

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 191 Session of
1991

INTRODUCED BY BROUJOS, BOYES, JOSEPHS, FREEMAN, OLIVER, DeLUCA, TANGRETTI, COY, MELIO, DeWEESE, KUKOVICH, PETRARCA, PESCI, CALTAGIRONE, VEON, LINTON, McNALLY, FREIND, CAPPABIANCA, JAROLIN, NAHILL, RITTER, BOWLEY, G. SNYDER, KOSINSKI, HAYDEN, BLAUM, TIGUE, STABACK, D. W. SNYDER, COLE, BATTISTO, PISTELLA, COHEN, DALEY, COWELL, CAWLEY, GIGLIOTTI, HALUSKA, MAIALE, RUDY, STISH, STURLA, MIHALICH, KASUNIC, MICHLOVIC, STETLER, HERMAN, ITKIN, WOZNIAC, GEORGE, LLOYD, BUTKOVITZ, MRKONIC, ROEBUCK, THOMAS, DONATUCCI, KAISER, GAMBLE, TRELLO, COLAFELLA, SURRA, E. Z. TAYLOR, LESCOVITZ, TRICH, JAMES, R. C. WRIGHT, EVANS AND TELEK, JANUARY 30, 1991

AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,
MARCH 19, 1991

AN ACT

1 Prohibiting contracts, combinations and conspiracies in
2 restraint of trade or commerce; prohibiting monopolies and
3 attempts to monopolize trade or commerce; prescribing powers
4 and duties of certain State officers and agencies; providing
5 for remedies, fines and penalties for violations of the act;
6 and barring certain causes of action.

7 TABLE OF CONTENTS

8 Section 1. Short title.

9 Section 2. Declaration of policy.

10 Section 3. Definitions.

11 Section 4. Contract, combination or conspiracy to restrain or
12 monopolize trade.

13 Section 5. Establishment, maintenance or use of a monopoly.

14 Section 6. Exclusions.

15 Section 7. Investigation.

1 Section 8. Violations; injunctive or equitable relief; civil
2 penalties.

3 Section 9. Damages and injunctive relief.

4 Section 10. Criminal penalties.

5 Section 11. Judgment in favor of Commonwealth as prima facie
6 evidence.

7 Section 12. Limitation of actions.

8 Section 13. Cumulative remedies.

9 Section 14. Uniformity of application and construction.

10 Section 15. Severability.

11 Section 16. Effective date.

12 The General Assembly of the Commonwealth of Pennsylvania
13 hereby enacts as follows:

14 Section 1. Short title.

15 This act shall be known and may be cited as the Pennsylvania
16 Antitrust Act.

17 Section 2. Declaration of policy.

18 The General Assembly finds and declares that the purpose of
19 this act is to promote the public interest by a competitive
20 economic environment and to protect the economic welfare of
21 consumers, large and small businesses and the Commonwealth.

22 Section 3. Definitions.

23 The following words and phrases when used in this act shall
24 have the meanings given to them in this section unless the
25 context clearly indicates otherwise:

26 "Person." An individual, corporation, business trust,
27 partnership, association or any other legal entity. The term
28 includes a political subdivision.

29 "Political subdivision." The term includes an agency, a
30 board, a commission or an authority of a political subdivision.

1 "Relevant market." The geographical area of actual or
2 potential competition in a line of trade or commerce, all or any
3 part of which is within this Commonwealth.

4 "Trade or commerce." The conduct of a business for profit or
5 not-for-profit producing or providing goods, commodities,
6 property or services and includes, without limitation,
7 advertising, franchising, solicitation, offering for sale, lease
8 or distribution of a service or property, tangible or
9 intangible, real, personal or mixed, or any other article of
10 commerce.

11 "Trade secret." Anything which constitutes, represents,
12 evidences or records secret or confidential scientific,
13 technical, merchandising, production, management or commercial
14 information.

15 Section 4. Contract, combination or conspiracy to restrain ~~or~~ <—
16 ~~monopolize~~ trade.

17 A contract, combination or conspiracy between two or more
18 persons in restraint of, ~~or to monopolize,~~ trade or commerce ~~in~~ <—
19 ~~a relevant market~~ is unlawful.

20 Section 5. Establishment, maintenance or use of a monopoly.

21 The establishment, maintenance or use of a monopoly, or any
22 attempt to establish a monopoly of trade or commerce in a
23 relevant market by any person OR PERSONS, for the purpose of <—
24 excluding or limiting competition or controlling, fixing or
25 maintaining prices, is unlawful.

26 Section 6. Exclusions.

27 (a) Human labor.--Labor of a human being is not a commodity
28 or an article of commerce.

29 (b) Cooperative organizations.--This act shall not be
30 construed to forbid the existence and operation of any labor,

1 agricultural or horticultural organization instituted for the
2 purpose of mutual help, while lawfully carrying out its
3 legitimate objects.

4 (c) Commonwealth and political subdivisions.--This act does
5 not apply to the Commonwealth or political subdivisions, or
6 officials or employees of the Commonwealth or political
7 subdivisions acting in their official capacities.

8 (d) Public utilities.--This act does not apply to activities
9 of, or to the rates charged by, a rural electric cooperative
10 corporation, as defined in the act of June 21, 1937 (P.L.1969,
11 No.389), known as the Electric Cooperative Corporation Act, or a
12 public utility as defined in 66 Pa.C.S. § 102 (relating to
13 definitions) TO THE EXTENT THAT THOSE ACTIVITIES OR RATES ARE <—
14 SUBJECT TO THE REVIEW OF THE PENNSYLVANIA PUBLIC UTILITY
15 COMMISSION OR A COMPARABLE FEDERAL AGENCY. UPON THE FILING OF A
16 COMPLAINT AGAINST A PUBLIC UTILITY PURSUANT TO THIS ACT, THE
17 PUBLIC UTILITY MAY REQUEST FROM THE COMMONWEALTH COURT A
18 DECLARATORY ORDER DETERMINING THE EXTENT TO WHICH THE ACTIVITY
19 OR RATES SUBJECT TO THE COMPLAINT ARE SUBJECT TO THE REVIEW OF
20 THE PENNSYLVANIA PUBLIC UTILITY COMMISSION. THIS PUBLIC UTILITY
21 EXEMPTION IS IN ADDITION TO OTHER EXEMPTIONS GRANTED PUBLIC
22 UTILITIES IN THIS ACT, INCLUDING SUBSECTION (F).

23 ~~(e) Regulated financial institutions. This act does not~~ <—
24 ~~apply to any institution subject to the Federal Bank Merger Act,~~
25 ~~the Federal Bank Holding Company Act or the Federal Deposit~~
26 ~~Insurance Act.~~

27 ~~(f) Competitively bid State contracts. Persons bidding on a~~
28 ~~contract let or to be let for competitive bidding by a~~
29 ~~governmental agency, to the extent that those activities are~~
30 ~~regulated by the act of October 28, 1983 (P.L.176, No.45), known~~

1 ~~as the Antibid Rigging Act, shall not be liable in actions under~~
2 ~~this act.~~

3 ~~(g) Federal or State exempt activities. Any activity or~~
4 ~~conduct authorized or exempt under Pennsylvania statutory or~~
5 ~~common law, or exempt from the provisions of the antitrust laws~~
6 ~~of the United States, shall be exempt from the provisions of~~
7 ~~this act.~~

8 (E) BANKS.--THIS ACT DOES NOT APPLY TO THE ACTIVITIES OF <—
9 BANKS, THEIR AFFILIATES OR SUBSIDIARIES TO THE EXTENT THAT THE
10 ACTIVITIES ARE AUTHORIZED, REGULATED OR SUPERVISED UNDER FEDERAL
11 OR STATE BANKING LAWS OR REGULATIONS.

12 (F) FEDERAL OR STATE-EXEMPT ACTIVITIES.--ANY ACTIVITY OR
13 CONDUCT AUTHORIZED UNDER PENNSYLVANIA STATUTORY LAW GRANTING A
14 RIGHT, POWER OR AUTHORITY, OR EXEMPT UNDER PENNSYLVANIA
15 STATUTORY LAW OR EXEMPT FROM THE PROVISIONS OF THE ANTITRUST
16 LAWS OF THE UNITED STATES, WHICH WOULD OTHERWISE CONSTITUTE A
17 VIOLATION UNDER SECTION 4 OR 5, SHALL BE EXEMPT FROM THE
18 PROVISIONS OF THIS ACT.

19 Section 7. Investigation.

20 ~~(a) Required attendance.~~ <—

21 ~~(1) Whenever the Office of Attorney General believes~~
22 ~~that a person may be in possession, custody or control of~~
23 ~~documentary material or may have information relevant to the~~
24 ~~subject matter of an investigation for the purpose of~~
25 ~~ascertaining whether a person is or has been engaged in a~~
26 ~~violation of this act, he may require the attendance and~~

27 (A) GENERAL POWER.--IF THE ATTORNEY GENERAL HAS REASON TO <—
28 BELIEVE THAT A VIOLATION OF THIS ACT HAS OCCURRED, THE ATTORNEY
29 GENERAL SHALL HAVE AUTHORITY TO INVESTIGATE ON BEHALF OF THE
30 COMMONWEALTH, ITS CITIZENS OR A POLITICAL SUBDIVISION.

(B) REQUIRED ATTENDANCE.--

(1) PRIOR TO THE INSTITUTION OF A CIVIL ACTION BY THE ATTORNEY GENERAL, HE IS AUTHORIZED TO REQUIRE THE ATTENDANCE AND testimony of witnesses and the production of books, accounts, papers, records, documents and files relating to the investigation; and, for this purpose, the Attorney General or his representatives may sign subpoenas, administer oaths or affirmations, examine witnesses and receive evidence during the investigation.

(2) A request for information shall state the subject matter of the investigation, the conduct constituting the alleged violation which is under investigation and the provisions of this act applicable to the alleged violation. A request for documentary material shall describe the material to be produced with reasonable particularity so as to fairly identify the documents demanded, provide a return date within which the material is to be produced and identify the member of the Attorney General's staff to whom the material shall be given.

(3) In case of disobedience of a subpoena or the contumacy of a witness appearing before the Attorney General or his representative, the Attorney General or his representative may, for good cause shown, invoke the aid of a court of record of the Commonwealth, and the court may thereupon issue an order requiring the person subpoenaed to obey the subpoena or to give evidence or to produce books, accounts, papers, records, documents and files relative to the matter in question. Failure to obey an order of the court may be punished by the court as a contempt.

~~(b)~~ (C) Confidentiality.--

<—

1 (1) No information, procedure, testimony or documentary
2 material produced under a demand under this section shall,
3 unless otherwise ordered by a court for good cause shown, be
4 produced for inspection or copying by, nor shall the contents
5 thereof be disclosed to, a person other than the Attorney
6 General or his representative without the consent of the
7 person who produced the information or material; except that
8 the Attorney General or his representative shall disclose
9 information or documentary material produced under this
10 section or information derived therefrom to officials of a
11 governmental agency affected by the alleged violation, and,
12 at the discretion of the Attorney General, may disclose to
13 the United States Department of Justice, the Federal Trade
14 Commission, another state or territory of the United States
15 or the District of Columbia, for use by that agency or entity
16 in connection with an investigation or proceeding within its
17 jurisdiction and authority, upon the prior certification of
18 an appropriate official of the agency that the information
19 shall be maintained in confidence other than use for official
20 purposes.

21 (2) Under reasonable terms and conditions as the
22 Attorney General or his representative shall prescribe, the
23 documentary material shall be available for inspection and
24 copying by the person who produced the material or a duly
25 authorized representative of that person. The Attorney
26 General or his representative may use such documentary
27 material or information or copies thereof as he determines
28 necessary in the enforcement of this act, including
29 presentation before any court. Material which contains trade
30 secrets or other highly confidential matter shall not be

1 presented except with the approval of the court in which a
2 proceeding is pending after adequate notice to the person
3 furnishing the material.

4 ~~(c) Limited disclosure. At the Attorney General's~~ <—
5 ~~discretion, the Attorney General may disclose information~~
6 ~~discovered under this section to the United States Department of~~
7 ~~Justice, the District of Columbia, another agency of the~~
8 ~~Commonwealth or a political subdivision, upon the prior~~
9 ~~certification of an appropriate official of the requestor that~~
10 ~~the information will be maintained in confidence other than use~~
11 ~~for official purposes and the requestor will abide by the~~
12 ~~provisions of subsection (b).~~

13 (d) Wrongful disclosure of information.--Any person who
14 publishes or communicates any procedure, testimony or material
15 produced, which is required to be kept confidential pursuant to
16 this section, commits a misdemeanor of the third degree.

17 Section 8. Violations; injunctive or equitable relief; civil
18 penalties.

19 The Attorney General may bring an action for appropriate
20 injunctive or other equitable relief and civil penalties in the
21 name of the Commonwealth for a violation of this act. The court
22 may assess for benefit of the Commonwealth a civil penalty of
23 not more than \$100,000 for each violation of this act and for
24 the cost of suit, including reasonable attorney fees.

25 Section 9. Damages and injunctive relief.

26 (a) Commonwealth or political subdivision.--The Commonwealth
27 or a political subdivision threatened with injury or injured
28 directly or indirectly in its business or property by a
29 violation of this act may bring an action for appropriate
30 injunctive or other equitable relief, damages sustained by

1 reason of a violation of this act, and, as determined by the
2 court, interest on the damages from the date of the complaint,
3 taxable costs and reasonable attorney fees.

4 (b) Other persons.--Any other person threatened with injury
5 directly or injured directly in his or her business or property
6 by a violation of this act may bring an action for appropriate
7 injunctive or other equitable relief against immediate
8 irreparable harm, damages sustained by reason of a violation of
9 this act, and, as determined by the court, interest on the
10 damages from the date of the complaint, taxable costs and
11 reasonable attorney fees.

12 (c) Damages.--Damages recoverable under this section by
13 persons shall be three times the actual damages sustained
14 thereby, taxable costs and reasonable attorney fees. Damages
15 recoverable under this section by the Commonwealth shall be
16 actual damages sustained, taxable costs and reasonable attorney
17 fees. Damages are subject to the following:

18 (1) Limitations on damages recoverable under the
19 National Cooperative Research Act of 1984 (Public Law 98-462,
20 15 U.S.C. § 4301 et seq.) and the Export Trading Company Act
21 of 1982 (Public Law 97-290, 15 U.S.C. § 4001 et seq.) shall
22 apply to actions under this section.

23 (2) If the conduct which gives rise to a violation of
24 this act also gives rise to a violation of the act of October
25 28, 1983 (P.L.176, No.45), known as the Antibid-Rigging Act,
26 the amount awarded as compensation under this section shall
27 not duplicate the amount awarded under the Antibid-Rigging
28 Act.

29 (d) Liability.--Liability under this section shall be joint
30 and several. Persons subject to liability under this section

1 shall be entitled to contribution under 42 Pa.C.S. Ch. 83 Subch.
2 B (relating to contribution among tort-feasors).

3 (E) AUTHORITY OF ATTORNEY GENERAL.--THE ATTORNEY GENERAL
4 SHALL HAVE AUTHORITY UNDER THIS SECTION:

5 (1) TO BRING ALL ACTIONS ON BEHALF OF THE COMMONWEALTH.

6 (2) TO BRING AN ACTION AS PARENS PATRIAE ON BEHALF OF
7 INDIVIDUALS WHO HAVE SUFFERED AN INJURY TO THEIR PROPERTY BY
8 REASON OF A VIOLATION OF SECTION 4 AND WHO RESIDED IN THIS
9 COMMONWEALTH WHEN THE VIOLATION OCCURRED.

10 (3) TO BRING AN ACTION ON BEHALF OF A POLITICAL
11 SUBDIVISION, IF REQUESTED TO DO SO BY THE POLITICAL
12 SUBDIVISION.

13 (F) NOTICE TO ATTORNEY GENERAL.--WITHIN 30 DAYS OF FILING A
14 COMPLAINT UNDER THIS SECTION, THE PLAINTIFF SHALL SERVE A COPY
15 OF THE COMPLAINT UPON THE ATTORNEY GENERAL IN ACCORDANCE WITH
16 THE RULES OF CIVIL PROCEDURE FOR SERVICE OF ORIGINAL PROCESS. A
17 COPY OF THE CERTIFICATE OF SERVICE SHALL BE FILED WITH THE
18 COURT.

19 Section 10. Criminal penalties.

20 (a) Institution of criminal action.--The Attorney General
21 shall have the authority to institute criminal proceedings for
22 violations of sections 4 and 5.

23 (b) Entity penalty.--A partnership, corporation, association
24 or other entity which violates section 4 or 5 commits a felony
25 of the third degree and shall, upon conviction, be sentenced to
26 pay a fine of not more than \$1,000,000.

27 (c) Individual penalty.--An individual who violates section
28 4 or 5 commits a felony of the third degree and shall, upon
29 conviction, be sentenced to pay a fine of not more than \$100,000
30 or to imprisonment for not more than three years, or both.

1 (d) Disposition of funds.--All fines collected pursuant to
2 this section shall be paid into the State Treasury.

3 (e) Double jeopardy.--A criminal prosecution under this
4 section may not be brought against a person previously charged
5 by information or indictment with a criminal violation of the
6 act of October 28, 1983 (P.L.176, No.45), known as the Antibid-
7 Rigging Act, or of a Federal antitrust statute if either
8 prosecution is based upon substantially the same conduct upon
9 which a prosecution under this section could be based and
10 jeopardy has attached under the prosecution.

11 Section 11. Judgment in favor of Commonwealth as prima facie
12 evidence.

13 A final judgment or decree determining that a person has
14 violated this act in an action brought by the Commonwealth under
15 section 8, 9(a) or 10 other than a consent judgment or decree
16 entered before any testimony has been taken, is prima facie
17 evidence against the person in any other action against the
18 person under section 9 as to all matters with respect to which
19 the judgment or decree would be an estoppel between the parties
20 to the action. This section does not affect the application of
21 collateral estoppel or issue preclusion.

22 Section 12. Limitation of actions.

23 (a) Actions under sections 8 and 10.--An action under
24 section 8 or 10 is barred if not commenced within four years
25 after the claim for relief or cause of action accrues.

26 (b) Actions under section 9.--~~An action to recover damages~~ <—
27 ~~under section 9 is barred if not commenced within four years~~
28 ~~after the claim for relief or cause of action accrues, or within~~
29 ~~one year after the conclusion of any timely action brought by~~
30 ~~the Commonwealth under section 9(a) or 10 which is based in~~

~~whole or in part on any matter complained of in the action for damages, whichever is later.~~

(1) AN ACTION TO RECOVER DAMAGES UNDER SECTION 9 FOR VIOLATION OF SECTION 4 IS BARRED IF NOT COMMENCED WITHIN FOUR YEARS AFTER THE CONDUCT IN VIOLATION OF SECTION 4 IS DISCOVERED OR SHOULD HAVE BEEN DISCOVERED OR, FOR A CONTINUING VIOLATION, AT THE TIME THE LATEST VIOLATION OF SECTION 4 IS DISCOVERED OR SHOULD HAVE BEEN DISCOVERED.

(2) AN ACTION TO RECOVER DAMAGES UNDER SECTION 9 FOR VIOLATION OF SECTION 5 IS BARRED IF NOT COMMENCED WITHIN FOUR YEARS AFTER THE CLAIM FOR RELIEF OR CAUSE OF ACTION ACCRUES.

(C) ACTIONS UNDER SECTIONS 9 AND 10.--DURING THE PENDENCY OF ANY TIMELY ACTION BROUGHT BY THE COMMONWEALTH UNDER SECTION 9(A) OR 10 AND FOR ONE YEAR AFTER THE ACTION IS COMPLETED, THE LIMITATION UNDER THIS SUBSECTION IS TOLLED IF THE ACTION UNDER THIS SUBSECTION IS BASED IN WHOLE OR IN PART ON ANY MATTER COMPLAINED OF IN THE ACTION BROUGHT BY THE COMMONWEALTH UNDER SECTION 9(A) OR 10.

Section 13. Cumulative remedies.

The remedies provided in this act are cumulative.

Section 14. Uniformity of application and construction.

This act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this act among those states that enact similar provisions.

Section 15. Severability.

If any portion of this act or the application of this act to any person or circumstances is found to be invalid by a court, such invalidity shall not affect the remaining portions of applications of this act which can be given effect without the

1 invalid portion or application, provided the remaining portions
2 are not determined by the court to be inoperable, and to this
3 end this act is declared to be severable.

4 Section 16. Effective date.

5 This act shall take effect in 60 days.