	Statutory Penalty Amount	
			Corporation	Individual
KY	Kentucky Consumer Prot. Act (Ky. Rev. Stat. Ann. § 367.110 <i>et seq.</i>)	Ky. Rev Stat. Ann. § 367.990(8)	Not more than the greater of \$5,000 or \$200 per day for each violation	Not more than the greater of \$5,000 or \$200 per day for each violation
LA	La. Stat. Ann. § 51:121 <i>et seq.</i>	La. Stat. Ann. §§ 51:122 and 123	No civil penalties. Fine not more than \$5,000, or imprisonment	No civil penalties. Fine not more than \$5,000, or imprisonment
ME	Maine Monopolies and Profiteering Act (Me. Rev. Stat. tit. 10, § 1101 <i>et seq.</i>)	Me. Rev. Stat. tit. 10, § 1104(3)	Not more than \$100,000 for each course of conduct that constitutes a violation	Not more than \$100,000 for each course of conduct that constitutes a violation
MD	Maryland Antitrust Act (Md. Code Ann., Com. Law § 11-201 <i>et seq.</i>)	Md. Code, Com. Law § 11-209(a)(4) as amended by 2018 Maryland Laws Ch. 847 (H.B. 1544)	Not exceeding \$10,000 for each violation. Each day that a violation continues is a separate violation.	Not exceeding \$10,000 for each violation. Each day that a violation continues is a separate violation.
MA	Mass. Gen. Laws Ann. ch. 93, §§ 4 to 6 (West)	Mass. Gen. Laws Ann. ch. 93, § 9 (West)	Not more than \$25,000 for any course of conduct, pattern of activity or activities	Not more than \$25,000 for any course of conduct, pattern of activity or activities
MI	Michigan Antitrust Reform Act (Mich. Comp. Laws § 445.771 <i>et seq.</i>)	Mich. Comp. Laws § 445.777	Not more than \$50,000 for each violation	Not more than \$50,000 for each violation
MN	Minnesota Antitrust Law of 1971 (Minn. Stat. § 325D.49 <i>et seq.</i>)	Minn. Stat. § 325D.56(1)	Not more than \$50,000 per violation	Not more than \$50,000 per violation

State	Statute	Penalty Provision	Statutory Penalty Amount	
			Corporation	Individual
MS	Miss. Code Ann. § 75-21-1 <i>et seq.</i>	Miss. Code Ann. §§ 75-21-1, -7, and -9	[Sec. 75-1] For a first offense, not less than \$100 nor more than \$5,000. For a second or subsequent offense, not less than \$200 nor more than \$10,000. [Sec. 75-7] Not less than \$100 nor more than \$2,000.00 for every such violation. Each month in which the conduct persists shall be a separate violation. [Sec. 75-9] (Private party suit) \$500 for each instance of injury.	[Sec. 75-1] For a first offense, not less than \$100 nor more than \$5,000. For a second or subsequent offense, not less than \$200 nor more than \$10,000. [Sec. 75-7] Not less than \$100 nor more than \$2,000.00 for every such violation. Each month in which the conduct persists shall be a separate violation. [Sec. 75-9] (Private party suit) \$500 for each instance of injury.
MO	Missouri Antitrust Law (Mo. Ann. Stat. § 416.011 <i>et seq.</i>)	Mo. Ann. Stat. § 416.051 (West)	No civil penalties. Fine of up to \$50,000, or imprisonment	No civil penalties. Fine of up to \$50,000, or imprisonment
MT	Mont. Code Ann. § 30-14-201 <i>et seq.</i> (West)	Mont. Code Ann. § 30-14-224(2) (West)	No civil penalties. Fine in an amount not exceeding \$25,000, or imprisonment	No civil penalties. Fine in an amount not exceeding \$25,000, or imprisonment
NE	Nebraska Consumer Protection Act (Neb. Rev. Stat. § 59-1601 <i>et seq.</i>)	Neb. Rev. Stat. § 59-1614	Not more than \$500,000	Not more than \$500,000
NV	Nevada Unfair Trade Practice Act (Nev. Rev. Stat. Ann. § 598A.010 <i>et seq.</i>)	Nev. Rev. Stat. Ann. § 598A.170 (West)	An amount not to exceed 5 percent of the gross income realized by the sale of commodities or services sold by such persons in this state in each year in which the prohibited activities occurred.	An amount not to exceed 5 percent of the gross income realized by the sale of commodities or services sold by such persons in this state in each year in which the prohibited activities occurred.
NH	New Hampshire Antitrust Provisions (N.H. Rev. Stat. Ann. § 356:1 <i>et seq.</i>)	N.H. Rev. Stat. Ann. § 356:4-a and -b	Not more than \$25,000 for each violation of any provision of this chapter	Not more than \$25,000 for each violation of any provision of this chapter
NJ	New Jersey Antitrust Act (N.J. Stat. Ann. § 56:9-1 <i>et seq.</i>)	N.J. Stat. Ann. § 56:9-10(c) (West)	Not more than the greater of \$100,000 or \$500 per day for each and every day of said violation	Not more than the greater of \$100,000 or \$500 per day for each and every day of said violation
NM	Antitrust Act (N.M. Stat. § 57-1-1 <i>et seq.</i>)	N.M. Stat. § 57-1-7(A)	Not to exceed \$250,000	Not more than \$50,000
NY	NY Gen. Bus. Law § 340 <i>et seq.</i>	N.Y. Gen. Bus. Law §§ 341 and 342-a	Not exceeding \$1,000,000 for a corporation	Not exceeding \$100,000

State	Statute	Penalty Provision	Statutory Penalty Amount	
			Corporation	Individual
NC	N.C. Gen. Stat. § 75-1 <i>et seq.</i>)	N.C. Gen. Stat. § 75-15.2	Up to \$5,000 for each violation if the defendant's acts were, when committed, knowingly violative	Up to \$5,000 for each violation if the defendant's acts were, when committed, knowingly violative
ND	Uniform State Antitrust Act (N.D. Cent. Code Ann. § 51-08.1-01 <i>et seq.</i>)	N.D. Cent. Code Ann. § 51-08.1-07 (West)	Not more than \$50,000 for each violation	Not more than \$50,000 for each violation
OH	Ohio Rev. Code § 1331.01 <i>et seq.</i>	Ohio Rev. Code § 1331.03	\$500 for each day that such violation is committed or continued after due notice is given by the attorney general	\$500 for each day that such violation is committed or continued after due notice is given by the attorney general
OK	Oklahoma Antitrust Reform Act (Okla. Stat. Ann. tit. 79, § 201 <i>et seq.</i>)	Okla. Stat. Ann. tit. 79, § 205 (West)	No civil penalties. Treble damages and costs.	No civil penalties. Treble damages and costs.
OR	Antitrust Law (Or. Rev. Stat. § 646.705 <i>et seq.</i>)	Or. Rev. Stat. § 646.760	Not more than \$250,000 for each violation	Not more than \$250,000 for each violation
PA	No overarching statute			
RI	Rhode Island Antitrust Act (R.I. Gen. Laws § 6-36-1 <i>et seq.</i>)	R.I. Gen. Laws § 6-36-10(c)	Not more than \$50,000 for each violation	Not more than \$50,000 for each violation
SC	S.C. Code Ann. § 39-3-10 <i>et seq.</i>	S.C. Code Ann. § 39-3-180	Not less than \$200, nor more than \$5,000, for every such offense. Each day such person shall continue to do so shall be a separate offense	Not less than \$200, nor more than \$5,000, for every such offense. Each day such person shall continue to do so shall be a separate offense
SD	S.D. Codified Laws § 37-1-3.1 <i>et seq.</i>	S.D. Codified Laws § 37-1-14.2	Not more than \$50,000 for each violation	Not more than \$50,000 for each violation
TN	Tenn. Code Ann. § 47-25-101 <i>et seq.</i>	Tenn. Code Ann. § 47-25-103 (West)	No civil penalties. Criminal fine not exceeding \$1,000,000	No civil penalties
TX	Texas Free Enterprise and Antitrust Act of 1983 (Tex. Bus. & Com. Code Ann. § 15.01 <i>et seq.</i>	Tex. Bus. & Com. Code Ann. § 15.20 (West)	Not to exceed \$1,000,000 if a corporation	Not to exceed \$100,000
UT	Utah Antitrust Act (Utah Code § 76-10-3101 <i>et seq.</i>)	Utah Code § 76-10-3108	Not more than \$500,000 for each violation	Not more than \$100,000 for each violation

<i>State</i>	<i>Statute</i>	<i>Penalty Provision</i>	<i>Statutory Penalty Amount</i>	
			<i>Corporation</i>	<i>Individual</i>
VT	Vt. Stat. Ann. tit. 9, § 2451 <i>et seq.</i>	Vt. Stat. Ann. tit. 9, § 2458(b)(1)	Not more than \$1,000,000 for each unfair method of competition	Not more than \$100,000 for each unfair method of competition
VA	Virginia Antitrust Act (Va. Code § 59.1-9.1 <i>et seq.</i>)	Va. Code § 59.1-9.11	Not more than \$100,000 for each willful or flagrant violation	Not more than \$100,000 for each willful or flagrant violation
WA	Consumer Protection Act (Wash. Rev. Code § 19.86.010 <i>et seq.</i>)	Wash. Rev. Code § 19.86.140	Not more than \$500,000	Not more than \$100,000
WV	West Virginia Antitrust Act (W. Va. Code § 47-18-1 <i>et seq.</i>)	W. Va. Code § 47-18-8	Not more than the greater of a total of \$100,000 or \$500 per day for each and every day of said violation	Not more than the greater of a total of \$100,000 or \$500 per day for each and every day of said violation
WI	Wis. Stat. § 133.01 <i>et seq.</i>	Wis. Stat. § 133.03(3)	A corporation may be required to forfeit not more than \$100,000	An individual may be required to forfeit not more than \$50,000
WY	Wyo. Stat. Ann. § 40-4-101 <i>et seq.</i>	Wyo. Stat. Ann. § 40-4-104 (West)	No civil penalties. Fine not more than \$5,000	No civil penalties. Fine not more than \$5,000

Source: OAG

As shown in Table 2, civil penalty caps range from a low of \$1,000 for individuals and corporations in Arkansas to a high of \$1,000,000 for individuals and \$50,000,000 for corporations in Alaska. Generally, southern states tend to have lower caps for both individuals and corporations, and states similar to the District, such as California, Connecticut, Illinois, and New York, have caps in the range of \$100,000 to \$250,000 for individuals and \$500,000 to \$1,000,000 for corporations. Maryland maintains a \$10,000 civil penalty for individuals and corporations, but each day constitutes a separate violation. Virginia’s penalty is \$100,000 for individuals and corporations.

At the Committee’s hearing, Catherine A. Jackson, Chief of the Public Integrity Section in the Public Advocacy Division at OAG, highlighted several jurisdictions that she stated indicate OAG’s proposed penalties are consistent with recent legislative trends to modernize civil penalty schemes.¹⁸ In 2009, Connecticut adopted a cap of \$100,000 for an individual and \$1,000,000 for a business entity. In 2016, Vermont increased its cap from \$10,000 to \$100,000 for an individual and \$1,000,000 for any other “person”. The same year, Nebraska increased its maximum penalty from \$25,000 to \$500,000.

III. Committee Reasoning

B23-0300 is critical to ensuring that District residents and businesses are not harmed by anticompetitive conduct. At the Committee’s hearing, Ms. Jackson stated that allowing OAG to

¹⁸ *Supra* note 2, at 3.

seek civil penalties in antitrust actions will justify the enforcement costs that come with bringing such complicated cases, which are “very resource intensive, involving voluminous data, documents, and witnesses, and relying heavily on expert economic work.”¹⁹ In some cases, relief granted under the current law is limited to injunctive relief or minimal damages, which fail to deter egregious conduct.. The Committee is supportive of the civil penalties as proposed in the introduced version, but believes they should be raised further to bring the District in line with similarly-situated attorneys general’s antitrust capacities. Although the \$100,000 maximum penalty for individuals proposed in the Committee Print is significant, OAG would need to have determined that the violation was so serious that the time and resources entailed in litigation were warranted – and such litigation is rare, as OAG is overwhelmingly more likely to pursue corporate violations. The Committee also notes that these amounts represent the ceiling, not the floor.

The Committee also agrees with OAG’s desire to create consistency among the other civil remedies, regardless on whose behalf OAG is bringing the case. The Committee Print therefore (1) permits treble damages in cases where OAG is pursuing litigation on behalf of the District government, as is currently permitted in suits by private parties and where OAG is acting as *parens patriae* on behalf of District resident individuals; (2) provides that injunctive and equitable relief is available when OAG is acting as *parens patriae*; and (3) provides that the equitable remedies of restitution and disgorgement are contemplated within that injunctive or equitable relief when OAG is acting on behalf of the District government or on behalf of individuals. As Ms. Jackson stated at the hearing, “[h]armonizing these provisions will result in consistent remedies for violations of the act, greater recoveries for District agencies that have been injured by antitrust violations, and provide an enhanced deterrent against violating the Antitrust Act.”²⁰

LEGISLATIVE HISTORY

May 14, 2019	B23-0300 is introduced by Chairman Mendelson at the request of the Attorney General.
May 24, 2019	Notice of Intent to Act on B23-0300 is published in the <i>District of Columbia Register</i> .
May 28, 2019	B23-0300 is referred to the Committee on the Judiciary and Public Safety.
June 7, 2019	Notice of Public Hearing on B23-0300 is published in the <i>District of Columbia Register</i> .
June 24, 2019	Public Hearing on B23-0300 is held by the Committee on the Judiciary and Public Safety.
October 30, 2020	Consideration and vote on B23-0300 by the Committee on the Judiciary and Public Safety.

¹⁹ *Supra* note 2, at 2.

²⁰ *Supra* note 2, at 3.

POSITION OF THE EXECUTIVE

The Committee did not receive testimony or comments from the Executive.

ADVISORY NEIGHBORHOOD COMMISSION COMMENTS

The Committee did not receive testimony or comments from Advisory Neighborhood Commissions.

WITNESS LIST AND HEARING RECORD

On Monday, June 24, 2019, the Committee on the Judiciary and Public Safety held a public hearing on B23-0300. A video recording of the hearing can be viewed at <https://entertainment.dc.gov/page/on-demand-2019>. The following witnesses testified at the hearing or submitted statements to the Committee:

Public Witnesses

The Committee did not receive testimony or comments from public witnesses.

Government Witness

Catherine A. Jackson – Chief, Public Integrity Section, Public Advocacy Division, Office of the Attorney General for the District of Columbia

Ms. Jackson testified in support of B23-0300 on behalf of Attorney General Karl Racine. She stated that the bill would align OAG's civil enforcement authority with that of similar states by permitting civil penalties not to exceed \$50,000 for individuals and \$500,000 for corporations. She said that only nine states, in addition to the District, do not have any authority to seek civil penalties [*seven states, as confirmed by the Committee*].

Chairperson Allen asked Ms. Jackson why civil penalties are an important remedy in an antitrust action, and against which entities OAG is currently litigating. Ms. Jackson replied that civil penalties are available for the purpose of government enforcement, and they provide additional deterrence for offenders. Further, the penalties are a funding source for OAG for bringing antitrust lawsuits, which are usually very expensive. Ms. Jackson testified that currently, OAG is pursuing litigation against pharmaceutical makers of opioid withdrawal drugs and corporate actors for widespread price fixing in the drug industry. She said that the penalties would be imposed on these corporations, and no individuals are involved in OAG's current lawsuits.

Chairperson Allen then asked Ms. Jackson what remedies courts usually award, and why OAG decided on \$50,000 as the penalty for individuals. Ms. Jackson replied that the award depends on what relief is requested, and courts can provide a wide array. OAG can also seek relief on behalf of District consumers as *parens patriae*. She stated that the \$50,000 proposed cap for individuals was driven in part by a survey of relevant statutes across the country, but Ms. Jackson agreed to look into the amount further with the Committee.

IMPACT ON EXISTING LAW

B23-0300 amends Chapter 45 of Title 28 of the District of Columbia Official Code to expand the remedies available in civil actions brought by OAG for antitrust violations, including by authorizing civil penalties for violations committed by individuals and legal entities. Specifically, in civil actions brought by OAG on behalf of the District government, OAG will be able to recover treble – instead of only single – damages, and civil penalties not to exceed \$100,000 for violations committed by individuals and \$1,000,000 for violations committed by other “persons”, and the injunctive and equitable relief currently available would now explicitly include restitution and disgorgement. In civil actions brought by OAG as *parens patriae* on behalf of District resident individuals, OAG will be able to recover – in addition to the treble damages currently available – injunctive and equitable relief, including restitution and disgorgement, as well as the civil penalties listed above.

FISCAL IMPACT

The Committee adopts the fiscal impact statement of the District’s Chief Financial Officer.

SECTION-BY-SECTION ANALYSIS

Section 1 States the short title.

Section 2 (a) Amends D.C. Official Code § 28-4505 to make technical changes.

(b) Amends D.C. Official Code § 28-4506 to make technical changes.

(c) Amends D.C. Official Code § 28-4507 to provide: in civil actions brought by OAG on behalf of the District government, OAG may also recover treble damages and civil penalties not to exceed \$100,000 for violations committed by individuals and \$1,000,000 for violations committed by other “persons”, and the current injunctive and equitable relief includes restitution and disgorgement; and in civil actions brought by OAG as *parens patriae* on behalf of District resident individuals, OAG may also recover injunctive and equitable relief, including restitution and disgorgement, as well as the civil penalties listed above.

(d) Amends D.C. Official Code § 28-4512 to make technical changes.

(e) Amends D.C. Official Code § 28-4513 to make technical changes.

Section 3 Contains the fiscal impact statement.

Section 4 Contains the effective date.

COMMITTEE ACTION

On October 30, 2020, the Committee on the Judiciary and Public Safety held an Additional Meeting to consider and markup B23-0300, the “Antitrust Remedies Amendment Act of 2020”. The meeting was called to order at 11:42 a.m. Chairperson Charles Allen recognized a quorum consisting of himself and Councilmembers Anita Bonds and Mary M. Cheh. Without objection, Chairperson Allen moved the Committee Report and Print for B23-0300 en bloc with leave for staff to make technical, editorial, and conforming changes. The Committee then voted 3-0 to approve the Committee Report and Committee Print with the Members voting as follows:

YES: Chairperson Allen and Councilmembers Bonds and Cheh

NO: None

PRESENT: None

ABSENT: Councilmembers Vincent C. Gray and Brooke Pinto

LIST OF ATTACHMENTS

- (A) B23-0300, as introduced
- (B) Notice of Public Hearing on B23-0300, as published in the *District of Columbia Register*
- (C) Agenda and Witness List
- (D) Witness Testimony
- (E) Fiscal Impact Statement
- (F) Legal Sufficiency Determination
- (G) Comparative Committee Print
- (H) Committee Print

ATTACHMENT A

COUNCIL OF THE DISTRICT OF COLUMBIA
1350 Pennsylvania Avenue, N.W.
Washington D.C. 20004

Memorandum

To : Members of the Council

From : 
Nyasha Smith, Secretary to the Council

Date : May 16, 2019

Subject : Referral of Proposed Legislation

Notice is given that the attached proposed legislation was introduced in the Office of the Secretary on Tuesday, May 14, 2019. Copies are available in Room 10, the Legislative Services Division.

TITLE: "Antitrust Remedies Amendment Act of 2019", B23-0300

INTRODUCED BY: Chairman Mendelson at the request of the Attorney General

The Chairman is referring this legislation to the Committee on Judiciary and Public Safety.

Attachment

cc: General Counsel
Budget Director
Legislative Services

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General

ATTORNEY GENERAL
KARL A. RACINE



2019 MAY 14 PM 12:36
OFFICE OF THE
SECRETARY

May 14, 2019

The Honorable Phil Mendelson
Chairman, Council of the District of Columbia
John A. Wilson Building
1350 Pennsylvania Avenue, N.W.
Suite 504
Washington, DC 20004

Dear Chairman Mendelson:

I am writing to transmit to the Council of the District of Columbia the *Antitrust Remedies Amendment Act of 2019*. This legislation will identify remedies the Attorney General may seek in an antitrust action; to specify how monetary relief recovered on behalf of individuals in an action under D.C. Official Code § 28-4507(b) shall be distributed; and to apply the notice and exclusion provisions of D.C. Official Code § 28-4507(c) specifically to individuals.

This legislation is critical to promoting the public interest by ensuring District residents are protected from unfair business practices. Only seven states, including the District of Columbia, do not have authority to seek civil penalties. The more progressive states that are authorized to recover civil penalties, including our neighbors in Maryland and Virginia, are more active in antitrust cases designed to protect their residents. The District should among the 43 states that allow for these penalties.

If you have any questions, you may contact me, or your staff may contact Deputy Attorney General James A. Pittman on (202) 724-6517.

Sincerely,

Karl A. Racine
Attorney General for the District of Columbia

Enclosure



Chairman Phil Mendelson
at the request of the Attorney General

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To identify remedies the Attorney General may seek in an antitrust action; to specify how monetary relief recovered on behalf of individuals in an action under D.C. Official Code § 28-4507(b) shall be distributed; and to apply the notice and exclusion provisions of D.C. Official Code § 28-4507(c) specifically to individuals.

BE IT ENACTED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this bill be cited as the “Antitrust Remedies Amendment Act of 2019”.

Sec. 2. Title 28, Section 4507 of the District of Columbia Official Code is amended as follows:

(a) Subsection (a) is amended to read as follows:

“(a)(1) Whenever the District of Columbia government is injured in its business or property by a violation of this chapter, the Corporation Counsel may, without prejudice to the right of the District to bring similar or identical actions under any other statute, bring a civil action in the name of the District of Columbia in any court of competent jurisdiction for one or more of the following remedies:

“(A) Up to treble damages;

“(B) Other appropriate injunctive or equitable relief, including an order that any profits, gain, gross receipts, or other benefit derived from the violation to be disgorged and paid to the District; and

“(C) Civil penalties.

33 “(2) In any action brought under paragraph (1) of this subsection, the court may
34 award the District of Columbia the relief sought and the cost of suit, including reasonable
35 attorney’s fees.”.

36 (b) Subsection (b) is amended as follows:

37 (1) Paragraph (1) is amended to read as follows:

38 “(1) The court may award the District of Columbia the relief stated in subsection
39 (a) of this section.”.

40 (2) Paragraph (2) is amended to read as follows:

41 “(2) Monetary relief recovered on behalf of individuals in an action under this
42 subsection shall be distributed in such manner as the court may authorize, according to
43 procedures approved by the court. Any distribution procedures adopted shall first afford each
44 individual a reasonable opportunity to secure the individual’s appropriate portion of the net
45 monetary relief.”.

46 (c) A new subsection (b-1) is added to read as follows:

47 “(b-1)(1) Any individual who knowingly commits any violation of this chapter shall be
48 liable for civil penalties not to exceed \$50,000.

49 “(2) Any person, other than an individual referenced in paragraph (1) of this
50 subsection, that knowingly commits any violation of this chapter shall be liable for civil penalties
51 not to exceed \$500,000.”.

52 (d) Subsection (c) is amended as follows:

53 (1) Paragraph (1) is amended by striking the phrase “person or persons” wherever
54 it appears and inserting the word “individual” in its place.

55 (2) Paragraph (2) is amended by striking the word “person” wherever it appears

56 and inserting the word “individual” in its place.

57 (e) Subsection (d) is amended by striking the word “persons” and inserting the word
58 “individuals” in its place.

59 Sec. 3. Effective date.

60 This Act shall take effect following approval of the Mayor (or, in the event of a veto by
61 the Mayor, action by the Council of the District of Columbia to override the veto), a 30-day
62 period of congressional review as provided in § 602(c)(1) of the District of Columbia Home Rule
63 Act, approved December 24, 1973 (87 Stat. 813, D.C. Official Code § 1-206.02(c)(1)), and
64 publication in the District of Columbia Register.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General




ATTORNEY GENERAL
KARL A. RACINE

Legal Counsel Division

MEMORANDUM

TO: James Pittman
Deputy Attorney General for Legislative, Intergovernmental, and
Community Engagement
Office of the Attorney General

FROM: Brian K. Flowers 
Deputy Attorney General
Legal Counsel Division

DATE: May 14, 2019

SUBJECT: Legal Sufficiency Review – Draft “Antitrust Remedies Amendment Act of
2019”
(AE-18-435 B)

This is to Certify that this Office has reviewed the above-
referenced draft legislation and found it to be legally sufficient. If you have any questions
in this regard, please do not hesitate to call me at 724-5524.



Brian K. Flowers

ATTACHMENT B

**Council of the District of Columbia
COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY
NOTICE OF PUBLIC HEARING
1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004**

**COUNCILMEMBER CHARLES ALLEN, CHAIRPERSON
COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY**

ANNOUNCES A PUBLIC HEARING ON

**B23-0083, THE “VULNERABLE USER COLLISION RECOVERY
AMENDMENT ACT OF 2019”**

**B23-0134, THE “COMMUNITY HARASSMENT PREVENTION
AMENDMENT ACT OF 2019”**

**B23-0253, THE “ALTERNATIVE SERVICE OF PROCESS ON DISTRICT OF COLUMBIA
RESIDENTS AMENDMENT ACT OF 2019”**

AND

B23-0300, THE “ANTITRUST REMEDIES AMENDMENT ACT OF 2019”

**Monday, June 24, 2019, 10:30 a.m.
Room 120, John A. Wilson Building
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004**

On Monday, June 24, 2019, Councilmember Charles Allen, Chairperson of the Committee on the Judiciary and Public Safety, will convene a public hearing on Bill 23-0083, the “Vulnerable User Collision Recovery Amendment Act of 2019”; Bill 23-0134, the “Community Harassment Prevention Amendment Act of 2019”; Bill 23-0253, the “Alternative Service of Process on District of Columbia Residents Amendment Act of 2019”; and Bill 23-0300, the “Antitrust Remedies Amendment Act of 2019”. The hearing will take place in Room 120 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., at 10:30 a.m.

The stated purpose of B23-0083, the “Vulnerable User Collision Recovery Amendment Act of 2019”, is to amend the Motor Vehicle Collision Recovery Amendment Act of 2016 to limit the application of the doctrine of contributory negligence in cases of a collision between an electronic mobility device user of a public highway and a motor vehicle.

The stated purpose of B23-0134, the “Community Harassment Prevention Amendment Act of 2019”, is to amend the Anti-Intimidation and Defacing of Public or Private Property Criminal Penalty Act of 1982 to make it unlawful to deface or burn a religious or secular symbol on any property of another without permission or to place or display on such property a physical impression that a reasonable person would perceive as a threat to physically damage the property of another; and to amend the Omnibus Public Safety and Justice Amendment Act of 2009 to make it unlawful to harass an entity.

The stated purpose of B23-0253, the “Alternative Service of Process on District of Columbia Residents Amendment Act of 2019”, is to amend the Motor Vehicle Safety Responsibility Amendment Act of the District of Columbia to allow a plaintiff to use an alternative method of service of process when serving defendants in motor vehicle cases who reside in the District of Columbia.

The stated purpose of B23-0300, the “Antitrust Remedies Amendment Act of 2019”, is to identify remedies the Attorney General may seek in an antitrust action, to specify how monetary relief recovered on behalf of individuals in an action under D.C. Official Code § 28-4507(b) shall be distributed, and to apply the notice and exclusion provisions of that section specifically to individuals.

The Committee invites the public to testify or to submit written testimony. Anyone wishing to testify at the hearing should contact the Committee via email at judiciary@dccouncil.us and provide their name, telephone number, organizational affiliation, and title (if any), by **close of business Thursday, June 20**. Representatives of organizations will be allowed a maximum of five minutes for oral testimony, and individuals will be allowed a maximum of three minutes. Witnesses should bring **twenty copies** of their written testimony and, if possible, also submit a copy of their testimony electronically in advance to judiciary@dccouncil.us.

For witnesses who are unable to testify at the hearing, written statements will be made part of the official record. Copies of written statements should be submitted to the Committee at judiciary@dccouncil.us. **The record will close at the end of the business day on Monday, July 8.**

ATTACHMENT C

**Council of the District of Columbia
COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY
AGENDA & WITNESS LIST
1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004**

**COUNCILMEMBER CHARLES ALLEN, CHAIRPERSON
COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY**

ANNOUNCES A PUBLIC HEARING ON

**B23-0083, THE “VULNERABLE USER COLLISION RECOVERY
AMENDMENT ACT OF 2019”**

**B23-0134, THE “COMMUNITY HARASSMENT PREVENTION
AMENDMENT ACT OF 2019”**

**B23-0253, THE “ALTERNATIVE SERVICE OF PROCESS ON DISTRICT OF COLUMBIA
RESIDENTS AMENDMENT ACT OF 2019”**

AND

B23-0300, THE “ANTITRUST REMEDIES AMENDMENT ACT OF 2019”

**Monday, June 24, 2019, 10:30 a.m.
Room 120, John A. Wilson Building
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004**

AGENDA AND WITNESS LIST

- I. CALL TO ORDER**
- II. OPENING REMARKS**
- III. WITNESS TESTIMONY**

B23-0083, the “Vulnerable User Collision Recovery Amendment Act of 2019”

- i. Public Witnesses**

1. David Cranor, Representative, Bicycle Advisory Council
2. Wayne McOwen, Executive Director, District of Columbia Insurance Federation
3. Laura Miller Brooks, Public Affairs Manager, Mid-Atlantic, Lime

ii. Government Witness

1. Dena Iverson, Chief of External Affairs, District Department of Transportation

B23-0134, the "Community Harassment Prevention Amendment Act of 2019"

ii. Public Witnesses

iii. Government Witnesses

1. Kelly O'Meara, Executive Director, Strategic Change Division, Executive Office of the Chief of Police, Metropolitan Police Department
2. Katya Semyonova, Special Counsel to the Director for Policy, Public Defender Service for the District of Columbia

B23-0253, the "Alternative Service of Process on District of Columbia Residents Amendment Act of 2019"

i. Public Witness

1. Daniel Singer, Executive Board Member, Trial Lawyers Association of Metropolitan D.C.

ii. Government Witnesses

B23-0300, the "Antitrust Remedies Amendment Act of 2019"

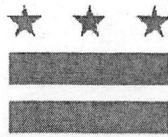
i. Public Witnesses

ii. Government Witness

1. Catherine A. Jackson, Chief, Public Integrity Section, Office of the Attorney General

IV. ADJOURNMENT

ATTACHMENT D



**Statement of Catherine A. Jackson
Chief, Public Integrity Section - Public Advocacy Division
Office of Attorney General for the District of Columbia**

Before the

**Committee on the Judiciary and Public Safety
The Honorable Charles Allen, Chairperson**

Public Hearing

on

Bill 23-300, the "Antitrust Remedies Amendment Act of 2019"

June 24, 2019

10:30 am

Room 123

**John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, District of Columbia 20004**

Greetings Chairman Allen, Councilmembers, staff, and residents. I am Catherine A. Jackson, Chief of the Public Integrity Section in the Public Advocacy Division at the Office of the Attorney General ("OAG"). I am pleased to appear on behalf of Attorney General Karl A. Racine to testify in favor of Bill 23-300, the "Antitrust Remedies Amendment Act of 2019." Attorney General Racine cares deeply about ensuring District residents are not harmed by anticompetitive conduct in the District, and that which impacts District residents, and he is committed to policing anticompetitive activity under the District's Antitrust Act. This bill seeks to amend the Antitrust Act to authorize the Attorney General to seek civil penalties when OAG brings an antitrust lawsuit, and to expand the remedies provided by the Act.

The Public Integrity Section of OAG investigates and civilly litigates antitrust and competition issues in the District of Columbia. The District's Antitrust Act protects District residents, agencies, and businesses from anticompetitive practices such as price-fixing, market allocation, and monopolization that occur at least partly within the District. These kind of practices may result in inflated prices for products and services used by District residents, decreased supply or quality of these products or services, or the loss of innovation and competitive opportunity in the District's markets. Bill 23-300 will improve OAG's ability to enforce the District's antitrust law, by providing that companies or individuals that violate it will be subject to civil penalties and effective remedies.

The inclusion of civil penalties in state antitrust statutes is widespread; the District is one of only 9 jurisdictions that currently does not have a civil penalty provision. Accordingly, we are

seeking to add the civil penalty provisions to the Antitrust Act in order to strengthen OAG's enforcement authority and bring it into line with other states' authority. Authorizing OAG to seek civil penalties will assist us in justifying the enforcement costs of bringing antitrust cases. Antitrust investigations and litigations are very resource intensive, involving voluminous data, documents, and witnesses, and relying heavily on expert economic work. The ability to recover meaningful penalties in addition to other damages and costs enhances OAG's enforcement resources across the board. The inclusion of civil penalties also increases OAG's ability to engage in antitrust litigation that involves serious violations of antitrust law, but may result in only injunctive relief or very low damages. Finally, the proposed civil penalties provide another tool for the District to deter antitrust violations before they occur, by the existence of a monetary penalty for all violations of D.C. Code 28-4507.

The amount of the penalties in the requested amendment also are consistent with those imposed by similar jurisdictions. The Bill provides for civil penalties of up to \$50,000 per violation for individuals, and up to \$500,000 for corporations and other organizational entities. Antitrust penalties against individuals are relatively rare, but penalties against corporations are common and are typically sought in antitrust actions by state Attorneys General. Increasingly, states are recovering specific amounts identified as civil penalty payments in litigation and settlements. An antitrust violation, for purposes of calculating a civil penalty, generally is considered to be the anticompetitive agreement or action that gives rise to the harm, so there will be only one violation per case.

Attached to this written testimony is a chart prepared by OAG that identifies the relevant statute, penalty provisions, and penalty amounts throughout the country. The following are some examples from smaller-population States that shows that OAG's requested amendment is consistent with similarly-situated jurisdictions authority:

- Vermont: In 2016, Vermont increased its maximum penalties from \$10,000 to \$100,000.00 for an individual or \$1,000,000.00 for any other person.
- Nebraska: In 2016, Nebraska increased its maximum penalty from \$25,000 to \$500,000.
- Utah: In 1991, Utah adopted maximum statutory penalties of \$100,000 for an individual and \$500,000 for a business entity.
- Connecticut: In 2009, Connecticut amended its state antitrust statutes to adopt maximum statutory penalties of \$100,000 for an individual and \$1 million for a business entity.

The Bill also expands the civil remedies available for violations of the Antitrust Act in two ways. First, the Bill provides for recovery of treble damages when OAG litigates on behalf of District government agencies. The current Act provides only for recovery of single damages when the District of Columbia is injured in "its business or property." D.C. Code § 28-4507(a). However, the Act does provide for recovery of treble damages in litigation by private parties, or by OAG as *parens patriae* on behalf of District consumers. D.C. Code §§ 28-4507(b), 28-4508(a). Harmonizing these two provisions will result in consistent remedies for violations of the Act, greater recoveries for District agencies that have been injured by antitrust violations, and provide an enhanced deterrent against violating the Antitrust Act.

Second, the Bill amends the Antitrust Act to explicitly include disgorgement within the injunctive or equitable relief remedies of D.C. Code § 28-4507(a). Disgorgement is an equitable remedy, separate from damages, that requires violators to pay their ill-gotten gains to the District. Disgorgement focuses on the benefits that the defendants improperly obtained, due to violating the law, rather than on quantifying specific injury to the District. A disgorgement remedy provides additional flexibility to OAG in obtaining remedies that are equitable and proportional to the facts of the case, and will be particularly effective in antitrust cases that may involve expert costs in excess of potential damages. The addition of an explicit disgorgement remedy strengthens OAG's ability to ensure that antitrust cases are resolved equitably, and in the public interest.

OAG urges the Council to approve Bill 23-300, and we look forward to working with the Committee on Public Safety and Justice to ensure this amendment is enacted to enable OAG to more effectively pursue antitrust cases. This concludes my testimony, and I am happy to answer any questions.

STATE CIVIL PENALTIES FOR RESTRAINT OF TRADE (ANTITRUST)

*Throughout, penalty amounts refer to corporations. Individuals may face lower fines.

STATE	STATUTE VIOLATED	PENALTY PROVISION	STATUTORY PENALTY AMOUNT
AL	Ala.Code 1975 § 8-10-1 <i>et seq.</i>	Ala.Code 1975 § 8-10-1 <i>et seq.</i>	Not less than \$500 nor more than \$2,000 for each offense
AK	Alaska Restraint of Trade Act (Alaska Stat. § 45.50.562 <i>et seq.</i>)	Alaska Stat. § 45.50.578(b)	Not more than \$50,000,000
AZ	Uniform State Antitrust Act (Ariz. Rev. Stat. Ann. § 44-1401 <i>et seq.</i>)	Ariz. Rev. Stat. Ann. § 44-1407	Not more than \$150,000 for each violation
AR	Ark. Code Ann. § 4-75-301 <i>et seq.</i>	Ark. Code Ann. § 4-75-(a)(4)	Up to \$1,000 per violation
CA	Cal. Bus. & Prof. Code § 16700 <i>et seq.</i> (West)	Cal. Bus. & Prof. Code § 16755	Not more than \$1,000,000 or the applicable amount under paragraph (3), whichever is greater. (3) If any person derives pecuniary gain from a violation of this chapter, or the violation results in pecuniary loss to a person other than the violator, the violator may be fined not more than an amount equal to the amount of the gross gain multiplied by two or an amount equal to the amount of the gross loss multiplied by two, whichever is applicable.
CO	Colorado Antitrust Act of 1992 (Colo. Rev. Stat. § 6-4-101 <i>et seq.</i>)	Colo. Rev. Stat. § 6-4-112	Not to exceed \$250,000 for each such violation
DC	D.C. Code Ann. § 28-4501 (West)	D.C. Code Ann. § 28-4507 (West)	No civil penalties. Treble damages and costs
CT	Connecticut Antitrust Act (Conn. Gen. Stat. § 35-24 <i>et seq.</i>)	Conn. Gen. Stat. § 35-38	Not more than \$1,000,000
DE	Delaware Antitrust Act (Del. Code tit. 6, § 2101 <i>et seq.</i>)	Del. Code tit. 6, § 2107	Not less than \$1,000 nor more than \$100,000 for each violation
FL	Florida Antitrust Act of 1980 (Fla. Stat. Ann. § 542.15 <i>et seq.</i>)	Fla. Stat. Ann. § 542.21	Not more than \$1,000,000
GA	No overarching statute		
HI	Hawaii Antitrust Act (Haw. Rev. Stat. § 480-1 <i>et seq.</i>)	Haw. Rev. Stat. § 480-3.1	Not less than \$500 nor more than \$10,000 for each violation. Each day the unfair competition occurs is a separate violation.

STATE	STATUTE VIOLATED	PENALTY PROVISION	STATUTORY PENALTY AMOUNT
ID	Idaho Competition Act (Idaho Code § 48-101 <i>et seq.</i>)	Idaho Code § 48-108(1)(d)	Up to \$50,000 per violation
IL	Illinois Antitrust Act (740 Ill. Comp. Stat. 10/1 <i>et seq.</i>)	740 Ill. Comp. Stat. 10/7(4)	Not to exceed \$1,000,000
IN	Ind. Code Ann. § 24-1-2-1 <i>et seq.</i> (West)	Ind. Code Ann. § 24-1-2-7 (West)	No civil penalties. Treble damages and costs
IA	Iowa Competition Law (Iowa Code § 553.1 <i>et seq.</i>)	Iowa Code § 553.13	Shall not exceed 10% 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 \$150,000. 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
KS	Kansas Restraint of Trade Act (Kan. Stat. Ann. § 50-101 <i>et seq.</i>)	Kan. Stat. Ann. § 50-160	A sum of not less than \$100 nor more than \$5,000 for each day such violation shall have occurred
KY	Kentucky Consumer Prot. Act (Ky. Rev. Stat. Ann. § 367.110 <i>et seq.</i>)	Ky. Rev Stat. Ann. § 367.990(8)	Not more than the greater of \$5,000 or \$200 per day for each violation
LA	La. Stat. Ann. § 51:121 <i>et seq.</i>	La. Stat. Ann. §§ 51:122 and 123	No civil penalties. Fine not more than \$5,000, or imprisonment
ME	Maine Monopolies and Profiteering Act (Me. Rev. Stat. tit. 10, § 1101 <i>et seq.</i>)	Me. Rev. Stat. tit. 10, § 1104(3)	Not more than \$100,000 for each course of conduct that constitutes a violation
MD	Maryland Antitrust Act (Md. Code Ann., Com. Law § 11-201 <i>et seq.</i>)	Md. Code, Com. Law § 11-209(a)(4) as amended by 2018 Maryland Laws Ch. 847 (H.B. 1544)	Not exceeding \$10,000 for each violation. Each day that a violation continues is a separate violation
MA	Mass. Gen. Laws Ann. ch. 93, §§ 4 to 6 (West)	Mass. Gen. Laws Ann. ch. 93, § 9 (West)	Not more than \$25,000 for any course of conduct, pattern of activity or activities
MI	Michigan Antitrust Reform Act (Mich. Comp. Laws § 445.771 <i>et seq.</i>)	Mich. Comp. Laws § 445.777	Not more than \$50,000 for each violation

STATE	STATUTE VIOLATED	PENALTY PROVISION	STATUTORY PENALTY AMOUNT
MN	Minnesota Antitrust Law of 1971 (Minn. Stat. § 325D.49 <i>et seq.</i>)	Minn. Stat. § 325D.56(1)	Not more than \$50,000 per violation
MS	Miss. Code Ann. § 75-21-1 <i>et seq.</i>	Miss. Code Ann. §§ 75-21-1, -7, and -9	[Sec. 75-1] For a first offense, not less than \$100 nor more than \$5,000. For a second or subsequent offense, not less than \$200 nor more than \$10,000. [Sec. 75-7] Not less than \$100 nor more than \$2,000.00 for every such violation. Each month in which the conduct persists shall be a separate violation. [Sec. 75-9] (Private party suit) \$500 for each instance of injury.
MO	Missouri Antitrust Law (Mo. Ann. Stat. § 416.011 <i>et seq.</i>)	Mo. Ann. Stat. § 416.051 (West)	No civil penalties. Fine of up to \$50,000, or imprisonment
MT	Mont. Code Ann. § 30-14-201 <i>et seq.</i> (West)	Mont. Code Ann. § 30-14-224(2) (West)	No civil penalties. Fine in an amount not exceeding \$25,000, or imprisonment
NE	Nebraska Consumer Protection Act (Neb. Rev. Stat. § 59-1601 <i>et seq.</i>)	Neb. Rev. Stat. § 59-1614	Not more than \$500,000
NV	Nevada Unfair Trade Practice Act (Nev. Rev. Stat. Ann. § 598A.010 <i>et seq.</i>)	Nev. Rev. Stat. Ann. § 598A.170 (West)	An amount not to exceed 5 percent of the gross income realized by the sale of commodities or services sold by such persons in this state in each year in which the prohibited activities occurred.
NH	New Hampshire Antitrust Provisions (N.H. Rev. Stat. Ann. § 356:1 <i>et seq.</i>)	N.H. Rev. Stat. Ann. § 356:4-a and -b	Not more than \$25,000 for each violation of any provision of this chapter
NJ	New Jersey Antitrust Act (N.J. Stat. Ann. § 56:9-1 <i>et seq.</i>)	N.J. Stat. Ann. § 56:9-10(c) (West)	Not more than the greater of \$100,000.00 or \$500.00 per day for each and every day of said violation
NM	Antitrust Act (N.M. Stat. § 57-1-1 <i>et seq.</i>)	N.M. Stat. § 57-1-7(A)	Not to exceed \$250,000
NY	NY Gen. Bus. Law § 340 <i>et seq.</i>	N.Y. Gen. Bus. Law §§ 341 and 342-a	Not exceeding \$1,000,000 for a corporation
NC	N.C. Gen. Stat. § 75-1 <i>et seq.</i>)	N.C. Gen. Stat. § 75-15.2	Up to \$5,000 for each violation if the defendant's acts were, when committed, knowingly violative
ND	Uniform State Antitrust Act (N.D. Cent. Code Ann. § 51-08.1-01 <i>et seq.</i>)	N.D. Cent. Code Ann. § 51-08.1-07 (West)	Not more than fifty thousand dollars for each violation
OH	Ohio Rev. Code § 1331.01 <i>et seq.</i>	Ohio Rev. Code § 1331.03	\$500 for each day that such violation is committed or continued after due notice is given by the attorney general

STATE	STATUTE VIOLATED	PENALTY PROVISION	STATUTORY PENALTY AMOUNT
OK	Oklahoma Antitrust Reform Act (Okla. Stat. Ann. tit. 79, § 201 <i>et seq.</i>)	Okla. Stat. Ann. tit. 79, § 205 (West)	No civil penalties. Treble damages and costs.
OR	Antitrust Law (Or. Rev. Stat. § 646.705 <i>et seq.</i>)	Or. Rev. Stat. § 646.760	Not more than \$250,000 for each violation
PA	No overarching statute.		
RI	Rhode Island Antitrust Act (R.I. Gen. Laws § 6-36-1 <i>et seq.</i>)	R.I. Gen. Laws § 6-36-10(c)	Not more than \$50,000 for each violation
SC	S.C. Code Ann. § 39-3-10 <i>et seq.</i>	S.C. Code Ann. § 39-3-180	Not less than \$200, nor more than \$5,000, for every such offense. Each day such person shall continue to do so shall be a separate offense
SD	S.D. Codified Laws § 37-1-3.1 <i>et seq.</i>	S.D. Codified Laws § 37-1-14.2	Not more than \$50,000 for each violation
TN	Tenn. Code Ann. § 47-25-101 <i>et seq.</i>	Tenn. Code Ann. § 47-25-103 (West)	No civil penalties. Criminal fine not exceeding \$1,000,000
TX	Texas Free Enterprise and Antitrust Act of 1983 (Tex. Bus. & Com. Code Ann. § 15.01 <i>et seq.</i>)	Tex. Bus. & Com. Code Ann. § 15.20 (West)	Not to exceed \$1,000,000 if a corporation
UT	Utah Antitrust Act (Utah Code § 76-10-3101 <i>et seq.</i>)	Utah Code § 76-10-3108	Not more than \$500,000 for each violation
VT	Vt. Stat. Ann. tit. 9, § 2451 <i>et seq.</i>	Vt. Stat. Ann. tit. 9, § 2458(b)(1)	Not more than \$1,000,000.00 for each unfair method of competition
VA	Virginia Antitrust Act (Va. Code § 59.1-9.1 <i>et seq.</i>)	Va. Code § 59.1-9.11	Not more than \$100,000 for each willful or flagrant violation
WA	Consumer Protection Act (Wash. Rev. Code § 19.86.010 <i>et seq.</i>)	Wash. Rev. Code § 19.86.140	Not more than \$500,000
WV	West Virginia Antitrust Act (W. Va. Code § 47-18-1 <i>et seq.</i>)	W. Va. Code § 47-18-8	Not more than the greater of a total of \$100,000 or \$500 per day for each and every day of said violation
WI	Wis. Stat. § 133.01 <i>et seq.</i>	Wis. Stat. § 133.03(3)	A corporation may be required to forfeit not more than \$100,000
WY	Wyo. Stat. Ann. § 40-4-101 <i>et seq.</i>	Wyo. Stat. Ann. § 40-4-104 (West)	No civil penalties. Fine not more than \$5,000.00

ATTACHMENT E

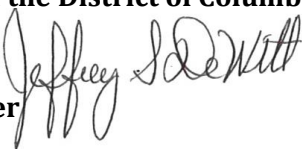
Government of the District of Columbia
Office of the Chief Financial Officer



Jeffrey S. DeWitt
Chief Financial Officer

MEMORANDUM

TO: The Honorable Phil Mendelson
Chairman, Council of the District of Columbia

FROM: Jeffrey S. DeWitt
Chief Financial Officer 

DATE: October 30, 2020

SUBJECT: Fiscal Impact Statement – Antitrust Remedies Amendment Act of 2020

REFERENCE: Bill 23-300, Draft Committee Print as provided to the Office of Revenue Analysis on October 28, 2020

Conclusion

Funds are sufficient in the fiscal year 2021 through fiscal year 2024 budget and financial plan to implement the bill.

Background

The District's antitrust laws protect District residents, businesses, and agencies from anticompetitive practices that could inflate prices, reduce supply, or impact quality of products or services.¹ The District can pursue civil remedies to remedy antitrust actions including injunctive or equitable relief, damages, and reasonable costs associated with the suit.

The bill expands the Office of the Attorney General's (OAG) civil remedies to include civil penalties and aligns the remedy options between action taken on behalf of the District and action taken alongside a private individual as *parens patriae*.² The bill sets maximum civil penalties at \$100,000 when the violator is an individual and \$1,000,000 when the violator is any person other than an

¹ District of Columbia Antitrust Act of 1980, effective March 5, 1981 (D.C. Law 3-169; D.C. Official Code § 28-4501 et seq.).

² The power of the state to act as guardian for those who are unable to care for themselves, such as children or disabled individuals. https://www.law.cornell.edu/wex/parens_patriae

The Honorable Phil Mendelson

FIS: Bill 23-300, "Antitrust Remedies Amendment Act of 2020," Draft Committee Print as provided to the Office of Revenue Analysis on October 28, 2020

individual.³ The bill also allows the District, when pursuing action for injuries against its own business or property to receive up to three times damages awarded. The bill also ensures that injunctive and equitable relief, including restitution, can be granted in cases where the District is acting as *parens patriae*.

The bill also makes several technical changes to the antitrust statutes.

Financial Plan Impact

Funds are sufficient in the fiscal year 2021 through fiscal year 2024 budget and financial plan to implement the bill. The bill gives OAG more civil remedy options in antitrust cases when bringing cases on behalf of the District and when acting in a *parens patriae* capacity alongside the actions of a private individual. OAG does not require any additional resources to implement the bill's changes. Any civil penalties assessed and collected will be deposited into the OAG's Litigation Support Fund.⁴

³ "'Person' includes an individual, corporation, business trust, partnership, business association, or any other legal entity." D.C. Official Code § 28-4501(a).

⁴ Attorney General Authority and Litigation Fund Establishment Act of 2015, effective October 22, 2105 (D.C. Law 21-36; D.C. Official Code § 1-301.86b).

ATTACHMENT F



OFFICE OF THE GENERAL COUNSEL

Council of the District of Columbia
1350 Pennsylvania Avenue NW, Suite 4
Washington, DC 20004
(202) 724-8026

MEMORANDUM

TO: Councilmember Charles Allen

FROM: Nicole L. Streeter, General Counsel *NLS*

DATE: October 28, 2020

**RE: Legal sufficiency determination for Bill 23-300, the
Antitrust Remedies Amendment Act of 2020**

The measure is legally and technically sufficient for Council consideration.

The bill would amend Chapter 45 of Title 28 of the District of Columbia Official Code ("Chapter 45") to expand the remedies available in civil actions brought by the Attorney General for violations of Chapter 45. Under the bill, remedies would be one or more of the following:

- Not more than treble damages;
- Other appropriate injunctive or equitable relief, including restitution or an order that any profits, gain, gross receipts, or other benefit derived from the violation be disgorged and paid to the District;
- Civil penalties; and
- Costs and attorney's fees.

The bill would establish the following civil penalties for a violation of Chapter 45:

- For individuals, not more than \$100,000; and
- For persons other than individuals, not more than \$1 million.

I am available if you have any questions.

ATTACHMENT G

Comparative Committee Print
B23-0300
Committee on the Judiciary & Public Safety
October 30, 2020

Section 2

§ 28-4505. Civil investigative demand.

(a) Whenever the ~~Corporation Counsel~~ Attorney General has reason to believe that any person may be in possession, custody, or control of any documentary material, or may have any information, relevant to a civil antitrust investigation, the ~~Corporation Counsel~~ Attorney General may, prior to the institution of a proceeding thereon, issue in writing, and cause to be served upon such person, a civil investigative demand requiring such person to produce such documentary material for inspection and copying or reproduction, to answer written interrogatories, to give oral testimony concerning documentary material or information, or to furnish any combination of such material, answers, or testimony.

(b) Each such demand shall:

(1) state the nature of:

(A) the conduct under investigation constituting the alleged antitrust violation; or

(B) the activities under investigation which, if consummated, may result in an antitrust violation; and

(C) the applicable provision of law;

(2) if it is a demand for production of documentary material:

(A) describe the class or classes of documentary material to be produced with sufficient definiteness as to permit such material to be fairly identified;

(B) prescribe a return date or dates which will provide a reasonable period of time for the material demanded to be assembled and made available for inspection and copying or reproduction; and

(C) identify the custodian to whom such material shall be made available;

(3) if it is a demand for answers to written interrogatories:

(A) propound with definiteness the written interrogatories to be answered;

(B) prescribe a date or dates at which time answers to written interrogatories shall be submitted; and

(C) identify the custodian to whom such answers shall be submitted; or

(4) if it is a demand for the giving of oral testimony:

(A) prescribe a date, time, and place at which oral testimony shall be commenced; and

(B) identify ~~an assistant corporation counsel~~ a designee of the Attorney General who shall conduct the examination and the custodian to whom the transcript of such examination shall be submitted.

(c) No such demand shall require the production of any documentary material, the submission of any answers to written interrogatories, or the giving of any oral testimony, if such material, answers, or testimony would be protected from disclosure under:

41 (1) the standards applicable to subpoenas or subpoenas duces tecum issued by the
42 Superior Court of the District of Columbia in aid of a grand jury investigation; or

43 (2) the standards applicable to discovery requests under the Superior Court of the
44 District of Columbia Rules of Civil Procedure, to the extent that the application of such standards
45 to any such demand is appropriate and consistent with the provisions and purposes of this chapter.

46 (d) Any such demand shall be served in any manner provided for service of process in the
47 Superior Court of the District of Columbia, or if the person to be served has no place of business
48 within the District of Columbia, the demand may be served by depositing a duly executed copy in
49 the United States mails by registered mail, return receipt requested, addressed to such person at
50 that person's principal office or place of business.

51 (e) The production of documentary material in response to a demand served pursuant to
52 this section shall be made under a sworn certificate, in such form as the demand designates, by the
53 person, if ~~a natural person~~ an individual, to whom the demand is directed or, if not ~~a natural person~~
54 an individual, by a person or persons having knowledge of the facts and circumstances relating to
55 such production, to the effect that all of the documentary material required by the demand and in
56 the possession, custody, or control of the person to whom the demand is directed has been produced
57 and made available to the custodian.

58 (f) Each interrogatory in a demand served pursuant to this section shall be answered
59 separately and fully in writing under oath, unless such procedure is objected to, in which event the
60 reasons for the objection shall be stated with specificity in lieu of an answer, and such reasons
61 shall be submitted under a sworn certificate.

62 (g)(1) The examination of any person pursuant to a demand for oral testimony served under
63 this section shall be taken before an officer authorized to administer oaths and affirmations by the
64 laws of the District of Columbia. The officer before whom the testimony is to be taken shall put
65 the witness on oath or affirmation and shall personally, or by someone acting under the officer's
66 direction and in the officer's presence, record the testimony of the witness. The testimony shall be
67 recorded and transcribed. When the testimony is fully transcribed, the officer before whom the
68 testimony is taken shall promptly transmit a copy of the transcript of the testimony to the custodian.

69 (2) The ~~assistant corporation counsel~~ designee of the Attorney General conducting
70 the examination shall exclude from the place where the examination is held all other persons:
71 except, the person being examined, the person's counsel, the officer before whom the testimony is
72 to be taken, and any stenographer taking such testimony.

73 (3) The oral testimony of any person taken pursuant to a demand served under this
74 section shall be taken in the District of Columbia, or in such other place as may be agreed upon by
75 the ~~assistant corporation counsel~~ designee of the Attorney General conducting the examination
76 and such person.

77 (4) When the testimony is fully transcribed, the ~~assistant corporation counsel~~
78 designee of the Attorney General or the officer shall afford the witness (who may be accompanied
79 by counsel) a reasonable opportunity to examine the transcript; and the transcript shall be read to
80 or by the witness, unless such examination and reading are waived by the witness. Any changes in
81 form or substance which the witness desires to make shall be entered and identified upon the
82 transcript by the officer or the ~~assistant corporation counsel~~ designee of the Attorney General with
83 a statement of the reasons given by the witness for making such changes. The transcript shall then
84 be signed by the witness, unless the witness in writing waives the signing, is ill, cannot be found,
85 or refuses to sign. If the transcript is not signed by the witness within 30 days of the witness being
86 afforded a reasonable opportunity to examine the transcript, the officer or the ~~assistant corporation~~

~~counsel~~ designee of the Attorney General shall sign the transcript and state on the record the fact of the waiver, illness, absence of the witness, or the refusal to sign, together with the reason, if any, given therefor.

(5) The officer shall certify on the transcript that the witness was duly sworn by the officer and that the transcript is a true record of the testimony given by the witness, and the officer or ~~assistant corporation counsel~~ designee of the Attorney General shall promptly deliver or send the transcript by registered mail, return receipt requested, addressed to the custodian.

(6) Upon request, the ~~assistant corporation counsel~~ designee of the Attorney General shall furnish a copy of the transcript at no cost to the witness only: except, that the ~~Corporation Counsel~~ Attorney General may for good cause limit such witness to inspection of the official transcript of the witness's testimony.

(7) Any person compelled to appear under a demand for oral testimony pursuant to this section may be accompanied, represented, and advised by counsel. Counsel may advise such person, in confidence, either upon the request of such person or upon counsel's own initiative, with respect to any question asked of such person. Such person or counsel may object on the record to any question, in whole or in part, and shall briefly state for the record the reason for the objection. An objection may properly be made, received, and entered upon the record when a claim is made that such person is entitled to refuse to answer the question on grounds of any constitutional or other legal right or privilege, including the privilege against self-incrimination. Such person shall not otherwise object to or refuse to answer any question, and shall not by himself or through counsel otherwise interrupt the oral examination. If such person refuses to answer any question, the ~~Corporation Counsel~~ Attorney General may petition the Superior Court of the District of Columbia pursuant to this section for an order compelling such person to answer such question. If such person refuses to answer any question on the grounds of privilege against self-incrimination, the testimony of such person may be compelled by order of court upon the granting of immunity. No testimony or other disclosure compelled under court order or any information directly or indirectly derived from such ordered testimony or disclosure may be used against the person in any criminal case except a prosecution for perjury or otherwise failing to comply with the order.

(8) Any person appearing for oral examination pursuant to a demand served under this section shall be entitled to the same mileage reimbursements which are paid to witnesses in the Superior Court of the District of Columbia.

(h) Whenever any person fails to comply with any civil investigative demand duly served upon that person under this section or whenever satisfactory copying or reproduction of any such material cannot be done and such person refuses to surrender such material, the ~~Corporation Counsel~~ Attorney General may file, in the Superior Court of the District of Columbia and serve upon such person a petition for an order of such court for the enforcement of this chapter. A person who, with the intent to avoid, prevent, or obstruct compliance, in whole or in part, with an investigative demand duly and properly made under this section, withholds, misrepresents, removes from any place, conceals, covers up, destroys, mutilates, alters, or by other means falsifies any documentary material, answers to written interrogatories, or oral testimony which is the subject of such demand, or who attempts to do so or solicits another to do so shall upon conviction thereof be fined not more than not more than the amount set forth in [§ 22-3571.01] or imprisoned not more than one (1) year or both.

(i) Within 20 days after the service of any such civil investigative demand upon any person, or at any time before the return date specified in the demand, whichever period is shorter, or within

such period exceeding 20 days after service or in excess of such return date as may be prescribed in writing, subsequent to service, by any antitrust investigator named in the demand, such person may file in the Superior Court of the District of Columbia and serve upon the ~~Corporation Counsel~~ Attorney General a petition for an order of such court modifying or setting aside such demand. The time allowed for compliance with the demand in whole or in part as deemed proper and ordered by the court shall not run during the pendency of such petition in the court, except that such person shall comply with any portion of the demand not sought to be modified or set aside. 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 or other legal right or privilege of such person.

(j) At any time during which any custodian is in custody or control of any documentary material or answers to interrogatories delivered, or transcripts of oral testimony given by any person in compliance with any such demand, such person may file, in the Superior Court of the District of Columbia, and serve upon such custodian a petition for an order of such court requiring the performance by such custodian of any duty imposed upon the custodian by this section.

(k) Any procedure, other than an action to enforce a demand pursuant to subsection (h) of this section, or testimony taken or material produced under this section or voluntarily in the course of an investigation shall be exempt from the provisions of the District of Columbia Freedom of Information Act (section 2-531 et seq.) and shall be kept confidential by the ~~Corporation Counsel~~ Attorney General before bringing an action against a person under this chapter for the violation under investigation, unless confidentiality is waived by the person who has testified, answered interrogatories, or produced material: except, that testimony taken or material or information produced under this section may be disclosed by the ~~Corporation Counsel~~ Attorney General to any officer or employee of any federal or state law enforcement agency upon the prior certification of an officer of any such federal or state law enforcement agency that such testimony, material, or information will be maintained in confidence and will be used only for official law enforcement purposes.

(l) Unless otherwise authorized or required by law, any employee of the District of Columbia who shall intentionally disclose information kept confidential by subsection (k) of this section shall be guilty of a misdemeanor punishable by a fine up to \$500.

D.C. Official Code § 28–4506. Criminal enforcement by the District of Columbia.

Every person who violates section 28-4502 or 28-4503 shall be guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine of not more than the amount set forth in [§ 22-3571.01], or by imprisonment not exceeding one (1) year, or both. The ~~Corporation Counsel~~ Attorney General shall commence and try all prosecutions for violations of section 28-4502 or 28-4503 . Whenever a corporation violates section 28-4502 or 28-4503 , the individual directors, officers, or agents of such corporation who have intentionally authorized, ordered or ratified the acts constituting such violation shall be punishable in accordance with this section.

D.C. Official Code § 28–4507. Damages and injunctive relief for injuries to or within the District of Columbia.

(a)(1) Whenever the District of Columbia government is injured in its business or property by a violation of this chapter, the ~~Corporation Counsel~~ Attorney General may, without prejudice

to the right of the District to bring similar or identical actions under any other statute, bring a civil action, in the name of the District, of Columbia for damages, or for appropriate injunctive or other equitable relief, or for both, without prejudice to the right of the District of Columbia to bring similar or identical actions under any other statute. In such an action, in addition to any appropriate injunctive or equitable relief, the court may award the District of Columbia damages and the cost of suit, including reasonable attorney's fees, in any court of competent jurisdiction.

(2)(A) Remedies in actions brought pursuant to paragraph (1) of this subsection shall be one or more of the following:

(i) Not more than treble damages;

(ii) Other appropriate injunctive or equitable relief, including restitution or an order that any profits, gain, gross receipts, or other benefit derived from the violation be disgorged and paid to the District; and

(iii) Civil penalties.

(B) In any action brought pursuant to paragraph (1) of this subsection, the court may award the District the relief sought and the cost of suit, including reasonable attorney's fees.

(b)(1) Whenever an individual residing in the District is injured in the individual's property by a violation of this chapter, ~~The Corporation Counsel~~ the Attorney General may bring a civil action, in the name of the District as parens patriae, of Columbia in any court of competent jurisdiction, as parens patriae on behalf of any individual residing in the District of Columbia in any court of competent jurisdiction for injury sustained by such individual to such individual's property by reason of any violation of this chapter.

(42) The court shall award the District of Columbia, as monetary relief, threefold the total damages sustained by such natural persons, and the cost of suit, including reasonable attorney's fees. Remedies in actions brought pursuant to paragraph (1) of this subsection shall be one or more of the remedies provided in subsection (a)(2) of this section.

(23) Monetary relief recovered on behalf of individuals in an action under pursuant to paragraph (1) of this subsection shall:

(A) be distributed in such manner as the court may authorize, according to procedures approved by the court, except that any ; or

(B) be deemed a civil penalty by the court and deposited with the District of Columbia, subject in either case to the requirement that any distribution procedures adopted approved shall first afford each person individual a reasonable opportunity to secure each such person's the individual's appropriate portion of the net monetary relief.

(b-1)(1) Any individual who knowingly commits any violation of this chapter shall be liable for civil penalties not to exceed \$100,000.

(2) Any person, other than an individual in paragraph (1) of this subsection, that knowingly commits any violation of this chapter shall be liable for civil penalties not to exceed \$1 million.

(c)(1) In any action brought under pursuant to subsection (b) of this section, the Corporation Council Attorney General shall, at such times, in such manner, and with such content as the court may direct, cause notice to be given by publication. If the court finds that notice given solely by publication would deny due process of law to any person or persons individual, the court shall direct further notice to such person or persons individual according to the circumstances of the case.

(2) Any ~~person~~ individual on whose behalf an action is brought under subsection (b) of this section may elect to exclude from adjudication the portion of the District of Columbia claim for monetary relief attributable to that ~~person~~ individual by filing notice of such election with the court within such time as specified in the notice given pursuant to paragraph (1) of this subsection.

(d) In any action under subsection (b) of this section, in which there has been a determination that a defendant violated a provision of this chapter, damages may be proved and assessed in the aggregate by the computation of illegal overcharges, or by such other reasonable system of estimating aggregate damages as the court may permit, without the necessity of separately proving the individual claim of, or amount of damage to, ~~persons~~ individuals on whose behalf the suit was brought.

(e) The court may award under this section, pursuant to a motion by the District of Columbia promptly made, simple interest on actual damages for the period beginning on the date of service of the pleading of the District of Columbia setting forth a claim under this chapter and ending on the date of judgment, or for any shorter period therein, if the court finds that the award of such interest for such period is just under the circumstances. In determining whether an award of interest under this section for any period is just under the circumstances, the court shall consider only:

(1) whether the District of Columbia or the opposing party, or either party's representative, made motions or asserted claims or defenses so lacking in merit as to show that such party or representative acted intentionally for delay, or otherwise acted in bad faith;

(2) whether, in the course of the action involved, the District of Columbia or the opposing party, or either party's representative, violated any applicable rule, statute, or court order providing for sanctions for dilatory behavior or otherwise providing for expeditious proceedings; and

(3) whether the District of Columbia or the opposing party, or either party's representative, engaged in conduct primarily for the purpose of delaying the litigation or increasing the cost thereof.

D.C. Official Code § 28–4512. Assurance of discontinuance.

(a) In enforcing this chapter, the ~~Corporation Counsel~~ Attorney General may accept an assurance of discontinuance of an act or practice considered in violation of this chapter from any person engaged in the act or practice.

(b) The assurance of discontinuance shall be in writing and shall be effective only upon the approval of the Superior Court of the District of Columbia.

(c) The assurance of discontinuance may not be considered for any purpose as an admission of a violation. Proof of failure to comply with the assurance of discontinuance is prima facie evidence of a violation of this chapter.

D.C. Official Code § 28–4513. Cooperation with federal government and states.

Except as provided in section 28-4505(k), the ~~Corporation Counsel~~ Attorney General may cooperate with the federal government and the states in the enforcement of this chapter.

ATTACHMENT H

1 **Committee Print**
2 **B23-0300**
3 **Committee on the Judiciary & Public Safety**
4 **October 30, 2020**
5
6
7

8 A BILL
9

10 23-0300
11

12
13 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA
14
15
16
17

18 To amend Chapter 45 of Title 28 of the District of Columbia Official Code to expand the remedies
19 available in civil actions brought by the Attorney General for antitrust violations, including
20 by authorizing civil penalties for violations committed by individuals and legal entities.
21

22 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this
23 act may be cited as the “Antitrust Remedies Amendment Act of 2020”.

24 Sec. 2. Chapter 45 of Title 28 of the District of Columbia Official Code is amended as
25 follows:

26 (a) Section 28-4505 is amended as follows:

27 (1) Subsection (a) is amended by striking the phrase “Corporation Counsel” both
28 times it appears and inserting the phrase “Attorney General” in its place.

29 (2) Subsection (b)(4)(B) is amended by striking the phrase “an assistant corporation
30 counsel” inserting the phrase “a designee of the Attorney General” in its place.

31 (3) Subsection (e) is amended by striking the phrase “a natural person” both times
32 it appears and inserting the phrase “an individual” in its place.

33 (4) Subsection (g) is amended as follows:

34 (A) Paragraph (2) is amended by striking the phrase “The assistant
35 corporation counsel” and inserting the phrase “The designee of the Attorney General” in its place.

36 (B) Paragraph (3) is amended by striking the phrase “the assistant
37 corporation counsel” and inserting the phrase “the designee of the Attorney General” in its place.

38 (C) Paragraph (4) is amended by striking the phrase “the assistant
39 corporation counsel” wherever it appears and inserting the phrase “the designee of the Attorney
40 General” in its place.

41 (D) Paragraph (5) is amended by striking the phrase “or assistant
42 corporation counsel” and inserting the phrase “or designee of the Attorney General” in its place.

43 (E) Paragraph (6) is amended to read as follows:

44 “(6) Upon request, the designee of the Attorney General shall furnish a copy of the
45 transcript at no cost to the witness only: except, that the Attorney General may for good cause limit
46 such witness to inspection of the official transcript of the witness’s testimony.”.

47 (F) Paragraph (7) is amended by striking the phrase “the Corporation
48 Counsel” and inserting the phrase “the Attorney General” in its place.

49 (5) Subsection (h) is amended by striking the phrase “the Corporation Counsel” and
50 inserting the phrase “the Attorney General” in its place.

51 (6) Subsection (i) is amended by striking the phrase “the Corporation Counsel” and
52 inserting the phrase “the Attorney General” in its place.

53 (7) Subsection (k) is amended by striking the phrase “the Corporation Counsel”
54 both times it appears and inserting the phrase “the Attorney General” in its place.

55 (b) Section 28-4506 is amended by striking the phrase “The Corporation Counsel” and
56 inserting the phrase “The Attorney General” in its place.

(c) Section 28-4507 is amended as follows:

(1) Subsection (a) is amended to read as follows:

“(a)(1) Whenever the District government is injured in its business or property by a violation of this chapter, the Attorney General may, without prejudice to the right of the District to bring similar or identical actions under any other statute, bring a civil action, in the name of the District, in any court of competent jurisdiction.

“(2)(A) Remedies in actions brought pursuant to paragraph (1) of this subsection shall be one or more of the following:

“(i) Not more than treble damages;

“(ii) Other appropriate injunctive or equitable relief, including restitution or an order that any profits, gain, gross receipts, or other benefit derived from the violation be disgorged and paid to the District; and

“(iii) Civil penalties.

“(B) In any action brought pursuant to paragraph (1) of this subsection, the court may award the District the relief sought and the cost of suit, including reasonable attorney’s fees.”.

(2) Subsection (b) is amended to read as follows:

“(b)(1) Whenever an individual residing in the District is injured in the individual's property by a violation of this chapter, the Attorney General may bring a civil action, in the name of the District as parens patriae, in any court of competent jurisdiction.

“(2) Remedies in actions brought pursuant to paragraph (1) of this subsection shall be one or more of the remedies provided in subsection (a)(2) of this section.

79 “(3) Monetary relief recovered on behalf of individuals in an action pursuant to
80 paragraph (1) of this subsection shall be distributed in such manner as the court may authorize,
81 according to procedures approved by the court, except that any distribution procedures approved
82 shall first afford each individual a reasonable opportunity to secure the individual’s appropriate
83 portion of the net monetary relief.”.

84 (3) A new subsection (b-1) is added to read as follows:

85 “(b-1)(1) Any individual who knowingly commits any violation of this chapter shall be
86 liable for civil penalties not to exceed \$100,000.

87 “(2) Any person, other than an individual in paragraph (1) of this subsection, that
88 knowingly commits any violation of this chapter shall be liable for civil penalties not to exceed \$1
89 million.”.

90 (4) Subsection (c) is amended as follows:

91 (A) Paragraph (1) is amended to read as follows:

92 “(1) In any action brought pursuant to subsection (b) of this section, the Attorney
93 General shall, at such times, in such manner, and with such content as the court may direct, cause
94 notice to be given by publication. If the court finds that notice given solely by publication would
95 deny due process of law to any individual, the court shall direct further notice to such individual
96 according to the circumstances of the case.”.

97 (B) Paragraph (2) is amended by striking the word “person” both times it
98 appears and inserting the word “individual” in its place.

99 (5) Subsection (d) is amended by striking the phrase “persons on” and inserting the
100 phrase “individuals on” in its place.

(d) Section 28-4512(a) is amended by striking the phrase “the Corporation Counsel” and inserting the phrase “the Attorney General” in its place.

(e) Section 28-4513 is amended by striking the phrase “the Corporation Counsel” and inserting the phrase “the Attorney General” in its place.

Sec. 3. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 4. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.