

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, LIVENGOOD, D. R. WRIGHT, MACKOWSKI, GOEBEL, BURNS, W. D. HUTCHINSON, MRS. GILLETTE, MESSRS. GLEESON AND BROWN, MARCH 30, 1977

AS REPORTED FROM COMMITTEE ON CONSUMER PROTECTION, HOUSE OF REPRESENTATIVES, AS AMENDED, FEBRUARY 15, 1978

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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23 The General Assembly of the Commonwealth of Pennsylvania
24 hereby enacts as follows:
25 Section 1. Short title.
26 This act shall be known and may be cited as the "Pennsylvania
27 Antitrust Act."
28 Section 2. Declaration of legislative policy.
29 It is the purpose of this act to promote the free market
30 system in the economy of this Commonwealth by prohibiting

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

10 Section 3. Definitions.

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

14 "Antitrust Enforcement Fund." The fund described in section
15 19.

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

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

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

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

1 ~~franchise, or a contract to franchise. "Combination" includes,~~
2 ~~but is not limited to, a trust, common selling or purchasing~~
3 ~~agent, pool, or holding company.~~

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

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

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

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

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

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

26 ~~Commonwealth.~~ THE ADVERTISING, OFFERING FOR SALE, SALE OR <—
27 DISTRIBUTION OF ANY SERVICES AND ANY PROPERTY, TANGIBLE OR
28 INTANGIBLE, REAL, PERSONAL OR MIXED, AND ANY OTHER ARTICLE,
29 COMMODITY, OR THING OF VALUE WHEREVER SITUATE, AND INCLUDES ANY
30 TRADE OR COMMERCE DIRECTLY OR INDIRECTLY AFFECTING THE PEOPLE OF

1 THIS COMMONWEALTH.

2 Section 4. Restraint of trade.

3 ~~(a) General rule.~~ Every contract, combination in the form <—
4 of trust or otherwise, or conspiracy, in unreasonable restraint <—
5 of trade or commerce of this Commonwealth is unlawful.

6 ~~(b) Specific violations.~~ Without limiting the effect of <—
7 subsection (a), the following shall be deemed to restrain trade
8 or commerce unreasonably and are unlawful:

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

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

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

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

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

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

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

1 ~~of a bid.~~

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

6 Section 5. Monopolization.

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

11 Section 6. Exemptions.

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

14 (1) The activities of any labor organization, or of
15 individual members thereof, which are directed solely to
16 labor objectives which are legitimate under the laws of
17 either this Commonwealth or the United States.

18 (2) The activities of any agricultural or horticultural
19 cooperative organization, whether incorporated or
20 unincorporated, or of individual members thereof, to the
21 extent necessary to achieve the aims of the enacted laws of
22 either this Commonwealth or the United States.

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

28 (b) Regulated activities.--This act shall not apply to
29 activities authorized, DIRECTED or approved under any Federal or <—
30 State regulatory scheme to the extent that such regulatory law

1 as applied to these activities is so comprehensive that
2 enforcement of this act would be either unnecessary to effect
3 the purposes of this act, in light of the existing regulatory
4 structure, or disruptive of that regulatory structure due to a
5 plain repugnancy between this act and the regulatory provisions.
6 Regulatory approval which does not include due consideration of
7 possible anticompetitive effects of any activity shall not
8 exclude such activity from the provisions of this act.

9 (C) THIS ACT SHALL NOT BE CONSTRUED TO MAKE THE MERE <—
10 EXISTENCE OF A TRADE ASSOCIATION OR PROFESSIONAL ASSOCIATION
11 UNLAWFUL BY ITSELF.

12 Section 7. General power of ~~district attorneys~~ and the <—
13 Attorney General.

14 ~~(a) District attorneys. A district attorney may investigate~~ <—
15 ~~suspected violations of this act occurring in his judicial~~
16 ~~district and may institute such criminal and civil injunctive~~
17 ~~proceedings as are hereinafter provided for such violations of~~
18 ~~this act.~~

19 ~~(b) Attorney General.~~ The Attorney General shall <—
20 investigate suspected violations of this act and may institute
21 such proceedings as are hereinafter provided for violations of
22 this act. ~~The Attorney General may request the district attorney~~ <—
23 ~~of any county in which such proceedings may be brought to aid~~
24 ~~and assist him in the conduct of an investigation or proceeding~~
25 ~~brought under this act.~~

26 Section 8. Investigation by Attorney General.

27 (a) General power of investigation.--Whenever it appears to
28 the Attorney General, either upon complaint or otherwise, that
29 any person has engaged in or ~~engages in or is about to engage in~~ <—
30 IS ENGAGING IN any act or practice prohibited by this act, or <—

1 that any person has assisted or participated in any plan,
2 scheme, agreement or combination of the nature prohibited by
3 this act, ~~or whenever he believes it to be in the public~~ <—
4 ~~interest that an investigation be made,~~ he may:

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

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

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

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

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

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

21 (3) require answers to written interrogatories to be
22 furnished under oath.

23 The power to issue antitrust investigative subpoenas FOR THE <—
24 PURPOSE OF INVESTIGATING A PERSON shall ~~not abate or~~ ABATE AND <—
25 terminate by reason of the bringing of any action or proceeding
26 AGAINST SUCH PERSON under this act. Upon application by the <—
27 Attorney General, the Commonwealth Court may issue successive
28 antitrust investigative subpoenas to the same person in order to
29 obtain additional information pertinent to an ongoing
30 investigation.

1 (c) Issuance of subpoena.--

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

4 (2) No antitrust investigative subpoena shall issue
5 unless:

6 (i) the Attorney General has applied to the
7 Commonwealth Court for the issuance of the antitrust
8 investigative subpoena, in accordance with the rules of
9 the court; and

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

16 (3) Within ten days of the filing of an application for
17 an antitrust investigative subpoena, the court shall issue
18 either the antitrust investigative subpoena, or an order
19 denying the application.

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

22 (1) the section or sections of this act, the alleged
23 violation of which is under investigation and the general
24 subject matter of the investigation;

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

27 (3) the time and place at which the person is to appear
28 and give testimony, produce documentary material, and furnish
29 answers to interrogatories, or do any or a combination of the
30 aforesaid;

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

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

6 (e) Prohibition against unreasonable requirements.--No
7 antitrust investigative subpoena shall:

8 (1) contain any requirement which would be unreasonable
9 or improper if contained in a subpoena other than an
10 antitrust investigative subpoena issued by a court of this
11 Commonwealth; or

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

16 (f) Offer of documentary evidence.--Where the information
17 requested upon oral examination or written interrogatory
18 pursuant to an antitrust investigative subpoena may be derived
19 or ascertained from the business records of the person upon whom
20 the demand has been served or from an examination, audit, or
21 inspection of such business records, or from a compilation,
22 abstract, or summary based thereon, and the burden of deriving
23 or ascertaining the answer is substantially the same for the
24 Attorney General as for the person from whom such information is
25 requested, it is sufficient for that person to specify the
26 records from which the answer may be derived or ascertained and
27 to afford the Attorney General reasonable opportunity to
28 examine, audit, or inspect such records and to make copies,
29 compilations, abstracts or summaries.

30 (g) Service of subpoena.--An antitrust investigative

1 subpoena may be served by:

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

5 (2) mailing by certified mail, return receipt requested,
6 a duly executed copy addressed to the person to be served at
7 his principal place of business in this Commonwealth, or if
8 he has no place of business in this Commonwealth, to his
9 principal office.

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

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

1 place where the examination is held all other persons except the
2 person being examined, his counsel, the officer before whom the
3 testimony is to be taken and any stenographer or operator
4 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 THE COURT MAY, FOR GOOD CAUSE
8 SHOWN, ALLOW THAT PERSON TO INSPECT ANY DOCUMENTS FILED WITH THE
9 COURT BY THE ATTORNEY GENERAL IN SUPPORT OF THE APPLICATION FOR
10 SUCH ANTITRUST INVESTIGATIVE SUBPOENA, SUBJECT TO ANY PROTECTIVE
11 ORDER OF THE COURT WHICH THE COURT DEEMS NECESSARY AND PROPER TO
12 PROTECT PRIVILEGED INFORMATION, TRADE SECRETS OR THE SECRECY OF
13 THE INVESTIGATION. Any person required to attend and give
14 testimony or to submit documentary material pursuant to this
15 section shall be entitled to retain, or on payment of lawfully
16 prescribed cost to procure, a copy of any document he produces
17 and of his own statements as transcribed. Any such person may be
18 accompanied and advised by counsel, but counsel may not, as a
19 matter of right, otherwise participate in the investigation.

20 (k) Secrecy of investigation.--The information contained in
21 and materials comprising documentary material and opinions of
22 any court of the Commonwealth concerning proceedings for the
23 issuance of an antitrust investigative subpoena shall not be
24 permitted to become public, either by the court or by the
25 Attorney General, other than as provided in this section. The
26 court shall establish a confidential file for all such materials
27 and opinions which shall be kept under seal except as
28 ~~hereinafter provided. Upon application of any person who has~~ <—
29 ~~received an antitrust investigative subpoena the court may, for~~
30 ~~good cause shown, allow that person to inspect all of the~~

1 ~~relevant materials in the court's possession and any relevant~~
2 ~~opinions of any court of the Commonwealth regarding the issuance~~
3 ~~or denial of an antitrust investigative subpoena. Except as~~
4 ~~provided in this section, the Attorney General shall use such~~
5 ~~information and material only for the purpose of antitrust~~
6 ~~enforcement. Except as provided in this section, while in the~~
7 ~~possession of the Attorney General or his representative, no~~
8 ~~such materials or copies thereof shall be available for~~
9 ~~examination without the written consent of the person who is~~
10 ~~named in the respective application for the antitrust~~

11 ~~investigative subpoena.~~ PROVIDED IN SUBSECTION (J). EXCEPT AS

<—

12 PROVIDED IN THIS SECTION, WHILE IN THE POSSESSION OF THE
13 ATTORNEY GENERAL OR HIS REPRESENTATIVE, NO SUCH MATERIALS OR
14 COPIES THEREOF SHALL BE AVAILABLE FOR EXAMINATION WITHOUT THE
15 WRITTEN CONSENT OF THE PERSON WHO IS NAMED IN THE RESPECTIVE
16 APPLICATION FOR THE ANTITRUST INVESTIGATIVE SUBPOENA AND THE
17 PERSON BEING INVESTIGATED. EXCEPT AS PROVIDED IN THIS SECTION,

18 THE ATTORNEY GENERAL SHALL USE SUCH INFORMATION AND MATERIAL
19 ONLY FOR THE PURPOSE OF ANTITRUST ENFORCEMENT. Upon application
20 of the Attorney General, the Commonwealth Court or court of

<—

21 common pleas having jurisdiction under subsection (o) may
22 authorize the disclosure or submission of any such information
23 and materials to the appropriate official of any jurisdiction
24 having enforcement authority over any suspected antitrust
25 violation to which the information and material may be relevant.

26 Nothing in this section shall prevent the Attorney General or
27 his representative from permitting authorized personnel of the
28 department to examine and work with such information and
29 materials, nor from introducing into evidence or referring to
30 any such relevant information or materials in an antitrust

1 proceeding in open court or before a grand jury or court filing
2 in connection therewith.

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

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

27 (n) Duty of public officials.--It shall be the duty of all
28 officials of this Commonwealth and its public bodies, their
29 deputies, assistants, clerks, subordinates, ~~employees, and all~~ <—
30 ~~other persons~~ AGENTS AND EMPLOYEES to render and furnish to the <—

1 Attorney General when so requested, all information and
2 assistance in their possession or within their power.

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

15 Section 9. Injunctive relief.

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

28 (b) Attorney General; right to injunctive relief.--The
29 Attorney General may institute proceedings to prevent and
30 restrain violations of this act as provided in subsection (a).

1 ~~(c) District attorneys; right to injunctive relief. A~~ <—
2 ~~district attorney may institute proceedings in the court of~~
3 ~~common pleas of his judicial district, to prevent and restrain~~
4 ~~violations of this act as provided in subsection (a).~~

5 ~~(d)~~ (C) Other persons; right to injunctive relief.--Any <—
6 person may institute proceedings for injunctive relief,
7 temporary or permanent, in a court of common pleas, as provided
8 in subsection (a), against threatened loss or damage to his
9 property or business by a violation of this act. A preliminary
10 injunction may be issued upon a showing that the danger of
11 irreparable loss or damage is immediate and, within the court's
12 discretion, the execution of proper bond against damages for an
13 injunction improperly granted. If the court issues a permanent
14 injunction, the plaintiff shall be awarded reasonable attorneys'
15 fees, filing fees, and reasonable costs of suit unless the
16 interests of justice otherwise so require. Reasonable costs of
17 suit may include, but shall not be limited to, the expenses of
18 discovery and document reproduction.

19 Section 10. Action for treble damages.

20 Any person or public body who shall be injured in his
21 business or property by reason of a violation of the provisions
22 of this act may sue therefor and shall recover threefold the
23 damages sustained by him, together with reasonable attorneys'
24 fees, filing fees, and reasonable costs of suit. Reasonable
25 costs of suit may include, but shall not be limited to, the
26 expenses of discovery and document reproduction. IN ANY ACTION <—
27 UNDER THIS ACT, THE FACT THAT A PERSON, PUBLIC BODY OR THE
28 COMMONWEALTH HAS NOT DEALT DIRECTLY WITH THE DEFENDANT SHALL NOT
29 BAR OR OTHERWISE LIMIT RECOVERY. IN ANY ACTION UNDER THIS ACT
30 THE DEFENDANT SHALL BE ENTITLED TO PROVE AS PARTIAL OR COMPLETE

1 DEFENSE TO A DAMAGE CLAIM, THAT THE PLAINTIFF HAS PASSED ON TO
2 OTHERS, WHO ARE THEMSELVES ENTITLED TO RECOVER UNDER THIS ACT,
3 SOME OR ALL OF WHAT WOULD OTHERWISE CONSTITUTE PLAINTIFF'S
4 DAMAGE.

5 Section 11. Suits by Attorney General.

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

14 (b) *Parens patriae*.--

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

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

30 (3) Any person on whose behalf an action is brought

1 under this subsection may elect to exclude from adjudication
2 the portion of the claim for monetary relief attributable to
3 him by filing notice of such election with the court within
4 such time as specified in the notice given pursuant to this
5 subsection.

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

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

15 (c) Measure of damages.--In any action brought under this
16 section, IN WHICH THERE HAS BEEN A DETERMINATION THAT THE
17 DEFENDANT AGREED TO FIX PRICES IN VIOLATION OF SECTION 4,
18 damages may be proved and assessed in the aggregate by
19 statistical or sampling methods, by the computation of illegal
20 overcharges, or by such other reasonable system of estimating
21 aggregate damages as the court in its discretion may permit
22 without the necessity of separately proving the individual claim
23 of, or amount of damage to, persons and/or public bodies on
24 whose behalf the suit was brought. The court shall exclude from
25 the amount of monetary relief awarded in such action any amount
26 of monetary relief which:

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

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

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

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

7 (2) the greater of:

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

10 (ii) an amount equal to the expenses and costs of
11 investigation, litigation and fund administration
12 attributable to the case.

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

22 (e) Attorney's fee.--In any investigation or action under
23 this act, the court ~~may, in its discretion,~~ SHALL award a <—
24 reasonable attorney's fee to a prevailing defendant upon a
25 finding that the Attorney General has acted in bad faith,
26 vexatiously, wantonly, or for oppressive reasons. Any such award
27 shall be paid from the Antitrust Enforcement Fund.

28 Section 12. Civil penalties.

29 (a) In general.--In addition to injunctive relief authorized
30 pursuant to section 9, any person who violates this act may be

1 liable for a civil penalty IN LIEU OF CRIMINAL LIABILITY FOR <—
2 SUCH VIOLATIONS in a suit by the Attorney General ~~or a district~~ <—
3 ~~attorney~~ of not more than the greater of \$100,000 or \$500 per
4 day for each and every day of said violation. THE ATTORNEY <—
5 GENERAL MAY IN HIS DISCRETION SEEK EITHER CIVIL PENALTIES OR
6 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 13 may be
10 liable for a civil penalty in a suit by the Attorney General ~~or~~ <—
11 ~~a district attorney~~ of not more than the greater of \$100,000 or
12 \$500 per day for each and every day of said violation.

13 (c) Forfeiture of franchise or right to do business.--Upon
14 petition of the Attorney General, any corporation or association
15 organized under the laws of this Commonwealth or exercising the
16 privilege of conducting business within the Commonwealth which
17 violates the terms of ~~this act or of~~ any order or decree issued <—
18 pursuant to section 9 may be subject to DISSOLUTION, SUSPENSION <—
19 OR forfeiture of all charter rights, franchises, privileges or
20 powers connected with doing business within this Commonwealth, <—
21 AS PROVIDED IN SUBSECTION (D).

22 (d) ~~Jurisdiction~~ AUTHORITY of court for forfeitures.--The <—
23 court ~~of common pleas~~ having jurisdiction over the corporation <—
24 or association may, in its discretion, and with due
25 consideration of all relevant factors, including relevant public
26 interest and competitive and economic factors, order the
27 DISSOLUTION, SUSPENSION OR forfeiture of charter rights, <—
28 franchises, privileges and powers, and the dissolution of the
29 corporation or association, or the suspension of the privilege
30 to conduct business within this Commonwealth. ~~A dissolution~~ <—

1 ~~pursuant to this section shall be conducted under the~~
2 ~~supervision of the court of common pleas in accordance with~~
3 ~~voluntary dissolution of the particular type of corporation or~~
4 ~~association.~~ IN ADDITION, THE COURT MAY APPOINT A RECEIVER OF <—
5 ASSETS OF THE COMPANY. WHEN A RECEIVER IS APPOINTED BY THE COURT
6 PURSUANT TO THIS ACT, HE SHALL HAVE THE POWER TO SUE FOR,
7 COLLECT, RECEIVE AND TAKE INTO HIS POSSESSION ALL THE GOODS AND
8 CHATTELS, RIGHTS AND CREDITS, MONEYS, AND EFFECTS, LANDS AND
9 TENEMENTS, BOOKS, RECORDS, DOCUMENTS, PAPERS, CHOSSES IN ACTION,
10 BILLS, NOTES AND PROPERTY OF EVERY DESCRIPTION OF THE PERSON OR
11 PERSONS FOR WHOM THE RECEIVER IS APPOINTED, RECEIVED BY MEANS OF
12 ANY PRACTICE DECLARED TO BE ILLEGAL AND PROHIBITED BY THIS ACT,
13 INCLUDING PROPERTY WITH WHICH SUCH PROPERTY HAS BEEN MINGLED IF
14 IT CANNOT BE IDENTIFIED IN KIND BECAUSE OF SUCH COMMINGLING, AND
15 TO SELL, CONVEY, AND ASSIGN THE SAME AND HOLD AND DISPOSE OF THE
16 PROCEEDS THEREOF UNDER THE DIRECTION OF THE COURT. ANY PERSON
17 WHO HAS SUFFERED DAMAGES AS A RESULT OF THE USE OR EMPLOYMENT OF
18 ANY UNLAWFUL PRACTICES AND SUBMITS PROOF TO THE SATISFACTION OF
19 THE COURT THAT HE HAS IN FACT BEEN DAMAGED, MAY PARTICIPATE WITH
20 GENERAL CREDITORS IN THE DISTRIBUTION OF THE ASSETS TO THE
21 EXTENT HE HAS SUSTAINED PROVABLE LOSSES. THE COURT SHALL HAVE
22 JURISDICTION OF ALL QUESTIONS ARISING IN SUCH PROCEEDINGS AND
23 MAY MAKE SUCH ORDERS AND JUDGMENTS THEREIN AS MAY BE REQUIRED.

24 (E) UNAUTHORIZED DISCLOSURE OF CONFIDENTIAL INFORMATION.--
25 ANY PERSON WHO IS AN OFFICER, EMPLOYEE, AGENT OR REPRESENTATIVE
26 OF THE DEPARTMENT WHO DISCLOSES INFORMATION CONTAINED IN OR
27 MATERIAL COMPRISING DOCUMENTARY MATERIAL AND OPINIONS OF ANY
28 COURT OF THE COMMONWEALTH CONCERNING PROCEEDINGS FOR THE
29 ISSUANCE OF AN ANTITRUST INVESTIGATIVE SUBPOENA OR MAKES SUCH
30 MATERIALS AVAILABLE TO UNAUTHORIZED PERSONS IN VIOLATION OF

1 SECTION 8(K) SHALL BE SUBJECT TO A CIVIL PENALTY PAYABLE TO THE
2 COMMONWEALTH NOT EXCEEDING \$1,000 PER VIOLATION.

3 ~~(e)~~ (F) Disposition of funds.--All civil penalties exacted <—
4 pursuant to this section shall be paid into the State Treasury
5 for the use of the Antitrust Enforcement Fund.

6 Section 13. Assurances of voluntary compliance.

7 In the administration of this act, the Attorney General may
8 accept an assurance of voluntary compliance with respect to any
9 method, act or practice deemed to be a violation of this act
10 from any person who has engaged or was about to engage in such
11 method, act or practice. Such assurance may include a
12 stipulation for voluntary payment by the alleged violator of
13 damages sustained by any person or public body. Any such
14 assurance shall be in writing and be filed with the court of
15 common pleas in which the alleged violator resides, has his
16 principal place of business, or is doing business, or the
17 Commonwealth Court. Such assurance of voluntary compliance shall
18 not be considered an admission of violation for any purpose.
19 Matters thus closed may at any time be reopened by the Attorney
20 General for further proceedings in the public interest.

21 ~~Section 14. Authorized procedures.~~ <—

22 ~~In any action brought by the Attorney General pursuant either~~
23 ~~to this act or the Federal Antitrust Laws or both for the~~
24 ~~recovery of damages or other relief, the Attorney General may~~
25 ~~enter into agreements relating to the investigation and~~
26 ~~litigation of such action with any other party plaintiff who has~~
27 ~~brought a similar action and with whom the Attorney General~~
28 ~~finds it advantageous to act jointly, or to share common~~
29 ~~expenses or to cooperate in any manner relative to such action.~~
30 ~~The Attorney General may enter into settlements with defendants~~

1 ~~which provide for the payment of money to plaintiffs.~~

2 Section ~~15~~ 14. Criminal penalties. <—

3 (a) Institution of criminal action.--The Attorney General
4 shall be permitted to institute criminal proceedings for
5 violations of ~~section 4(b)~~. SECTIONS 4 AND 5. <—

6 (b) Fine and penalty.--Any person or corporation, or any
7 officer or agent thereof, who shall knowingly violate any of the
8 provisions of ~~section 4(b)~~ SECTIONS 4 AND 5 or aid in or advise <—
9 such violation, or who, as principal, manager, director,
10 stockholder owning 10% or more of the aggregate outstanding
11 capital stock of all classes of the corporation, agent, servant
12 or employee, knowingly does any act comprising a part of such
13 violation, is guilty of a misdemeanor of the ~~first~~ SECOND degree <—
14 and shall be ~~punished by imprisonment of not more than five~~ <—
15 ~~years or a fine of the greater of \$2,000,000 or \$1,000 per day,~~
16 ~~or both imprisonment and fine.~~ PUNISHED BY A FINE NOT EXCEEDING <—
17 \$1,000,000 IF A CORPORATION OR IF ANY OTHER PERSON OR LEGAL
18 ENTITY, \$100,000 OR BY IMPRISONMENT OF NOT MORE THAN THREE YEARS
19 OR A FINE, OR BOTH IMPRISONMENT AND FINE.

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

23 Section ~~16~~ 15. Notice to Attorney General of civil action. <—

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

30 Section ~~17~~ 16. Attorney General; promulgation of rules and <—

1 regulations.

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

7 Section ~~18~~ 17. Judgment as evidence. <—

8 A final judgment or decree rendered in any civil or criminal
9 proceeding brought by or on behalf of this Commonwealth under
10 the provisions of this act to the effect that a defendant has
11 violated said act shall be prima facie evidence against such
12 defendant under this act as to all matters respecting which said
13 judgment or decree would be an estoppel as between the parties
14 thereto: PROVIDED, THAT THIS SECTION SHALL NOT APPLY TO DECREES <—
15 ISSUED UPON CONSENT OF THE PARTIES OR ASSURANCES OF VOLUNTARY
16 COMPLIANCE UNDER SECTION 13.

17 Section ~~19~~ 18. Antitrust Enforcement Fund. <—

18 (a) Fund established.--All money received by the
19 Commonwealth from July 1, 1977 as a result of actions by the
20 Attorney General pursuant to this act or to the Federal
21 Antitrust Laws shall be placed in a separate fund by the State
22 Treasurer, to be known as the "Antitrust Enforcement Fund," and
23 shall be used solely for the payment of all expenses incurred by
24 the department in connection with antitrust enforcement
25 activities.

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

1 (c) Estimates of expenditures.--Estimates of the amounts to
2 be expended by the department for antitrust enforcement
3 activities shall be submitted to the Governor for his approval
4 or disapproval as in the case of other appropriations made to
5 administrative departments, and it shall be unlawful for the
6 State Treasurer to honor any requisition for the expenditure of
7 any money out of this appropriation by the department in excess
8 of the estimates approved by the Governor. Subject to the
9 foregoing provisions, the State Treasurer shall honor each
10 requisition by the Attorney General for the amount specified in
11 such requisition, not exceeding, however, the amount in the
12 appropriation available at the time of making the requisition.
13 Section ~~20~~ 19. Limitation of actions. <—

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

24 Section ~~21~~ 20. Suspension of limitation. <—

25 Whenever any civil or criminal proceeding shall be commenced
26 by the Commonwealth to prevent, restrain, or punish a violation
27 of this act, but not including an action brought by the
28 Commonwealth under section 10, the running of the statute of
29 limitations in respect of every private right of action arising
30 under this act and based in whole or in part on any matter

1 complained of in said proceeding shall be suspended during the
2 pendency thereof and for one year thereafter: Provided,
3 however, That whenever the running of the statute of limitations
4 in respect of a cause of action arising under either section 9
5 or 10 or both shall be suspended hereunder, any action to
6 enforce such cause of action shall be forever barred unless
7 commenced either within the period of suspension or within four
8 years after the cause of action accrued, whichever is later.

9 Section ~~22~~ 21. Remedies cumulative. <—

10 The remedies provided in this act shall be cumulative.

11 Section ~~23~~ 22. Cooperation with Commonwealth and Federal <—
12 officials.

13 The Attorney General may cooperate with and coordinate the
14 enforcement of this act with officials of the Federal Government
15 and the several states, including but not limited to the sharing
16 of information and evidence obtained in accordance with section
17 8.

18 Section ~~24~~ 23. Construction of statute. <—

19 This act shall be construed in harmony with ruling judicial
20 decisions based on the common law of this Commonwealth and
21 ruling judicial interpretations of comparable Federal antitrust
22 statutes insofar as practicable. The provisions of this act
23 shall be interpreted to supersede the jurisdiction of all
24 Commonwealth regulatory agencies, commissions and bodies except
25 ~~where there is a plain repugnancy between this act and the~~ <—
26 ~~regulatory scheme in issue. Such repugnancy exists only where~~
27 ~~the regulatory scheme is so pervasive that it indicates the~~
28 ~~Legislature's intent to substitute governmental supervision for~~
29 ~~the regulatory effects of competition.~~ AS TO ACTIVITIES WHICH <—
30 ARE EXEMPTED FROM THE ACT UNDER SECTION 6(B).

1 Section ~~25~~ 24. Effective date.

←

2 This act shall take effect immediately.