
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2721 Session of
2002

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WILT, M. WRIGHT AND YOUNGBLOOD, JUNE 18, 2002

REFERRED TO COMMITTEE ON COMMERCE AND ECONOMIC DEVELOPMENT,
JUNE 18, 2002

AN ACT

1 Prohibiting certain acts relating to trade or commerce; and
2 providing for powers and duties of the Attorney General, for
3 damages and other remedies and for construction and
4 interpretation of the act's provisions.

5 TABLE OF CONTENTS

- 6 Section 1. Short title.
- 7 Section 2. Declaration of purpose.
- 8 Section 3. Definitions.
- 9 Section 4. Prohibited acts.
- 10 Section 5. Powers and duties of Attorney General.
- 11 Section 6. Proof of damages.
- 12 Section 7. Procedure for distributing recovery.
- 13 Section 8. Subpoenas.
- 14 Section 9. Cooperation with Federal Government and other
15 states.
- 16 Section 10. Exceptions.

1 Section 11. Consistency with Federal law.

2 Section 12. Jurisdiction of Commonwealth Court.

3 Section 13. Action not barred as affecting or involving
4 interstate or foreign commerce.

5 Section 14. Remedies cumulative.

6 Section 15. Effective date.

7 The General Assembly of the Commonwealth of Pennsylvania
8 hereby enacts as follows:

9 Section 1. Short title.

10 This act shall be known and may be cited as the Free
11 Enterprise Protection Act.

12 Section 2. Declaration of purpose.

13 The purpose of this act is to promote free enterprise and
14 free trade in the marketplaces of this Commonwealth by
15 prohibiting restraints of trade which are secured through
16 monopolistic or collusive practices and which act or tend to act
17 to decrease competition between and among persons engaged in
18 commerce and trade, whether in manufacturing, distribution,
19 financing, service industries or in related for-profit and
20 nonprofit pursuits.

21 Section 3. Definitions.

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

25 "Commodity." Any kind of real or personal property.

26 "Documentary material." The original or any copy of any
27 designated documents, including, but not limited to, writings,
28 drawings, graphs, charts, photographs, electronically created
29 data and other compilations of data.

30 "Person." A natural person, corporation, partnership or

1 association of persons.

2 "Service." An activity, not covered by the definition of
3 "commodity" which is performed in whole or in part for the
4 purpose of financial gain. The term shall not include labor
5 which is performed by natural persons as employees of others.

6 "Trade or commerce." All economic activity involving or
7 relating to any commodity or service.

8 Section 4. Prohibited acts.

9 The following acts are prohibited:

10 (1) To contract, combine or conspire in restraint of
11 trade or commerce.

12 (2) To monopolize, attempt to monopolize or combine or
13 conspire with any other person or persons to monopolize any
14 part of trade or commerce.

15 (3) To acquire, directly or indirectly, the whole or any
16 part of the stock or other share, capital or the assets of
17 any other person or persons, where the effect of the
18 acquisition may be to lessen competition substantially in any
19 line of trade or commerce.

20 Section 5. Powers and duties of Attorney General.

21 (a) Civil action.--The Attorney General may bring a civil
22 action in the Commonwealth's proprietary capacity on behalf of
23 the Commonwealth, as parens patriae on behalf of any county,
24 municipal corporation, agency or other political subdivision, or
25 as parens patriae on behalf of natural persons residing in this
26 Commonwealth, to recover threefold the actual damages and the
27 costs of the suit, including a reasonable attorney fee, for any
28 violation of section 4.

29 (b) Limitation of actions.--A civil action for damages for a
30 violation of section 4 must be commenced within four years after

1 the accrual of a cause of action, except that no statute of
2 limitation shall bar any civil action for the recovery of
3 damages sustained by the Commonwealth.

4 (c) Equitable remedy.--The Attorney General may bring a
5 civil action in the Commonwealth's proprietary capacity on
6 behalf of the Commonwealth, as parens patriae on behalf of any
7 county, municipal corporation, agency or other political
8 subdivision, or as parens patriae on behalf of natural persons
9 residing in this Commonwealth, for injunctive relief or other
10 equitable relief against loss or damage, whether threatened or
11 actual, for a violation of section 4.

12 (d) Damages for indirect purchasers.--In a civil action
13 under this section, the fact that the Commonwealth or any
14 county, agency, municipal corporation or other political
15 subdivision or any natural person who has sustained damages by
16 reason of a violation of section 4 has not dealt directly with
17 the defendant shall not bar or otherwise limit recovery, except
18 to avoid duplicate liability for the same injury.

19 Section 6. Proof of damages.

20 In any action under section 5, the Attorney General may
21 recover the aggregate damage sustained by the persons on whose
22 behalf the civil action has been brought without separately
23 proving the individual claims of each person. Proof of damages
24 must be based on:

25 (1) statistical or sampling methods;

26 (2) the pro rata allocation of illegal overcharges of
27 sales occurring within this Commonwealth; or

28 (3) such other reasonable system of estimating aggregate
29 damages as the Commonwealth Court may permit.

30 Section 7. Procedure for distributing recovery.

1 The Attorney General shall distribute, allocate or otherwise
2 pay the amounts recovered under this act in accordance with the
3 laws of the Commonwealth, or in the absence of any applicable
4 Commonwealth law, as the Commonwealth Court may authorize. Where
5 it is impossible or economically impractical to identify the
6 persons on whose behalf a suit was brought, the amounts
7 recovered shall be paid into the General Fund.

8 Section 8. Subpoenas.

9 (a) Authority to issue.--Whenever the Attorney General
10 believes that a person may be in control of information relevant
11 to any civil investigation under this act, the Attorney General
12 may issue and serve subpoenas, administer oaths or affirmations
13 and examine witnesses and receive evidence. Each subpoena shall
14 state the subject matter of the civil investigation, describe
15 the conduct constituting the alleged violation which is under
16 investigation and list the provisions of this act applicable to
17 the alleged violation.

18 (b) Form.--The subpoena shall prescribe the data, time and
19 place at which oral testimony shall be taken, describe the
20 material to be produced with reasonable particularity so as to
21 fairly identify the documents subpoenaed and prescribe a date
22 within which the material is to be produced. Under terms as the
23 Attorney General shall prescribe, the documentary material shall
24 be available for inspection and copying by the person who
25 produced the material. The Attorney General may use the
26 information in a civil action brought under this act.
27 Information which contains trade secrets or other highly
28 confidential matter shall not be presented except with the
29 approval of the court in which a proceeding is pending after
30 adequate notice to the person furnishing the documentary

1 material.

2 (c) Applicability of rules.--Except as otherwise specified
3 by this act, compliance with the subpoena shall be governed by
4 the Pennsylvania Rules of Civil Procedure.

5 (d) Confidentiality.--Any testimony, documentary material or
6 other tangible evidence produced or answer made under this act
7 shall be kept confidential by the Attorney General prior to the
8 institution of a civil action brought under this act for the
9 alleged violation of the provisions of this act under
10 investigation, unless:

11 (1) confidentiality is waived by the person subpoenaed;

12 (2) disclosure is authorized by the Commonwealth Court;

13 or

14 (3) disclosure is made pursuant to section 9.

15 (e) Failure to obey subpoena.--In the event a witness served
16 with a subpoena under this act by the Attorney General fails or
17 refuses to produce documentary material, to answer written
18 interrogatories or to give testimony, the Attorney General may
19 petition the Commonwealth Court for an order requiring the
20 witness to answer, testify or produce the documentary material
21 demanded.

22 (f) Prohibited acts.--Any person who obstructs compliance
23 with a subpoena of the Attorney General issued under authority
24 of this section or knowingly removes or falsifies any
25 documentary material that is the subject of a subpoena issued by
26 the Attorney General under authority of this section commits a
27 misdemeanor of the second degree.

28 Section 9. Cooperation with Federal Government and other
29 states.

30 The Attorney General may cooperate with and coordinate

1 enforcement of the provisions of this act with the Federal
2 Government and the several states, including, but not limited
3 to, sharing information and evidence obtained in accordance with
4 section 8.

5 Section 10. Exceptions.

6 This act shall not make illegal any activity or conduct
7 exempt under Commonwealth law or the antitrust laws of the
8 United States.

9 Section 11. Consistency with Federal law.

10 When the wording of this act is identical to or similar to
11 that of a Federal antitrust statute, it shall be interpreted in
12 a manner consistent with comparable Federal antitrust law as
13 decided by the Federal courts whose jurisdiction includes this
14 Commonwealth.

15 Section 12. Jurisdiction of Commonwealth Court.

16 The Commonwealth Court shall have original jurisdiction over
17 all actions for violations of this act.

18 Section 13. Action not barred as affecting or involving
19 interstate or foreign commerce.

20 No action under this act shall be barred on the grounds that
21 the activities or conduct complained of in any way affects or
22 involves interstate or foreign commerce.

23 Section 14. Remedies cumulative.

24 The remedies afforded by this act are cumulative.

25 Section 15. Effective date.

26 This act shall take effect in 60 days.