

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1981 Session of
1993

INTRODUCED BY PICCOLA, DERMODY, BOYES, FARGO, BAKER, NICKOL,
KREBS, NAILOR, LEH, S. H. SMITH, SAYLOR, GEIST, COLAIZZO,
SEMMELE, E. Z. TAYLOR, DEMPSEY, MILLER, CLARK, MASLAND, LAUB,
CLYMER AND BATTISTO, SEPTEMBER 29, 1993

REFERRED TO COMMITTEE ON JUDICIARY, SEPTEMBER 29, 1993

AN ACT

1 Prohibiting unreasonable restraints of trade; imposing
2 penalties; and providing for enforcement.

3 The General Assembly of the Commonwealth of Pennsylvania
4 hereby enacts as follows:

5 Section 1. Short title.

6 This act shall be known and may be cited as the Unreasonable
7 Restraint of Trade Law.

8 Section 2. Declaration of policy.

9 The General Assembly finds and declares that the purpose of
10 this act is to promote the public benefits of a competitive
11 economic environment and to protect the economic welfare of
12 consumers, businesses and the Commonwealth.

13 Section 3. Definitions.

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

17 "Attorney General." Includes a designated deputy Attorney

1 General. The term shall not include a private attorney or law
2 firm.

3 "Person." An individual, partnership, corporation,
4 association or other entity individually or as a part of an
5 alleged class, or through its officers, agents, employees or
6 attorneys or those acting in concert with the person. The term
7 includes a political subdivision.

8 "Political subdivision." Includes an agency, a board, a
9 commission or an authority of a political subdivision.

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

14 Section 4. Unreasonable restraints of trade.

15 A contract, combination or conspiracy in restraint of trade
16 or commerce in this Commonwealth is unlawful.

17 Section 5. Penalties.

18 (a) Criminal penalty.--

19 (1) A partnership, corporation, association or other
20 entity which violates section 4 commits a felony of the third
21 degree and shall, upon conviction, be sentenced to pay a fine
22 of not more than \$1,000,000.

23 (2) An individual who violates section 4 commits a
24 felony of the third degree and shall, upon conviction, be
25 sentenced to pay a fine of not more than \$100,000 or to
26 imprisonment for not more than three years, or both.

27 (b) Enforcement.--The Attorney General shall have standing
28 and authority to prosecute an action for a criminal penalty.

29 (c) Alternative civil penalty.--In lieu of criminal
30 prosecution under subsection (b), the Attorney General may elect

1 to bring an action for a civil penalty. In an action under this
2 subsection:

3 (1) An individual who violates section 4 shall be liable
4 for a penalty of not more than \$100,000 for each violation
5 and for the cost of suit, including a reasonable attorney
6 fee.

7 (2) A partnership, corporation, association or other
8 entity which violates section 4 shall be liable for a penalty
9 of not more than \$1,000,000 for each violation and for the
10 cost of the suit, including a reasonable attorney fee.

11 (d) Factors to be considered.--In determining the
12 appropriate sanctions to be imposed under this section, the
13 court shall consider at least the following factors:

14 (1) The prior criminal record of the violator.

15 (2) The size and amount of the contract involved, if
16 any.

17 (e) Disposition of fines and penalties.--Criminal fines and
18 civil penalties collected under this section shall be paid into
19 the State Treasury and deposited in the appropriate fund.

20 (f) Limitation of action.--An action under this section must
21 be commenced within four years after the violation of this act
22 is committed.

23 (g) Double jeopardy.--A criminal prosecution or an action
24 for a civil penalty under this section may not be brought
25 against a person previously charged by information or indictment
26 with a criminal violation of the act of October 28, 1983
27 (P.L.176, No.45), known as the Antibid-Rigging Act, or of a
28 Federal antitrust statute if either prosecution is based upon
29 substantially the same conduct upon which a prosecution under
30 this section could be based and jeopardy has attached under the

1 prosecution.

2 (h) Other actions.--An action under this section does not
3 bar administrative sanctions, a civil action for injunctive
4 relief under section 6 or a civil action for damages or
5 injunctive relief under section 7.

6 Section 6. Injunctive relief.

7 (a) Action by Attorney General.--The Attorney General may
8 bring a civil action against any person to restrain the conduct
9 prohibited by this act.

10 (b) Commencement of action.--An action under this section
11 must be commenced within four years after the violation of this
12 act is committed.

13 Section 7. Private cause of action.

14 (a) Cause of action.--

15 (1) A person directly injured in his business or
16 property as a result of an act prohibited by this act shall
17 have a right to bring a civil action for damages or
18 injunctive relief.

19 (2) The Commonwealth, as a direct purchaser, when
20 injured in its business or property as a result of an act
21 prohibited by this act, shall have the right to bring a civil
22 action for damages or injunctive relief.

23 (3) Neither the Commonwealth nor any person may maintain
24 or continue to maintain a civil action under this act based
25 on any transactions or occurrences if a final judgment as to
26 which all appeals have been exhausted has been entered in an
27 action by or on behalf of the Commonwealth or the person
28 under the antitrust laws of the United States or another
29 state for injury arising from the same transactions,
30 occurrences or circumstances.

1 (b) Limitation of action.--A cause of action arises under
2 this section at the time the conduct in violation of this act is
3 discovered or should have been discovered or, for a continuing
4 violation, at the time the latest violation of this act is
5 discovered or should have been discovered. An action under this
6 section must be brought within four years of the date when the
7 cause of action arises. During the pendency of an action under
8 section 5 and for one year after the action is completed, the
9 limitation under this subsection is tolled if the action under
10 this section is based in whole or in part on any matter
11 complained of in the action under section 5, provided that,
12 whenever the running of the statute of limitations in respect of
13 a cause of action arising under this section is tolled
14 hereunder, any action to enforce that cause of action shall be
15 forever barred unless commenced either within the period of
16 suspension or within four years after the cause of action
17 accrued.

18 (c) Damages.--If the circumstances warrant, damages
19 recoverable under this act by the Commonwealth may be actual
20 damages sustained plus the cost of suit, including reasonable
21 attorney fees. Damages recoverable under this act by persons may
22 be three times the actual damages sustained plus taxable costs
23 and reasonable attorney fees. Damages are subject to the
24 following:

25 (1) Neither the Commonwealth nor any person shall be
26 awarded any damages, including treble damages, if a court of
27 another jurisdiction has already entered judgment on a claim
28 by the Commonwealth or the person arising out of the same
29 transaction or occurrence.

30 (2) If the conduct which gives rise to a violation of

1 this act also gives rise to a violation of the act of October
2 28, 1983 (P.L.176, No.45), known as the Antibid-Rigging Act,
3 the amount awarded as civil damages or compensation under
4 this act shall not duplicate the amount awarded under the
5 Antibid-Rigging Act.

6 (d) Costs in injunction actions.--In an injunction action in
7 which the plaintiff substantially prevails, the court shall
8 award the cost of suit, including a reasonable attorney fee.

9 (e) Liability.--Liability under this section shall be joint
10 and several. Persons subject to liability under this act shall
11 be entitled to contribution in accordance with 42 Pa.C.S. Ch. 83
12 Subch. B (relating to contribution among tort-feasors).

13 (f) Notice to Attorney General.--Within ten days of filing a
14 complaint under this section, the plaintiff shall serve a copy
15 of the complaint upon the Attorney General by registered mail. A
16 copy of the certificate of service shall be filed with the
17 court.

18 (g) Collateral estoppel.--A criminal conviction for a
19 violation of section 4 shall be prima facie evidence as to
20 liability of the convicted participants in a civil action under
21 this section. This subsection does not apply to pleas of no
22 contest or to consent decrees. Nothing contained in this
23 subsection shall be construed to impose a limitation on the
24 application of collateral estoppel.

25 (h) Authority of Attorney General.--The Attorney General
26 shall have authority under this section:

27 (1) To bring all actions on behalf of the Commonwealth.

28 (2) To bring an action as parens patriae on behalf of
29 individuals who have suffered an injury to their property by
30 reason of a violation of this act and who resided in this

Commonwealth when the violation occurred.

(3) To bring an action on behalf of a political subdivision, if requested to do so by the political subdivision.

Section 8. Exemptions.

(a) Sovereign immunity.--The Commonwealth shall not be liable in actions under this act. Commonwealth officials and employees acting in their official capacities shall not be liable for penalties under section 5 or for damages, costs and attorney fees under section 7.

(b) Governmental and official immunity.--Political subdivisions shall not be liable in actions under this act. Officials and employees of political subdivisions acting in their official capacities shall not be liable for penalties under section 5 or for damages, costs and attorney fees under section 7.

(c) State action.--Conduct which results from a clearly articulated and affirmatively expressed State policy and which is actively supervised by the Commonwealth shall not constitute a violation of this act.

(d) Labor organizations.--The existence and operation of a labor organization and the exercise of lawful activities of a labor organization shall not constitute a violation of this act.

(e) Cooperative associations.--The collective activities of an agricultural or a horticultural cooperative association to process, prepare for market, handle and market members' products, whether or not the activities restrain competition among the members of the association, shall not constitute a violation of this act.

(f) Business of insurance.--This act shall not apply to any

1 insurance company, association or reciprocal, nonprofit hospital
2 plan corporation, nonprofit professional health service plan,
3 health maintenance organization, fraternal benefits society or
4 any risk-assuming preferred provider organization and nonrisk-
5 assuming preferred provider organization not governed and
6 regulated under the Employee Retirement Income Security Act of
7 1974 (Public Law 93-406, 88 Stat. 829). Nothing in this act
8 shall be construed to divest the Insurance Commissioner of his
9 exclusive jurisdiction to determine what constitutes an unfair
10 method of competition or an unfair or deceptive act or practice
11 in the business of insurance under the act of July 22, 1974
12 (P.L.589, No.205), known as the Unfair Insurance Practices Act.

13 (g) Public utilities.-- This act does not apply to
14 activities of, or to the rates charged by, an electric
15 cooperative corporation, as defined in 15 Pa.C.S. Ch. 73
16 (relating to electric cooperative corporations), or a public
17 utility, as defined in 66 Pa.C.S. § 102 (relating to
18 definitions), to the extent that those activities or rates are
19 subject to the review of the Pennsylvania Public Utility
20 Commission or a comparable Federal agency. Upon the filing of a
21 complaint against a public utility pursuant to this act, the
22 public utility may request from the Commonwealth Court a
23 declaratory order outlining the extent to which the activity or
24 rates subject to the complaint are subject to the review of the
25 commission or, if the public utility's conduct or activities are
26 subject primarily to the jurisdiction of a comparable Federal
27 agency, the public utility may request from that agency a
28 declaratory order outlining the extent to which the activity or
29 rates subject to the complaint are subject to the agency's
30 jurisdiction. This public utility exemption is in addition to

1 other exemptions granted to public utilities in this act,
2 including subsections (c) and (i).

3 (h) Regulated financial institutions.--This act does not
4 apply to any institution subject to the Bank Holding Company Act
5 of 1956 (70 Stat. 133, 12 U.S.C. § 1841 et seq.), section 10 of
6 the Home Owners' Loan Act (48 Stat. 128, 12 U.S.C. § 1467a), the
7 Bank Merger Act (Public Law 86-463, 74 Stat. 129), the Federal
8 Deposit Insurance Act (64 Stat. 873, 12 U.S.C. §§ 1728(b) and
9 1811 et seq.; 18 U.S.C. §§ 215 and 709), the act of November 30,
10 1965 (P.L.847, No.356), known as the Banking Code of 1965, or
11 the act of December 14, 1967 (P.L.746, No.345), known as the
12 Savings Association Code of 1967.

13 (i) Federal or State exempt activities.--Any activity or
14 conduct authorized by or exempt from Pennsylvania statutory or
15 common law, or exempt from the provisions of the antitrust laws
16 of the United States, shall be exempt from the provisions of
17 this act. Any activity or conduct subject to any other Federal
18 statute that limits, modifies or otherwise affects the
19 applicability of one or more provisions of the Federal antitrust
20 statutes, or Federal judicial opinions interpreting those
21 statutes, shall to that extent be exempt from the provisions of
22 this act.

23 (j) Not-for-profit health care facilities.--Any agreement or
24 conduct by a not-for-profit health care facility which is likely
25 to reduce health care costs or improve the quality of patient
26 care shall not constitute a violation of this act unless the
27 Department of Health determines that such agreement or conduct
28 is inconsistent with the State Health Plan of the Commonwealth.
29 The Department of Health may, at the request of a health care
30 facility, issue advisory opinions concerning whether or not a

1 specific agreement or conduct is inconsistent with the State
2 Health Plan of the Commonwealth.

3 Section 9. Investigation.

4 (a) General power.--If the Attorney General has probable
5 cause to believe that a violation of this act has occurred, the
6 Attorney General shall have authority to investigate on behalf
7 of the Commonwealth, its citizens or a political subdivision.

8 (b) Attendance and production of documents.--Prior to the
9 institution of a civil action, the Attorney General is
10 authorized to require the attendance and testimony of witnesses
11 and the production of documents. For this purpose, the Attorney
12 General may issue subpoenas, examine witnesses and receive
13 evidence. If a person objects to or otherwise fails to comply
14 with a subpoena or request for testimony, the Attorney General
15 may file in Commonwealth Court an action to enforce the subpoena
16 or request. The Attorney General shall have the burden to prove
17 that probable cause exists. Notice of hearing the action and a
18 copy of all pleadings shall be served upon the person, who may
19 appear in opposition.

20 (c) Confidentiality.--

21 (1) Any testimony taken or material produced shall be
22 kept confidential by the Attorney General except to the
23 extent he may use information in a judicial proceeding or if
24 the disclosure is authorized by the court for good cause
25 shown or confidentiality is waived by the person being
26 investigated and by the person who has testified, answered
27 interrogatories or produced materials.

28 (2) At the Attorney General's discretion, the Attorney
29 General may disclose information discovered under this
30 section to the United States Department of Justice, the

1 Federal Trade Commission, another state or territory of the
2 United States, the District of Columbia and another agency of
3 the Commonwealth, upon the prior certification of an
4 appropriate official of the recipient that the information
5 will be maintained in confidence other than use for official
6 purposes and that the recipient will abide by the provisions
7 of paragraph (1). However, trade secrets may not be disclosed
8 by the Attorney General without the approval of the
9 Commonwealth Court, after notice to the person who produced
10 the information.

11 (3) The Attorney General may use information, including
12 documents, obtained under this section in an action brought
13 under this act or Federal antitrust statutes; however,
14 information relating to trade secrets may not be made public
15 in an action without the approval of the court in which the
16 action is pending, after notice to the person who produced
17 the information.

18 (d) Limitation on use.--No criminal prosecution under this
19 act may be brought by the Attorney General based principally
20 upon information or documents obtained in a civil investigation
21 under this section.

22 (e) Wrongful disclosure of information.--Any person who
23 publishes or communicates any procedure, testimony or material
24 produced, which is required to be kept confidential pursuant to
25 this section, commits a misdemeanor of the third degree.

26 Section 10. Consistency with Federal law.

27 The provisions of this act which parallel provisions of
28 Federal antitrust statutes shall be construed consistently with
29 pertinent Federal statutes and Federal judicial opinions
30 interpreting those Federal statutes.

1 Section 11. Effective date.

2 This act shall take effect July 1, 1994.