

THE GENERAL ASSEMBLY OF PENNSYLVANIA

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INTRODUCED BY RAPPAPORT, W. D. HUTCHINSON, L. E. SMITH, BENNETT,
SCHMITT, SPENCER, SIEMINSKI, CHESS AND GRUPPO, JUNE 28, 1979

REFERRED TO COMMITTEE ON BUSINESS AND COMMERCE, JUNE 29, 1979

AN ACT

1 Prohibiting restraints of trade and monopolistic practices;
2 providing remedies and penalties therefor; imposing powers
3 and duties on the Attorney General; and providing for an
4 Antitrust Fund.

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15 The General Assembly of the Commonwealth of Pennsylvania
16 hereby enacts as follows:

17 Section 1. Short title.

18 This act shall be known and may be cited as the "Pennsylvania
19 Antitrust Act."

20 Section 2. Declaration of legislative policy.

21 It is the purpose of this act to promote the free market
22 system in the economy of this Commonwealth and to protect
23 business organizations and the citizens of this Commonwealth by
24 prohibiting restraints of trade and monopolistic practices,
25 inasmuch as these have the effect of lessening competition and
26 increasing the prices of goods and services.

27 Section 3. Definitions.

28 The following words and phrases, when used in this act shall
29 have, unless the context clearly indicates otherwise, the
30 meanings given to them in this section:

1 "Antitrust Fund." The fund described in section 20.

2 "Antitrust investigative subpoena." An antitrust
3 investigative subpoena pursuant to section 10(b).

4 "Attorney General." The Attorney General of the Commonwealth
5 of Pennsylvania or his deputies and assistants.

6 "Department." The Department of Justice.

7 "Documentary material." Includes the original and any
8 nonidentical copy of any book, record, report, memorandum,
9 paper, communication, tabulation, chart or other document and
10 further includes any other form of data or information however
11 embodied, stored or reproduced.

12 "Person" or "Persons." Includes individuals, corporations,
13 firms, trusts, partnerships and incorporated or unincorporated
14 associations, existing under or authorized by the laws of the
15 Commonwealth or any other state, the United States or any
16 foreign country.

17 "Government unit." The Commonwealth government, the General
18 Assembly and its officers and agencies, any government agency,
19 executive agency and independent agency, as those terms are
20 defined in 42 Pa.C.S. § 102 (relating to definitions).

21 Section 4. Restraint of trade.

22 Every contract, combination in the form of trust or
23 otherwise, or conspiracy, in restraint of trade or commerce in
24 or affecting this Commonwealth is unlawful.

25 Section 5. Requirements and output contracts, tying
26 arrangements.

27 Every contract for the supplying of commodities, furnishing
28 of services, or for the price therefor, or a discount or rebate
29 therefrom, on the condition, agreement, or understanding that
30 one party shall not deal in the commodities or services of

1 another, or on the condition, agreement, or understanding that
2 one party shall deal in other commodities or services of the
3 other party, is unlawful, when the effect of such contract, or
4 such condition, agreement or understanding may be substantially
5 to lessen competition or to tend to create a monopoly in any
6 line of commerce in or affecting this Commonwealth.

7 Section 6. Monopolization.

8 It is unlawful for any person to monopolize or attempt to
9 monopolize or combine or conspire with any other person or
10 persons to monopolize, any part of the trade or commerce in or
11 affecting this Commonwealth.

12 Section 7. Acquisitions.

13 It is unlawful for a corporation engaged in commerce to
14 acquire, directly or indirectly, the whole or any part of the
15 stock, other share capital, or assets of another corporation,
16 also engaged in commerce, where in any line of commerce within
17 this Commonwealth, the effect of such acquisition, or of the use
18 of such stock by the voting or granting of proxies or otherwise,
19 may be substantially to lessen competition, or to tend to create
20 a monopoly.

21 Section 8. Exemptions.

22 (a) Exempt activities.--No provision of this act shall be
23 construed to make illegal:

24 (1) The activities of any labor organization, or of
25 individual members thereof, which are directed solely to
26 labor objectives which are legitimate under the laws of
27 either this Commonwealth or the United States.

28 (2) The activities of any agricultural or horticultural
29 cooperative organization, whether incorporated or
30 unincorporated, or of individual members thereof, which are

1 directed solely to objectives of such cooperative
2 organizations which are legitimate under the laws of either
3 this Commonwealth or the United States.

4 (3) The activities of any consumer organization, whether
5 incorporated or unincorporated, or of individual members
6 thereof, which are directed solely to consumer objectives
7 which are legitimate under the laws of either this
8 Commonwealth or the United States.

9 (b) Federal exemptions.--Activities regulated by the
10 Commonwealth or its regulatory agencies are not unlawful under
11 this act if those same activities would not be unlawful under
12 the Federal Antitrust Laws. For purposes of this subsection, the
13 determination of the applicability of the Federal Antitrust Laws
14 shall be made without regard to whether the commerce involved is
15 interstate, intrastate, or both.

16 (c) Trade or professional association.--This act shall not
17 be construed to make the mere existence of a trade or
18 professional association unlawful in itself.

19 Section 9. General powers of the Attorney General and actions
20 against government units.

21 (a) Actions by Attorney General.--The Attorney General shall
22 investigate suspected violations of this act and may institute
23 such proceedings as set forth in this act. The Attorney General
24 shall not initiate or proceed with any criminal action under
25 this act against any person who has been indicted and is being
26 prosecuted by the United States for substantially the same
27 conduct, nor shall he seek civil remedies against any person who
28 is a defendant in an action by the United States for
29 substantially the same conduct except that the Attorney General
30 may seek relief, including but not limited to, restitution and

1 damages, which is not being sought by the United States.

2 (b) Actions against government units.--Upon written request
3 from any government unit, and to the extent moneys are
4 specifically available therefore from appropriations made by the
5 General Assembly, it shall be the duty of the Attorney General
6 to provide for the defense of such government unit in any action
7 alleging that the government unit violated this act or the
8 Federal Antitrust Laws. The Attorney General may enter an
9 appearance for the government unit or may, if he deems that the
10 entry of his appearance will create a conflict of interests,
11 appoint private counsel to enter an appearance for the
12 government unit. If the amount of payment for costs, expenses
13 and legal fees required exceeds amounts available, supplemental
14 appropriations as are necessary shall be made by the General
15 Assembly. The Attorney General shall not be required to provide
16 for the payment of damages or of any sum payable in settlement
17 of any claim. Nothing herein shall prevent a government unit,
18 except Commonwealth government, from engaging counsel to defend
19 it without requesting the Attorney General to provide for its
20 defense, in which event the Attorney General shall have no
21 duties under this section; in any such case, the Attorney
22 General shall be promptly notified by the government unit of the
23 pendency of the action.

24 Section 10. Investigation by Attorney General.

25 (a) General power of investigation.--Whenever it appears to
26 the Attorney General, either upon complaint or otherwise, that
27 any person has engaged in or is engaging in any act or practice
28 prohibited by this act, or that any person has assisted or
29 participated in any plan, scheme, agreement or combination
30 prohibited by this act, he may:

1 (1) permit a complainant to file with him a statement;

2 (2) request such other data and information from the
3 complainant as he deems relevant;

4 (3) make such special and independent investigations as
5 he deems necessary in connection with the matter; and

6 (4) send such letters of inquiry as he deems proper in
7 conducting any antitrust investigation, which may seek:

8 (i) the attendance of such person for submission to
9 examination and giving of testimony under oath;

10 (ii) the production of documentary material
11 pertinent to the investigation for inspection or copying;
12 and

13 (iii) answers to written interrogatories to be
14 furnished under oath.

15 (b) Antitrust investigative subpoena.--Whenever the Attorney
16 General has reason to believe that any person may have
17 knowledge, or be in possession, custody or control of any
18 documentary material, pertinent to an investigation of a
19 possible violation of this act, he may make application to the
20 Commonwealth Court for an antitrust investigative subpoena which
21 may:

22 (1) compel the attendance of such person and require him
23 to submit to examination and give testimony under oath;

24 (2) require the production of documentary material
25 pertinent to the investigation for inspection or copying; and

26 (3) require answers to written interrogatories to be
27 furnished under oath.

28 The power to issue antitrust investigative subpoenas for the
29 purpose of investigating a person shall abate and terminate by
30 reason of the bringing of any action or proceeding against such

1 person under this act. Upon application by the Attorney General,
2 the Commonwealth Court may issue successive antitrust
3 investigative subpoenas to the same person in order to obtain
4 additional information pertinent to a continuing investigation.

5 (c) Issuance of subpoena.--

6 (1) The Commonwealth Court shall have the exclusive
7 power to issue antitrust investigative subpoenas.

8 (2) No antitrust investigative subpoena shall issue
9 unless:

10 (i) the Attorney General has applied to the
11 Commonwealth for the issuance of the antitrust
12 investigative subpoena, in accordance with the rules of
13 the court; and

14 (ii) the Commonwealth Court after considering the
15 application of the Attorney General has determined that
16 there is reason to believe that the subpoenaed person may
17 have knowledge or the subpoenaed document or documents
18 may contain information relevant to the matter being
19 investigated.

20 (3) Within ten days of the filing of an application for
21 an antitrust investigative subpoena, the court shall issue
22 either the antitrust investigative subpoena or an order
23 denying or modifying the application. Failure of the court to
24 act within that time shall constitute approval of the
25 issuance of the subpoena and the clerk of court upon the
26 request of the Attorney General shall issue the antitrust
27 investigative subpoena forthwith.

28 (d) Contents of subpoena.--Every antitrust investigative
29 subpoena shall include the following statements:

30 (1) the section or sections of this act, the alleged

1 violation of which is under investigation and the general
2 subject matter of the investigation;

3 (2) a reasonable return date no less than 20 days from
4 the date of service of the antitrust investigative subpoena;

5 (3) the time and place at which the person is to appear
6 and give testimony, produce documentary material and furnish
7 answers to interrogatories or do any or a combination of the
8 aforesaid;

9 (4) a description by class of any documentary material
10 required to be produced, so as to clearly indicate what is
11 demanded; and

12 (5) any interrogatories to which written answers under
13 oath are required.

14 (e) Prohibition against unreasonable requirements.--No
15 antitrust investigative subpoena shall:

16 (1) contain any requirement which would be unreasonable
17 or proper if contained in a subpoena other than an antitrust
18 investigative subpoena issued by a court of this
19 Commonwealth; or

20 (2) require the disclosure of any material which would
21 be privileged or which for any other reason would not be
22 required by a subpoena other than an antitrust investigative
23 subpoena issued by a court of this Commonwealth.

24 (f) Offer of documentary evidence.--Where the information
25 requested upon oral examination or written interrogatory
26 pursuant to an antitrust investigative subpoena may be derived
27 or ascertained from the business records of the person upon whom
28 the demand has been served or from an examination, audit or
29 inspection of such business records, or from a compilation,
30 abstract or summary based thereon, and the burden of deriving or

1 ascertaining the answer is substantially the same for the
2 Attorney General as for the person from whom such information is
3 requested, it is sufficient for that person to identify
4 specifically in writing the records from which the answer may be
5 derived or ascertained and to afford the Attorney General
6 reasonable opportunity to examine, audit or inspect such records
7 and to make copies, compilations, abstracts or summaries.

8 (g) Service of subpoena.--An antitrust investigative
9 subpoena may be served by any means provided by the laws of this
10 Commonwealth and the Pennsylvania Rules of Civil Procedure for
11 service of a complaint in a civil action.

12 (h) Motion to quash.--Within ten days after the service of
13 an antitrust investigative subpoena, the person served may file
14 in Commonwealth Court and serve upon the Attorney General a
15 petition for an order of court modifying or setting aside the
16 subpoena. The time allowed for compliance in whole or in part
17 with the subpoena as deemed proper and ordered by the court
18 shall not run while the petition is pending before the court.
19 The petition shall specify each ground upon which the petitioner
20 relies in seeking relief, and may be based upon any failure of
21 the subpoena to comply with the provisions of this act or upon
22 any constitutional or other legal right, privilege or qualified
23 privilege of such party. The provisions of this subsection shall
24 be the sole and exclusive means for challenging the requirements
25 of an antitrust investigative subpoena.

26 (i) Taking of testimony.--The examination of all persons
27 pursuant to this section by the Attorney General shall be
28 conducted before an officer authorized to administer oaths in
29 this Commonwealth. The statements made shall be taken down
30 stenographically or by a sound recording device. The Attorney

1 General shall exclude from the place where the examination is
2 held all other persons except the person being examined, his
3 counsel, the officer before whom the testimony is to be taken
4 and any stenographer or operator recording such testimony.

5 (j) Rights of persons served with antitrust investigative
6 subpoena.--Upon application of any person who has received an
7 antitrust investigative subpoena, and the response of the
8 Attorney General to that application, the court may, for good
9 cause shown, allow that person to inspect any documents filed
10 with the court by the Attorney General in support of the
11 application for such antitrust investigative subpoena, subject
12 to any protective order of the court which the court deems
13 necessary and proper to protect privileged information, trade
14 secrets or the secrecy of the investigation. Any person required
15 to attend and give testimony or to submit documentary material
16 pursuant to this section shall be entitled to retain, or on
17 payment of lawfully prescribed costs, to procure, a copy of any
18 document he produces and of his own statements as transcribed.
19 Any such person may be accompanied and represented by counsel,
20 but counsel may not, as a matter of right, otherwise participate
21 in the investigation.

22 (k) Secrecy of investigation.--The information contained in
23 and materials comprising any testimony taken or documentary
24 material produced pursuant to this section and opinions of the
25 Commonwealth Court concerning proceedings for the enforcement of
26 an antitrust investigative subpoena shall not be permitted to
27 become public either by the court or by the Attorney General
28 other than as provided in this section. The court shall
29 establish a confidential file for all such materials and
30 opinions which shall be kept under seal except as provided in

1 subsection (j). Except as provided in this section, while in the
2 possession of the Attorney General or any representative, no
3 such materials or copies thereof shall be available for public
4 examination without the written consent of the person who is
5 named in the antitrust investigative subpoena and the person
6 being investigated. Except as provided in this section, the
7 Attorney General shall use such information and material only
8 for the purpose of antitrust enforcement. The Attorney General
9 may disclose such information or materials to the Attorney
10 General of the United States or the Attorneys General on the
11 several states, or their respective representatives. Nothing in
12 this section shall prevent the Attorney General from permitting
13 authorized personnel of the department to examine and work with
14 such information and materials, nor from introducing into
15 evidence or referring to any such information or materials in an
16 antitrust proceeding in open court or before a grand jury or a
17 court filing in connection therewith.

18 (l) Witness expenses.--All persons served with an antitrust
19 investigative subpoena shall be tendered the same fees and
20 mileage as paid witnesses in the courts of this Commonwealth. No
21 person shall be excused from attending such inquiry pursuant to
22 the mandate of an antitrust investigative subpoena, or from
23 giving testimony, or from producing documentary material or from
24 being required to answer questions on the ground of failure to
25 tender or pay a witness fee or mileage unless demand therefor is
26 made at the time testimony is about to be taken and unless
27 payment thereof is not thereupon made.

28 (m) Refusal of witness to testify or produce requested
29 documents.--Any natural person who shall neglect or refuse to
30 attend and give testimony or to answer any lawful inquiry or to

1 produce documentary material, if in his power to do so, in
2 obedience to an antitrust investigative subpoena pursuant to
3 this section shall be liable to punishment for contempt of
4 court. Any natural person who commits perjury or false swearing
5 in response to an antitrust investigative subpoena pursuant to
6 this section shall be subject to the provisions of 18 Pa.C.S. §
7 4902 (relating to perjury) or § 4903 (relating to false
8 swearing).

9 (n) Duty of public officials.--It shall be the duty of all
10 officials of government units, their deputies, assistants,
11 clerks, subordinates, agents and employees to render and furnish
12 to the Attorney General when so requested, all relevant
13 information and assistance in their possession or within their
14 power.

15 (o) Conduct of judicial proceedings.--Proceedings under
16 subsections (c), (h), (k) and (m) and appeals therefrom shall be
17 expedited by the courts of this Commonwealth, to assure speedy
18 resolution of issues pertaining to antitrust investigations and
19 to secure the ends of justice by timely initiation and
20 prosecution of antitrust investigative proceedings.

21 Section 11. Injunctive relief.

22 (a) Remedial powers of courts.--The Commonwealth Court is
23 hereby empowered to prevent and restrain violations of this act.
24 In addition to granting prohibitory injunctions and other
25 restraints for a period and upon terms and conditions necessary
26 to deter the defendant from, and insure against, the committing
27 of future violations of this act, the court may grant such
28 mandatory injunctions as are within its equity powers reasonably
29 necessary to dissipate the ill effects of the violation. The
30 court may issue appropriate decrees upon consent and stipulation

1 by the parties. The court may also issue restraining orders.

2 (b) Attorney General; right to injunctive relief.--The
3 Attorney General may institute proceedings to prevent and
4 restrain violations of this act as provided in subsection (a).
5 Under no circumstances shall the Commonwealth be required to
6 post bond in any action hereunder.

7 (c) Other persons; right to injunctive relief.--Any person
8 may institute proceedings for injunctive relief, temporary or
9 permanent, in the Commonwealth Court, as provided in subsection
10 (a), against threatened loss or damage to his property or
11 business, commercial or otherwise, by a violation of this act. A
12 preliminary injunction may be issued upon a showing that the
13 danger of irreparable loss or damage is immediate and, within
14 the court's discretion, the execution of proper bond against
15 damages for an injunction improperly granted.

16 (d) Attorneys' fees and costs.--If the court issues a
17 permanent injunction, the plaintiff, whether a government unit
18 or other person, shall be awarded reasonable attorneys' fees,
19 filing fees, and reasonable costs of suit unless the interests
20 of justice otherwise so require. Reasonable costs of suit may
21 include, but shall not be limited to, the expenses of discovery
22 and document reproduction.

23 Section 12. Action for damages.

24 (a) Damages.--Any person or government unit which shall be
25 injured in its business or property, commercial or otherwise, by
26 reason of a violation of the provisions of sections 4 or 5 may
27 sue therefore and shall recover threefold the damages sustained
28 by it, together with reasonable attorneys' fees, filing fees and
29 reasonable costs of suit. Any person or public body which shall
30 be injured in its business or property, commercial or otherwise,

1 by reason of a violation of the provisions of section 6 may sue
2 therefore and shall recover the damages sustained by him,
3 together with reasonable attorneys' fees, filing fees, and
4 reasonable costs of suit. Reasonable costs of suit may include,
5 but shall not be limited to, the expenses of discovery and
6 document reproduction. The fact that a government unit has not
7 dealt directly with the defendant shall not bar or otherwise
8 limit recovery. The defendant shall be entitled to prove as a
9 partial or complete defense to a damage claim that the plaintiff
10 has passed on to government units, which are themselves entitled
11 to recover under this act, some or all of what otherwise would
12 constitute plaintiff's damage.

13 (b) Consolidation of private actions limited.--No action by
14 a private person under this section shall be consolidated with
15 any action of the Attorney General except that upon motion of
16 the Attorney General the court may in its discretion,
17 consolidate such actions. No private person shall file an action
18 under this section as a joint plaintiff with any party
19 represented by the Attorney General.

20 Section 13. Suits by Attorney General.

21 (a) Government units and institutions receiving
22 appropriations from the Commonwealth.--The Attorney General may
23 bring suit in the Commonwealth Court under this act and in
24 Federal court for violations of the Federal Antitrust Laws or of
25 both this act and the Federal Antitrust Laws, to secure relief
26 as provided in sections 11, 12, 14 and 15, and other lawful
27 relief as appropriate, on behalf of this Commonwealth, any other
28 government units, and on behalf of any charitable or educational
29 institution which has received appropriations directly or
30 indirectly from the Commonwealth representing a substantial part

1 of its operating funds for any year during the five-year period
2 before commencement of suit.

3 (b) *Parens patriae*.--

4 (1) The Attorney General shall be permitted to bring
5 suit in the Commonwealth Court as *parens patriae* of natural
6 persons who are citizens and residents of this Commonwealth
7 under this act, and in Federal court for violations of the
8 Federal Antitrust Laws or of both this act and the Federal
9 Antitrust Laws, to secure relief as provided in sections 11,
10 12, 14 and 15, and other lawful relief as appropriate. In any
11 action under this subsection, the fact that natural persons
12 as purchasers of goods or services have not dealt directly
13 with the defendant shall not bar recovery or otherwise limit
14 actions by the Attorney General as *parens patriae*. The
15 defendant shall be entitled to provide as a partial or
16 complete defense to a damage claim that the plaintiff has
17 passed on to natural persons for whom *parens patriae* actions
18 may be brought, some or all of what otherwise would
19 constitute plaintiff's damage.

20 (2) In any action brought under this subsection, the
21 Attorney General shall, at such times, in such manner, and
22 with such content as the court may direct, cause notice
23 thereof to be given by publication. If the court finds that
24 notice given solely by publication would deny due process of
25 law to any person or persons, the court may direct further
26 notice to such person or persons according to the
27 circumstances of the case.

28 (3) Any person on whose behalf an action is brought
29 under this subsection may elect to exclude from adjudication
30 the portion of the claim for monetary relief attributable to

1 him by filing notice of such election with the court within
2 such time as specified in the notice given pursuant to this
3 subsection.

4 (4) The final judgment in an action under this
5 subsection shall be res judicata as to any claim under this
6 act by any person on behalf of whom such action was brought
7 and who fails to give such notice within the period specified
8 in the notice given pursuant to subsection (b)(2).

9 (5) An action under subsection (b)(1) shall not be
10 dismissed or compromised without approval of the court, and
11 notice of any proposed dismissal or compromise shall be given
12 in such manner as the court directs.

13 (c) Measure of damages.--In any action brought under
14 subsection (b) in which there has been a determination that a
15 defendant agreed to fix prices in violation of section 4,
16 damages may be proved and assessed in the aggregate by
17 statistical or sampling methods, by the computation of illegal
18 overcharges, or by such other reasonable system of estimating
19 aggregate damages as the court in its discretion may permit
20 without the necessity of separately proving the individual claim
21 of, or amount of damage to, persons on whose behalf the suit was
22 brought. The court shall exclude from the amount of monetary
23 relief awarded in such action any amount of monetary relief
24 which:

25 (1) duplicates amounts which have been awarded for the
26 same injury; or

27 (2) are properly allocable to natural persons who have
28 excluded their claims pursuant to subsection (b)(2).

29 (d) Distribution of monetary relief.--In any action brought
30 under this section, the court shall award to the Commonwealth

1 for payment into the State Treasury for the use of the Antitrust
2 Fund:

3 (1) Amounts attributable to the recovery of the
4 Commonwealth Government as defined in 42 Pa.C.S. § 102
5 (relating to definitions).

6 (2) Ten percent of the amounts attributable to
7 recoveries under subsection (a) on behalf of institutions and
8 government units other than the Commonwealth Government and
9 on behalf of natural persons under subsection (b).

10 (3) Any amount assessed as reasonable attorneys' fees,
11 filing fees and costs of suit.

12 If the court determines in the exercise of its discretion that
13 because of expenses related to or difficulty likely to be
14 encountered, any distribution to persons or government units of
15 the remainder of the monetary relief assessed under this section
16 is not economically feasible or is otherwise unreasonable, the
17 court shall award such undistributed portion to the Commonwealth
18 for payment into the General Fund of the State Treasury for the
19 overall benefit of the citizens, residents and government units
20 of this Commonwealth; otherwise the court shall afford persons
21 and the government units other than the Commonwealth Government
22 a reasonable opportunity to secure appropriate portions of the
23 undistributed remainder.

24 (e) Attorney's fee.--In any investigation or action under
25 this act, the court shall award a reasonable attorney's fee to a
26 prevailing defendant upon a finding that the Attorney General
27 has acted in bad faith, vexatiously, wantonly or for oppressive
28 reasons. Any such award shall be paid from the Antitrust Fund.
29 Section 14. Civil penalties.

30 (a) In general.--In addition to injunctive relief authorized

1 pursuant to section 9, any person who violates this act may be
2 liable for a civil penalty in lieu of criminal liability for
3 such violations in a suit by the Attorney General of not more
4 than the greater of \$100,000 or \$500 per day for each and every
5 day of said violation. The Attorney General may in his
6 discretion seek either civil penalties or criminal penalties.

7 (b) Violation of court orders or decrees.--Any person who
8 violates an order or decree issued pursuant to section 9, or an
9 assurance of voluntary compliance pursuant to section 15 may be
10 liable for a civil penalty in a suit by the Attorney General of
11 not more than the greater of \$100,000 or \$500 per day for each
12 and every day of said violation.

13 (c) Unauthorized disclosure of confidential information.--
14 Any person who is an officer, employee, agent or representative
15 of the department who discloses information contained in or
16 material comprising documentary material and opinions of any
17 court of the Commonwealth concerning proceedings for the
18 issuance of any antitrust investigative subpoena or makes such
19 materials available to unauthorized persons in violation of
20 section 10(k) shall be subject to a civil penalty payable to the
21 Commonwealth not exceeding \$1,000 per violation.

22 (d) Disposition of funds.--All civil penalties exacted
23 pursuant to this section shall be paid into the State Treasury
24 for the use of the Antitrust Fund.

25 Section 15. Assurances of voluntary compliance.

26 In the administration of this act, the Attorney General may
27 accept an assurance of voluntary compliance with respect to any
28 method, act or practice alleged to be a violation of this act
29 from any person who has engaged or was about to engage in such
30 method, act or practice. Such assurance may include a

1 stipulation for voluntary payment by the alleged violator of
2 damages sustained by any person or government unit. Any such
3 assurance shall be in writing and be filed with the Commonwealth
4 Court. Such assurance of voluntary compliance shall not be
5 considered an admission of violation for any purpose. Matters
6 thus closed may at any time be reopened by the Attorney General
7 for further proceedings in accordance with this act.

8 Section 16. Criminal penalties.

9 (a) Institution of criminal action.--The Attorney General
10 shall be permitted to institute criminal proceedings for
11 violations of sections 4 and 5.

12 (b) Fine and penalty.--Any person or corporation, or any
13 officer or agent thereof, who shall violate any of the
14 provisions of sections 4 and 5, is guilty of a misdemeanor of
15 the second degree and shall be punished by a fine not exceeding
16 \$1,000,000 if a corporation or if any other person or legal
17 entity, \$100,000 or by imprisonment of not more than three years
18 or a fine, or both imprisonment and fine.

19 (c) Disposition of funds.--All fines collected pursuant to
20 this section shall be paid into the State Treasury for the use
21 of the Antitrust Fund.

22 Section 17. Notice to Attorney General of civil action.

23 Upon commencement of any civil action by a person, other than
24 the Attorney General, for violation of this act, plaintiff shall
25 mail a copy of the complaint to the Attorney General and shall
26 file proof of service upon the Attorney General with the court.
27 The civil action may not proceed until such proof of service is
28 filed.

29 Section 18. Assignment of acting judges.

30 (a) Assignment of common pleas judges.--The Chief Justice of

1 the Supreme Court may temporarily assign any judge of the court
2 of common pleas who has been recommended, by the President Judge
3 of the Commonwealth Court, to sit temporarily to hear and
4 determine any matter in a proceeding under this act with like
5 effect as if duly commissioned to sit in the Commonwealth Court.

6 (b) Assignment of temporary court locations.--The President
7 Judge of the Commonwealth Court may, with the approval of the
8 Chief Justice of the Supreme Court, designate such temporary
9 locations for proceedings under this act as will be convenient
10 for the parties and the efficient administration of justice.
11 Section 19. Judgment as evidence.

12 A final judgment or decree rendered in any civil or criminal
13 proceeding brought by or on behalf of this Commonwealth under
14 the provisions of this act or a final judgment or decree
15 rendered in any civil or criminal proceeding brought by or on
16 behalf of the United States under the Federal antitrust Laws to
17 the effect that a defendant has violated either this act or the
18 Federal Antitrust Laws shall be prima facie evidence against
19 such defendant under this act as to all matters respecting which
20 said judgment or decree would be an estoppel as between the
21 parties thereto: Provided, That this section shall not apply to
22 decrees issued upon consent of the parties or assurances of
23 voluntary compliance under section 15: And, provided further,
24 That this section shall not prevent the application of
25 collateral estoppel against such defendant.

26 Section 20. Antitrust Fund.

27 (a) Fund established.--All money received for the
28 Commonwealth from July 1, 1979 as a result of actions by the
29 Attorney General pursuant to this act or the Federal Antitrust
30 Laws the disposition of which is not otherwise designated in

1 this act shall be placed in a separate fund by the State
2 Treasurer, to be known as the "Antitrust Fund," and shall be
3 used solely as authorized by this act.

4 (b) Appropriations for antitrust enforcement shall be made
5 from the Antitrust Fund.--To the extent moneys in the Antitrust
6 Fund are not sufficient for antitrust enforcement activities,
7 the General Assembly shall make such additional appropriations
8 as needed. All sums in the Antitrust Fund in excess of
9 \$1,000,000 at the end of any fiscal year shall revert to the
10 General Fund.

11 Section 21. Limitation of actions.

12 Any action brought to enforce the provisions of this act
13 shall be barred unless commenced within four years after the
14 cause of action arose, or if the cause of action is based upon a
15 conspiracy in violation of this act, within four years after the
16 plaintiff discovered, or by the exercise of reasonable diligence
17 should have discovered, the facts relied upon for proof of the
18 conspiracy. No cause of action barred on the effective date of
19 this act shall be revived by this act. For purposes of this
20 section, a cause of action for a continuing violation is deemed
21 to arise at any time during the period of such violation.

22 Section 22. Suspension of limitation.

23 Whenever any civil or criminal proceeding shall be commenced
24 by the Commonwealth to prevent, restrain or punish a violation
25 of this act, but not including an action brought by the
26 Commonwealth under section 12, the running of the statute of
27 limitations in respect of the right of every action under
28 section 13(b) and of every private right of action arising under
29 this act and based in whole or in part on any matter complained
30 of in said proceeding shall be suspended during the pendency

1 thereof and for one year thereafter: Provided, however, That
2 whenever the running of the statute of limitations in respect of
3 a cause of action arising under section 12 shall be suspended
4 hereunder, any action to enforce such cause of action shall be
5 forever barred unless commenced either within the period of
6 suspension or within four years after the cause of action
7 accrued, whichever is later.

8 Section 23. Remedies cumulative.

9 The remedies provided in this act shall be cumulative.

10 Section 24. Cooperation with Federal and State
11 officials.

12 The Attorney General may cooperate with and coordinate the
13 enforcement of this act with officials of the Federal Government
14 and the several states.

15 Section 25. Construction of statute.

16 This act shall be construed in harmony with judicial
17 decisions based on the common law of this Commonwealth and
18 judicial interpretations of comparable Federal Antitrust
19 Statutes. The provisions of this act shall be interpreted to
20 supersede the jurisdiction of all Commonwealth regulatory
21 agencies, commissions and bodies except as to activities which
22 are exempted from the act under section 8.

23 Section 26. Effective date.

24 This act shall take effect in 60 days.