

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 845

Session of
1977

INTRODUCED BY MESSRS. FINEMAN, SCHMITT, MANDERINO, ENGLEHART, WARGO, SHUPNIK, GEISLER, BENNETT, COHEN, MORRIS, YAHNER, DeMEDIO, MUSTO, B. F. O'BRIEN, TAYLOR, VALICENTI, RAPPAPORT, RITTER, WANSACZ, GAMBLE, DUFFY, STAPLETON, GARZIA, FEE, COLE, GALLAGHER, BERLIN, CAPUTO, SALVATORE, HOEFFEL, COWELL, FLAHERTY, NOVAK, O'KEEFE, CIANCIULLI, BORSKI, O'CONNELL, LEHR, PRATT, CALTAGIRONE, STUBAN, STEWART, KOWALYSHYN, REED, GATSKI, PYLES, JOHNSON, JONES, OLIVER, GIAMMARCO, O'DONNELL, BERSON, WHITE, MRS. KELLY, MRS. SCANLON, MESSRS. RIEGER, ITKIN, RHODES, MRKONIC, RAVENSTAHL, PETRARCA, BRUNNER, PIEVSKY, LAUDADIO, A. K. HUTCHINSON, McCALL, BELLOMINI, DOMBROWSKI, PARKER, WIGGINS, DONATUCCI, DUMAS, ZELLER, ZWIKL, MELUSKEY, BROWN, MRS. WISE, MESSRS. DeWEESE, BITTINGER, MILANOVICH, LIVENGOD, D. R. WRIGHT, MACKOWSKI, GOEBEL, BURNS, W. D. HUTCHINSON, MRS. GILLETTE AND MR. GLEESON, MARCH 30, 1977

REFERRED TO COMMITTEE ON CONSUMER AFFAIRS, MARCH 30, 1977

AN ACT

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

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22 The General Assembly of the Commonwealth of Pennsylvania
23 hereby enacts as follows:

24 Section 1. Short title.

25 This act shall be known and may be cited as the "Pennsylvania
26 Antitrust Act."

27 Section 2. Declaration of legislative policy.

28 It is the purpose of this act to promote the free market
29 system in the economy of this Commonwealth by prohibiting
30 restraints of trade and monopolistic practices, inasmuch as

1 these have the effect of decreasing competition. It is intended
2 that as a result the prices of goods and services to consumers
3 will be fairly determined by free market competition in
4 activities affecting trade or commerce in this Commonwealth,
5 including the manufacturing, distribution, financing and service
6 sectors of the economy. The Legislature intends to exercise
7 fully its power to affect and regulate commerce in order to
8 effectuate the purposes of this act.

9 Section 3. Definitions.

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

13 "Antitrust Enforcement Fund." The fund described in section
14 19.

15 "Antitrust investigative subpoena." An antitrust
16 investigative subpoena pursuant to section 8(b).

17 "Commodity." Any property, tangible or intangible, real,
18 personal or mixed, and any other thing of value wherever
19 situated.

20 "Consumer." With respect to a particular commodity or
21 service, a natural person who acquires the commodity or service
22 for benefit, use and enjoyment in his private or personal
23 capacity and not for commercial benefit or for resale, or for
24 use in connection with the production of income.

25 "Contract, combination in the form of trust or otherwise, or
26 conspiracy." Any agreement, arrangement, collusion, or
27 understanding. "Contract" includes, but is not limited to, a
28 purchase, a contract to purchase, a sale, a contract to sell, a
29 lease, a contract to lease, a license, a contract to license, a
30 franchise, or a contract to franchise. "Combination" includes,

1 but is not limited to, a trust, common selling or purchasing
2 agent, pool, or holding company.

3 "Department." The Department of Justice of this
4 Commonwealth.

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

10 "Person." Any natural person or the estate thereof, or trust
11 or association of persons, whether formal or otherwise, or any
12 corporation, partnership, company, or any other legal or
13 commercial entity.

14 "Public body." Any branch or department of the government of
15 the Commonwealth of Pennsylvania, its agencies, bureaus, boards,
16 commissions and authorities and all of the political
17 subdivisions of the Commonwealth including the authorities of
18 such subdivisions.

19 "Service." Any activity which is performed in whole or in
20 part for financial gain.

21 "Trade or commerce" or "trade" or "commerce." The
22 advertising, offering for sale, sale or distribution, of any
23 service or commodity, and including any trade or commerce
24 directly or indirectly affecting the people of this
25 Commonwealth.

26 Section 4. Restraint of trade.

27 (a) General rule.--Every contract, combination in the form
28 of trust or otherwise, or conspiracy, in unreasonable restraint
29 of trade or commerce of this Commonwealth is unlawful.

30 (b) Specific violations.--Without limiting the effect of

subsection (a), the following shall be deemed to restrain trade or commerce unreasonably and are unlawful:

(1) A contract, combination, or conspiracy between two or more persons:

(i) for the purpose or with the effect of fixing, controlling, or maintaining the market price, rate, or fee of any commodity or service;

(ii) fixing, controlling, maintaining, limiting, or discontinuing the production, manufacture, mining, sale, or supply of any commodity, or the sale or supply of any service, for the purpose or with the effect of fixing, controlling, or maintaining the market price, rate, or fee of the commodity or service; or

(iii) allocating or dividing customers or markets, functional or geographic, for any commodity or service.

(2) A contract, combination, or conspiracy between two or more persons whereby, in the letting of any public or private contract:

(i) the price quotation of any bid is fixed or controlled; or

(ii) one or more persons submits a bid intending it to be higher than another bid and thus complementary thereto, submits a bid intending it to be substantially identical to another bid, or refrains from the submission of a bid.

(3) A contract, combination, or conspiracy between two or more persons refusing to deal with any other person or persons for the purpose of effecting any of the acts described in paragraphs (1) and (2).

Section 5. Monopolization.

1 It is unlawful for any person or persons to monopolize, or
2 attempt to monopolize, or combine or conspire with any other
3 person or persons to monopolize, any part of the trade or
4 commerce in this Commonwealth.

5 Section 6. Exemptions.

6 (a) Exclusions.--No provision of this act shall be construed
7 to make illegal:

8 (1) The activities of any labor organization, or of
9 individual members thereof, which are directed solely to
10 labor objectives which are legitimate under the laws of
11 either this Commonwealth or the United States.

12 (2) The activities of any agricultural or horticultural
13 cooperative organization, whether incorporated or
14 unincorporated, or of individual members thereof, to the
15 extent necessary to achieve the aims of the enacted laws of
16 either this Commonwealth or the United States.

17 (3) The activities of any consumer organization, whether
18 incorporated or unincorporated, or of individual members
19 thereof, which are directed solely to consumer objectives
20 which are legitimate under the laws of either this
21 Commonwealth or the United States.

22 (b) Regulated activities.--This act shall not apply to
23 activities authorized or approved under any Federal or State
24 regulatory scheme to the extent that such regulatory law as
25 applied to these activities is so comprehensive that enforcement
26 of this act would be either unnecessary to effect the purposes
27 of this act, in light of the existing regulatory structure, or
28 disruptive of that regulatory structure due to a plain
29 repugnancy between this act and the regulatory provisions.

30 Regulatory approval which does not include due consideration of

1 possible anticompetitive effects of any activity shall not
2 exclude such activity from the provisions of this act.

3 Section 7. General power of district attorneys and the
4 Attorney General.

5 (a) District attorneys.--A district attorney may investigate
6 suspected violations of this act occurring in his judicial
7 district and may institute such criminal and civil injunctive
8 proceedings as are hereinafter provided for such violations of
9 this act.

10 (b) Attorney General.--The Attorney General shall
11 investigate suspected violations of this act and may institute
12 such proceedings as are hereinafter provided for violations of
13 this act. The Attorney General may request the district attorney
14 of any county in which such proceedings may be brought to aid
15 and assist him in the conduct of an investigation or proceeding
16 brought under this act.

17 Section 8. Investigation by Attorney General.

18 (a) General power of investigation.--Whenever it appears to
19 the Attorney General, either upon complaint or otherwise, that
20 any person has engaged in or engages in or is about to engage in
21 any act or practice prohibited by this act, or that any person
22 has assisted or participated in any plan, scheme, agreement or
23 combination of the nature prohibited by this act, or whenever he
24 believes it to be in the public interest that an investigation
25 be made, he may:

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

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

29 (3) make such special and independent investigations as
30 he deems necessary in connection with the matter.

1 (b) Antitrust investigative subpoena.--Whenever the Attorney
2 General has reason to believe that any person may have
3 knowledge, or be in possession, custody or control of any
4 documentary material, pertinent to an investigation of a
5 possible violation of this act, he may make application to the
6 Commonwealth Court for an antitrust investigative subpoena which
7 may:

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

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

12 (3) require answers to written interrogatories to be
13 furnished under oath.

14 The power to issue antitrust investigative subpoenas shall
15 not abate or terminate by reason of the bringing of any action
16 or proceeding under this act. Upon application by the Attorney
17 General, the Commonwealth Court may issue successive antitrust
18 investigative subpoenas to the same person in order to obtain
19 additional information pertinent to an ongoing investigation.

20 (c) Issuance of subpoena.--

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

23 (2) No antitrust investigative subpoena shall issue
24 unless:

25 (i) the Attorney General has applied to the
26 Commonwealth Court for the issuance of the antitrust
27 investigative subpoena, in accordance with the rules of
28 the court; and

29 (ii) the Commonwealth Court after considering the
30 application of the Attorney General has determined that

1 there is reason to believe that the subpoenaed person may
2 have knowledge of the subpoenaed document or documents
3 may contain information, relevant to the matter being
4 investigated.

5 (3) Within ten days of the filing of an application for
6 an antitrust investigative subpoena, the court shall issue
7 either the antitrust investigative subpoena, or an order
8 denying the application.

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

11 (1) the section or sections of this act, the alleged
12 violation of which is under investigation and the general
13 subject matter of the investigation;

14 (2) a reasonable return date no less than 20 days from
15 the date of the antitrust investigative subpoena;

16 (3) the time and place at which the person is to appear
17 and give testimony, produce documentary material, and furnish
18 answers to interrogatories, or do any or a combination of the
19 aforesaid;

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

23 (5) any interrogatories to which written answers under
24 oath are required.

25 (e) Prohibition against unreasonable requirements.--No
26 antitrust investigative subpoena shall:

27 (1) contain any requirement which would be unreasonable
28 or improper if contained in a subpoena other than an
29 antitrust investigative subpoena issued by a court of this
30 Commonwealth; or

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

5 (f) Offer of documentary evidence.--Where the information
6 requested upon oral examination or written interrogatory
7 pursuant to an antitrust investigative subpoena may be derived
8 or ascertained from the business records of the person upon whom
9 the demand has been served or from an examination, audit, or
10 inspection of such business records, or from a compilation,
11 abstract, or summary based thereon, and the burden of deriving
12 or ascertaining the answer is substantially the same for the
13 Attorney General as for the person from whom such information is
14 requested, it is sufficient for that person to specify the
15 records from which the answer may be derived or ascertained and
16 to afford the Attorney General reasonable opportunity to
17 examine, audit, or inspect such records and to make copies,
18 compilations, abstracts or summaries.

19 (g) Service of subpoena.--An antitrust investigative
20 subpoena may be served by:

21 (1) delivering a duly executed copy to the person to be
22 served, or if the person is not a natural person, to its
23 principal place of business in this Commonwealth; or

24 (2) mailing by certified mail, return receipt requested,
25 a duly executed copy addressed to the person to be served at
26 his principal place of business in this Commonwealth, or if
27 he has no place of business in this Commonwealth, to his
28 principal office.

29 (h) Motion to quash.--Within 20 days after the service of an
30 antitrust investigative subpoena, the person served may file in

1 Commonwealth Court and serve upon the Attorney General a
2 petition for an order of court modifying or setting aside the
3 subpoena. The time allowed for compliance in whole or in part
4 with the subpoena as deemed proper and ordered by the court
5 shall not run while the petition is pending before the court.
6 The petition shall specify each ground upon which the petitioner
7 relies in seeking relief, and may be based upon any failure of
8 the subpoena to comply with the provisions of this act or upon
9 any constitutional or other legal right or privilege of such
10 party. The provisions of this subsection shall be the sole and
11 exclusive means for challenging the requirements of an antitrust
12 investigative subpoena.

13 (i) Taking of testimony.--The examination of all persons
14 pursuant to this section shall be conducted before an officer
15 authorized to administer oaths in this Commonwealth by the
16 Attorney General or a representative designated in writing by
17 him. The statements made shall be taken down stenographically or
18 by a sound recording device and shall be transcribed. The
19 Attorney General or his representative shall exclude from the
20 place where the examination is held all other persons except the
21 person being examined, his counsel, the officer before whom the
22 testimony is to be taken and any stenographer or operator
23 recording such testimony.

24 (j) Rights of persons served with antitrust investigative
25 subpoena.--Any person required to attend and give testimony or
26 to submit documentary material pursuant to this section shall be
27 entitled to retain, or on payment of lawfully prescribed cost to
28 procure, a copy of any document he produces and of his own
29 statements as transcribed. Any such person may be accompanied
30 and advised by counsel, but counsel may not, as a matter of

1 right, otherwise participate in the investigation.

2 (k) Secrecy of investigation.--The information contained in
3 and materials comprising documentary material and opinions of
4 any court of the Commonwealth concerning proceedings for the
5 issuance of an antitrust investigative subpoena shall not be
6 permitted to become public, either by the court or by the
7 Attorney General, other than as provided in this section. The
8 court shall establish a confidential file for all such materials
9 and opinions which shall be kept under seal except as
10 hereinafter provided. Upon application of any person who has
11 received an antitrust investigative subpoena the court may, for
12 good cause shown, allow that person to inspect all of the
13 relevant materials in the court's possession and any relevant
14 opinions of any court of the Commonwealth regarding the issuance
15 or denial of an antitrust investigative subpoena. Except as
16 provided in this section, the Attorney General shall use such
17 information and material only for the purpose of antitrust
18 enforcement. Except as provided in this section, while in the
19 possession of the Attorney General or his representative, no
20 such materials or copies thereof shall be available for
21 examination without the written consent of the person who is
22 named in the respective application for the antitrust
23 investigative subpoena. Upon application of the Attorney General
24 the Commonwealth Court or court of common pleas having
25 jurisdiction under subsection (o) may authorize the disclosure
26 or submission of any such information and materials to the
27 appropriate official of any jurisdiction having enforcement
28 authority over any suspected antitrust violation to which the
29 information and material may be relevant. Nothing in this
30 section shall prevent the Attorney General or his representative

1 from permitting authorized personnel of the department to
2 examine and work with such information and materials, nor from
3 introducing into evidence or referring to any such relevant
4 information or materials in an antitrust proceeding in open
5 court or before a grand jury or court filing in connection
6 therewith.

7 (l) Witness expenses.--All persons served with an antitrust
8 investigative subpoena, other than those persons whose conduct
9 or practices are being investigated or any officer, director, or
10 person in the employ of such person under investigation, shall
11 be paid the same fees and mileage as paid witnesses in the
12 courts of this Commonwealth. No person shall be excused from
13 attending such inquiry pursuant to the mandate of an antitrust
14 investigative subpoena, or from giving testimony, or from
15 producing documentary material or from being required to answer
16 questions on the ground of failure to tender or pay a witness
17 fee or mileage unless demand therefor is made at the time
18 testimony is about to be taken and unless payment thereof is not
19 thereupon made.

20 (m) Refusal of witness to testify or produce requested
21 documents.--Any natural person who shall neglect or refuse to
22 attend and give testimony or to answer any lawful inquiry or to
23 produce documentary material, if in his power to do so, in
24 obedience to an antitrust investigative subpoena pursuant to
25 this section shall be liable to punishment for contempt of
26 court. Any natural person who commits perjury or false swearing
27 in response to an antitrust investigative subpoena pursuant to
28 this section shall be subject to the provisions of 18 Pa.C.S. §
29 4902 (relating to perjury) or 18 Pa.C.S. § 4903 (relating to
30 false swearing), respectively.

1 (n) Duty of public officials.--It shall be the duty of all
2 officials of this Commonwealth and its public bodies, their
3 deputies, assistants, clerks, subordinates, employees, and all
4 other persons to render and furnish to the Attorney General when
5 so requested, all information and assistance in their possession
6 or within their power.

7 (o) Conduct of judicial proceedings.--Proceedings under
8 subsections (c), (h), (k) and (m) and appeals therefrom shall be
9 expedited by the courts of this Commonwealth, to assure speedy
10 resolution of issues pertaining to ongoing antitrust
11 investigations and to secure the ends of justice by timely
12 initiation and prosecution of antitrust investigative
13 proceedings. Upon application of the Attorney General or upon
14 its own motion or upon request of a court of common pleas in
15 which a relevant proceeding is pending, the Commonwealth Court
16 may transfer to a court of common pleas any proceeding under
17 subsection (h), (k) or (m) or all such proceedings relating to
18 any antitrust investigative subpoena.

19 Section 9. Injunctive relief.

20 (a) Remedial powers of courts.--The Commonwealth Court and
21 the courts of common pleas are hereby empowered to prevent and
22 restrain violations of this act. In addition to granting
23 prohibitory injunctions and other restraints for a period and
24 upon terms and conditions necessary to deter the defendant from,
25 and insure against, the committing of future violations of this
26 act, the courts may grant mandatory injunctions reasonably
27 necessary to dissipate the ill effects of the violation. The
28 courts may issue appropriate decrees upon consent and
29 stipulation by the parties. The courts may also issue
30 restraining orders. Under no circumstances shall the

1 Commonwealth be required to post bond in any action hereunder.

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 (c) District attorneys; right to injunctive relief.--A
6 district attorney may institute proceedings in the court of
7 common pleas of his judicial district, to prevent and restrain
8 violations of this act as provided in subsection (a).

9 (d) Other persons; right to injunctive relief.--Any person
10 may institute proceedings for injunctive relief, temporary or
11 permanent, in a court of common pleas, as provided in subsection
12 (a), against threatened loss or damage to his property or
13 business by a violation of this act. A preliminary injunction
14 may be issued upon a showing that the danger of irreparable loss
15 or damage is immediate and, within the court's discretion, the
16 execution of proper bond against damages for an injunction
17 improperly granted. If the court issues a permanent injunction,
18 the plaintiff 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 10. Action for treble damages.

24 Any person or public body who shall be injured in his
25 business or property by reason of a violation of the provisions
26 of this act may sue therefor and shall recover threefold the
27 damages sustained by him, together with reasonable attorneys'
28 fees, filing fees, and reasonable costs of suit. Reasonable
29 costs of suit may include, but shall not be limited to, the
30 expenses of discovery and document reproduction.

1 Section 11. Suits by Attorney General.

2 (a) Public bodies.--The Attorney General shall be permitted
3 to bring suit under this act, and in proper Federal court for
4 violations of the Federal Antitrust Laws or of both this act and
5 the Federal Antitrust Laws, to secure relief as provided in
6 sections 9, 10, 12 and 13, and other lawful relief as
7 appropriate, on behalf of this Commonwealth and the other public
8 bodies of this Commonwealth or of any of the public bodies of
9 this Commonwealth that have been injured.

10 (b) *Parens patriae*.--

11 (1) The Attorney General shall be permitted to bring
12 suit as *parens patriae* of natural persons who are citizens
13 and residents of this Commonwealth, under this act, and in
14 proper Federal court for violations of the Federal Antitrust
15 Laws or of both this act and the Federal Antitrust Laws, to
16 secure relief as provided in sections 9, 10, 12 and 13, and
17 other lawful relief as appropriate.

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

26 (3) Any person on whose behalf an action is brought
27 under this subsection may elect to exclude from adjudication
28 the portion of the claim for monetary relief attributable to
29 him by filing notice of such election with the court within
30 such time as specified in the notice given pursuant to this

subsection.

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

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

(c) Measure of damages.--In any action brought under this section, damages may be proved and assessed in the aggregate by statistical or sampling methods, by the computation of illegal overcharges, or by such other reasonable system of estimating aggregate damages as the court in its discretion may permit without the necessity of separately proving the individual claim of, or amount of damage to, persons and/or public bodies on whose behalf the suit was brought. The court shall exclude from the amount of monetary relief awarded in such action any amount of monetary relief which:

(1) duplicate amounts which have been awarded for the same injury; or

(2) are properly allocable to natural persons who have excluded their claims pursuant to subsection (b)(3).

(d) Distribution of monetary relief.--In any action brought under this section, the court shall award to the Commonwealth for payment into the State Treasury for the use of the Antitrust Enforcement Fund:

(1) an amount attributable to the recovery of the Commonwealth and its public agencies; and

1 (2) the greater of:

2 (i) any amount assessed as reasonable attorney fees,
3 filing fees, and reasonable costs of suit; or

4 (ii) an amount equal to the expenses and costs of
5 investigation, litigation and fund administration
6 attributable to the case.

7 The court shall afford the citizens and residents and the public
8 bodies of this Commonwealth (other than the Commonwealth and its
9 agencies) a reasonable opportunity individually to secure
10 appropriate portions of the remainder of the monetary relief
11 assessed under this section and thereafter shall award the
12 undistributed portion of said remainder to the Commonwealth for
13 payment into the General Fund of the State Treasury for the
14 overall benefit of the citizens, residents and public bodies of
15 this Commonwealth.

16 (e) Attorney's fee.--In any investigation or action under
17 this act, the court may, in its discretion, award a reasonable
18 attorney's fee to a prevailing defendant upon a finding that the
19 Attorney General has acted in bad faith, vexatiously, wantonly,
20 or for oppressive reasons. Any such award shall be paid from the
21 Antitrust Enforcement Fund.

22 Section 12. Civil penalties.

23 (a) In general.--In addition to injunctive relief authorized
24 pursuant to section 9, any person who violates this act may be
25 liable for a civil penalty in a suit by the Attorney General or
26 a district attorney of not more than the greater of \$100,000 or
27 \$500 per day for each and every day of said violation.

28 (b) Violation of court orders or decrees.--Any person who
29 violates an order or decree issued pursuant to section 9, or an
30 assurance of voluntary compliance pursuant to section 13 may be

1 liable for a civil penalty in a suit by the Attorney General or
2 a district attorney of not more than the greater of \$100,000 or
3 \$500 per day for each and every day of said violation.

4 (c) Forfeiture of franchise or right to do business.--Upon
5 petition of the Attorney General, any corporation or association
6 organized under the laws of this Commonwealth or exercising the
7 privilege of conducting business within the Commonwealth which
8 violates the terms of this act or of any order or decree issued
9 pursuant to section 9 may be subject to forfeiture of all
10 charter rights, franchises, privileges or powers connected with
11 doing business within this Commonwealth.

12 (d) Jurisdiction of court for forfeitures.--The court of
13 common pleas having jurisdiction over the corporation or
14 association may, in its discretion, and with due consideration
15 of all relevant factors, including relevant public interest and
16 competitive and economic factors, order the forfeiture of
17 charter rights, franchises, privileges and powers, and the
18 dissolution of the corporation or association, or the suspension
19 of the privilege to conduct business within this Commonwealth. A
20 dissolution pursuant to this section shall be conducted under
21 the supervision of the court of common pleas in accordance with
22 voluntary dissolution of the particular type of corporation or
23 association.

24 (e) Disposition of funds.--All civil penalties exacted
25 pursuant to this section shall be paid into the State Treasury
26 for the use of the Antitrust Enforcement Fund.

27 Section 13. Assurances of voluntary compliance.

28 In the administration of this act, the Attorney General may
29 accept an assurance of voluntary compliance with respect to any
30 method, act or practice deemed to be a violation of this act

1 from any person who has engaged or was about to engage in such
2 method, act or practice. Such assurance may include a
3 stipulation for voluntary payment by the alleged violator of
4 damages sustained by any person or public body. Any such
5 assurance shall be in writing and be filed with the court of
6 common pleas in which the alleged violator resides, has his
7 principal place of business, or is doing business, or the
8 Commonwealth Court. Such assurance of voluntary compliance shall
9 not be considered an admission of violation for any purpose.
10 Matters thus closed may at any time be reopened by the Attorney
11 General for further proceedings in the public interest.

12 Section 14. Authorized procedures.

13 In any action brought by the Attorney General pursuant either
14 to this act or the Federal Antitrust Laws or both for the
15 recovery of damages or other relief, the Attorney General may
16 enter into agreements relating to the investigation and
17 litigation of such action with any other party plaintiff who has
18 brought a similar action and with whom the Attorney General
19 finds it advantageous to act jointly, or to share common
20 expenses or to cooperate in any manner relative to such action.
21 The Attorney General may enter into settlements with defendants
22 which provide for the payment of money to plaintiffs.

23 Section 15. Criminal penalties.

24 (a) Institution of criminal action.--The Attorney General
25 shall be permitted to institute criminal proceedings for
26 violations of section 4(b).

27 (b) Fine and penalty.--Any person or corporation, or any
28 officer or agent thereof, who shall knowingly violate any of the
29 provisions of section 4(b) or aid in or advise such violation,
30 or who, as principal, manager, director, stockholder owning 10%

1 or more of the aggregate outstanding capital stock of all
2 classes of the corporation, agent, servant or employee,
3 knowingly does any act comprising a part of such violation, is
4 guilty of a misdemeanor of the first degree and shall be
5 punished by imprisonment of not more than five years or a fine
6 of the greater of \$2,000,000 or \$1,000 per day, or both
7 imprisonment and fine.

8 (c) Disposition of funds.--All fines collected pursuant to
9 this section shall be paid into the State Treasury for the use
10 of the Antitrust Enforcement Fund.

11 Section 16. Notice to Attorney General of civil action.

12 Upon commencement of any civil action by a person, other than
13 the Attorney General, for violation of this act, plaintiff shall
14 mail a copy of the complaint to the Attorney General and shall
15 file proof of service on the Attorney General with the court.
16 The civil action may not proceed until such proof of service is
17 filed.

18 Section 17. Attorney General; promulgation of rules and
19 regulations.

20 The Attorney General may adopt, after public hearing and
21 compliance with the act of July 31, 1968 (P.L.769, No.240),
22 known as the "Commonwealth Documents Law," such rules and
23 regulations as may be necessary for the enforcement and
24 administration of this act.

25 Section 18. Judgment as evidence.

26 A final judgment or decree rendered in any civil or criminal
27 proceeding brought by or on behalf of this Commonwealth under
28 the provisions of this act to the effect that a defendant has
29 violated said act shall be prima facie evidence against such
30 defendant under this act as to all matters respecting which said

1 judgment or decree would be an estoppel as between the parties
2 thereto.

3 Section 19. Antitrust Enforcement Fund.

4 (a) Fund established.--All money received by the
5 Commonwealth from July 1, 1977 as a result of actions by the
6 Attorney General pursuant to this act or to the Federal
7 Antitrust Laws shall be placed in a separate fund by the State
8 Treasurer, to be known as the "Antitrust Enforcement Fund," and
9 shall be used solely for the payment of all expenses incurred by
10 the department in connection with antitrust enforcement
11 activities.

12 (b) Appropriation required.--No money in the Antitrust
13 Enforcement Fund shall be removed or expended by the department
14 for the purposes set forth in subsection (a) until such time as
15 the General Assembly shall specifically make an appropriation
16 for each fiscal year from this fund to the department.

17 (c) Estimates of expenditures.--Estimates of the amounts to
18 be expended by the department for antitrust enforcement
19 activities shall be submitted to the Governor for his approval
20 or disapproval as in the case of other appropriations made to
21 administrative departments, and it shall be unlawful for the
22 State Treasurer to honor any requisition for the expenditure of
23 any money out of this appropriation by the department in excess
24 of the estimates approved by the Governor. Subject to the
25 foregoing provisions, the State Treasurer shall honor each
26 requisition by the Attorney General for the amount specified in
27 such requisition, not exceeding, however, the amount in the
28 appropriation available at the time of making the requisition.

29 Section 20. Limitation of actions.

30 Any action brought to enforce the provisions of this act

1 shall be barred unless commenced within four years after the
2 cause of action arose, or if the cause of action is based upon a
3 conspiracy in violation of this act, within four years after the
4 plaintiff discovered, or by the exercise of reasonable diligence
5 should have discovered, the facts relied upon for proof of the
6 conspiracy. No cause of action barred on the effective date of
7 this act shall be revived by this act. For purposes of this
8 section, a cause of action for a continuing violation is deemed
9 to arise at any time during the period of such violation.

10 Section 21. Suspension of limitation.

11 Whenever any civil or criminal proceeding shall be commenced
12 by the Commonwealth to prevent, restrain, or punish a violation
13 of this act, but not including an action brought by the
14 Commonwealth under section 10, the running of the statute of
15 limitations in respect of every private right of action arising
16 under this act and based in whole or in part on any matter
17 complained of in said proceeding shall be suspended during the
18 pendency thereof and for one year thereafter: Provided,
19 however, That whenever the running of the statute of limitations
20 in respect of a cause of action arising under either section 9
21 or 10 or both shall be suspended hereunder, any action to
22 enforce such cause of action shall be forever barred unless
23 commenced either within the period of suspension or within four
24 years after the cause of action accrued, whichever is later.

25 Section 22. Remedies cumulative.

26 The remedies provided in this act shall be cumulative.

27 Section 23. Cooperation with Commonwealth and Federal
28 officials.

29 The Attorney General may cooperate with and coordinate the
30 enforcement of this act with officials of the Federal Government

1 and the several states, including but not limited to the sharing
2 of information and evidence obtained in accordance with section
3 8.

4 Section 24. Construction of statute.

5 This act shall be construed in harmony with ruling judicial
6 decisions based on the common law of this Commonwealth and
7 ruling judicial interpretations of comparable Federal antitrust
8 statutes insofar as practicable. The provisions of this act
9 shall be interpreted to supersede the jurisdiction of all
10 Commonwealth regulatory agencies, commissions and bodies except
11 where there is a plain repugnancy between this act and the
12 regulatory scheme in issue. Such repugnancy exists only where
13 the regulatory scheme is so pervasive that it indicates the
14 Legislature's intent to substitute governmental supervision for
15 the regulatory effects of competition.

16 Section 25. Effective date.

17 This act shall take effect immediately.