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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 1344 Session of  
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INTRODUCED BY MUTH, L. WILLIAMS, FONTANA, KEARNEY, CAPPELLETTI,  
COSTA, STREET AND SAVAL, SEPTEMBER 29, 2022

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REFERRED TO CONSUMER PROTECTION AND PROFESSIONAL LICENSURE,  
SEPTEMBER 29, 2022

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AN ACT

1 Providing for cause of action for antitrust conduct, for  
2 indirect purchaser recovery under State antitrust laws and  
3 for premerger notice of health care mergers and transactions;  
4 and imposing criminal penalties.

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

8 Section 1. Short title.

9 This act shall be known and may be cited as the Pennsylvania  
10 Small Business and Consumer Protection Act.

11 Section 2. Findings and declaration of purpose.

12 (a) Findings.--The General Assembly finds that:

13 (1) For decades, large companies have purchased smaller  
14 businesses creating concentrated power in particular sectors  
15 of this Commonwealth's economy, including energy,  
16 telecommunications and health care.

17 (2) These corporate monopolies use a dominant market  
18 share to harm consumers through price gouging, collusion and  
19 other predatory tactics that harm small businesses and their  
20 workers.

21 (b) Purpose.--The purpose of this act is to promote open and  
22 fair trade in the marketplaces of this Commonwealth by  
23 prohibiting restraints of trade that are secured through  
24 monopolistic or collusive practices and that act or tend to act  
25 to decrease competition between and among persons engaged in  
26 commerce and trade.

27 Section 3. Definitions.

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

1 "Entity." The term means the same as in 15 Pa.C.S. § 102  
2 (relating to definitions) and includes a natural person, the  
3 Commonwealth, a Commonwealth agency, municipal authority,  
4 political subdivision or any other legal entity.

5 "Monopoly." The power to control prices and exclude  
6 competition as a buyer or seller.

7 "Monopsony." A market structure in which a firm is the sole  
8 purchaser of a good or service.

9 "Trade or commerce." Economic activity directly or  
10 indirectly affecting the people of this Commonwealth.

11 Section 4. Prohibited acts.

12 (a) Restraints of trade.--A contract, a combination in the  
13 form of trust or otherwise or a conspiracy in restraint of trade  
14 or commerce shall be unlawful.

15 (b) Monopolize or monopsonize.--It shall be unlawful for an  
16 entity to monopolize or monopsonize, to attempt to monopolize or  
17 monopsonize or to combine or conspire with another entity to  
18 monopolize or monopsonize in any part of trade or commerce.

19 (c) Acquisitions.--It shall be unlawful for an entity to  
20 acquire, directly or indirectly, the whole or any part of the  
21 stock, share capital or other equity interest of another entity  
22 or the whole or any part of the assets of another entity if any  
23 of the following apply:

24 (1) The effect of the acquisition may substantially  
25 lessen competition.

26 (2) The effect of the acquisition tends to create a  
27 monopoly or monopsony of any part of trade or commerce.

28 (d) Market power.--It shall be unlawful for any entity with  
29 market power in the conduct of any business, trade or commerce,  
30 in any labor market, or in the furnishing of any service in this

1 Commonwealth to abuse that market power.

2 Section 5. Enforcement by Attorney General.

3 (a) Action on behalf of Commonwealth.--If the Attorney  
4 General has reason to believe that an entity has engaged in, is  
5 engaging in or is about to engage in an act or practice that is  
6 unlawful under this act, the Attorney General may bring a civil  
7 action in the name of the Commonwealth against the entity to:

8 (1) Obtain a declaratory judgment that the action or  
9 practice violates this act.

10 (2) Enjoin an act or practice that violates this act by  
11 issuing a temporary restraining order, an ex parte temporary  
12 restraining order or a preliminary or permanent injunction,  
13 without bond.

14 (3) Recover a civil penalty, not less than \$100,000, for  
15 each violation of this act or of an injunction, judgment or  
16 consent agreement issued or entered into under this act.

17 (4) Obtain an order requiring divestiture of assets:

18 (i) acquired in violation of this act and after the  
19 court determines that divestiture is necessary to avoid  
20 the creation or continuation of a monopoly or to avoid a  
21 likely substantial lessening of competition that results  
22 from a transaction found to be in violation of this act;  
23 or

24 (ii) to restore competition to a line of commerce  
25 that has been eliminated by a violation of this act.

26 (5) Recover actual damages or restitution, and  
27 disgorgement, on behalf of the Commonwealth and its agencies  
28 that are injured either directly or indirectly through a  
29 violation of this act.

30 (b) Action on behalf of resident.--The Attorney General may

1 bring a civil action in the name of the Commonwealth on behalf  
2 of an entity residing within this Commonwealth to secure damages  
3 or restitution, and disgorgement, for losses incurred directly  
4 or indirectly through any violation of this act.

5 (c) Recovery authorized.--The Attorney General shall recover  
6 the costs of an investigation, expert costs and reasonable  
7 attorney fees and costs if successful in an action initiated  
8 under this section.

9 (d) Jurisdiction.--A civil action under this section may be  
10 brought in Commonwealth Court or in the court of common pleas of  
11 the county in which any party resides or has a principal place  
12 of business or in the Court of Common Pleas of Dauphin County.  
13 Section 6. Measurement of damages.

14 If a court has found a violation of this act, damages may be  
15 proved and assessed in the aggregate by statistical or sampling  
16 methods, by the computation of illegal overcharges or by other  
17 reasonable systems of estimating aggregate damages, as the court  
18 in its discretion may permit, without the necessity of  
19 separately proving the individual claim of, or amount of damage  
20 to, entities on whose behalf the suit was brought.

21 Section 7. Premerger notification regarding health care.

22 (a) Legislative intent.--

23 (1) It is the intent of the General Assembly to ensure  
24 that competition beneficial to consumers in health care  
25 markets across this Commonwealth remains vigorous and robust.

26 (2) The General Assembly supports that intent through  
27 this section, which provides the Office of Attorney General  
28 with notice of all material health care transactions in this  
29 Commonwealth so that the Office of Attorney General has the  
30 information necessary to determine whether an investigation

1 under this act is warranted for potential anticompetitive  
2 conduct and consumer harm.

3 (3) This section is intended to supplement the Hart-  
4 Scott-Rodino Act by requiring notice of transactions not  
5 reportable under the Hart-Scott-Rodino Act's reporting  
6 thresholds and by providing the Office of Attorney General  
7 with a copy of any filings made pursuant to the Hart-Scott-  
8 Rodino Act.

9 (b) Notice of material change.--

10 (1) Not less than 120 days prior to the effective date  
11 of a transaction that results in a material change, the  
12 parties to the transaction shall submit written notice to the  
13 Office of Attorney General of the material change.

14 (2) For the purposes of this section, a material change  
15 includes a merger, acquisition or contracting affiliation  
16 between two or more entities of the following types:

17 (i) health care facilities;

18 (ii) health care facility systems; or

19 (iii) provider organizations.

20 (3) A material change includes proposed changes  
21 identified in paragraph (2) between a Commonwealth entity and  
22 an out-of-state entity where the out-of-state entity  
23 generates at least \$10,000,000 in health care services  
24 revenue from patients residing in this Commonwealth and the  
25 entities are of the types identified in paragraph (2). A  
26 party to a material change that is licensed or operating in  
27 this Commonwealth shall submit a notice as required under  
28 this section.

29 (4) For purposes of paragraph (2), a merger, acquisition  
30 or contracting affiliation between two or more health care

1 facilities, health care facility systems or provider  
2 organizations only qualifies as a material change if the  
3 health care facilities, health care facility systems or  
4 provider organizations did not previously have common  
5 ownership or a contracting affiliation.

6 (c) Notice requirements.--

7 (1) The written notice provided by the parties, as  
8 required by subsection (b), shall include:

9 (i) The names of the parties and their current  
10 business addresses.

11 (ii) Identification of all locations where health  
12 care services are currently provided by each party.

13 (iii) Identification of all health care  
14 practitioners who currently provide health care services  
15 for each party.

16 (iv) A brief description of the nature and purpose  
17 of the proposed material change.

18 (v) The anticipated effective date of the proposed  
19 material change.

20 (2) Nothing in this section shall be construed to  
21 prohibit the parties to a material change from voluntarily  
22 providing additional information to the Office of Attorney  
23 General.

24 (d) Requests for additional information.--

25 (1) The Office of Attorney General must make a request  
26 for additional information from the parties under this act  
27 within 30 days of the date notice is received under  
28 subsections (b) and (c).

29 (2) Nothing in this subsection shall be construed to  
30 preclude the Office of Attorney General from conducting an

1 investigation or enforcing Federal or State laws at a later  
2 date.

3 (e) Premerger notification.--A health care practitioner or  
4 provider organization conducting business in this Commonwealth  
5 that files a premerger notification with the Federal Trade  
6 Commission or the United States Department of Justice, in  
7 compliance with the Hart-Scott-Rodino Act, shall provide a copy  
8 of the filing to the Office of Attorney General. Providing a  
9 copy of the Hart-Scott-Rodino Act filing to the Office of  
10 Attorney General satisfies the notice requirement under  
11 subsection (c).

12 (f) Materials submitted to the Office of Attorney General.--

13 (1) Information submitted to the Office of Attorney  
14 General pursuant to this section shall be maintained and used  
15 by the Office of Attorney General in the same manner and  
16 under the same protections as provided under this act.

17 (2) Nothing in this section shall be construed to limit  
18 the Office of Attorney General's authority under this act.

19 (g) Penalty for noncompliance.--An entity that fails to  
20 comply with this section is liable to the Commonwealth for a  
21 civil penalty of not more than \$200 per day for each day of  
22 noncompliance.

23 (h) Definitions.--As used in this section, the following  
24 words and phrases shall have the meanings given to them in this  
25 subsection unless the context clearly indicates otherwise:

26 "Acquisition." An agreement, arrangement or activity, the  
27 consummation of which results in an entity acquiring, directly  
28 or indirectly, the control of another entity or the ability to  
29 influence the competitive conduct of the target firm, and  
30 includes the acquisition of voting securities and noncorporate

1 interests, such as assets, capital stock, membership interests  
2 or equity interests.

3 "Contracting affiliation." The formation of a relationship  
4 between two or more entities that permits the entities to  
5 negotiate jointly with insurers or third-party administrators  
6 over rates for professional medical services or for one entity  
7 to negotiate on behalf of the other entity with insurers or  
8 third-party administrators over rates for professional medical  
9 services.

10 "Hart-Scott-Rodino Act." Title II of the Clayton Antitrust  
11 Act (Public Law 63-212, 15 U.S.C. § 18a).

12 "Health care facility." As defined in section 103 of the act  
13 of July 19, 1979 (P.L.130, No.48), known as the Health Care  
14 Facilities Act.

15 "Health care facility system." Either of the following:

16 (1) a parent corporation of one or more health care  
17 facilities and an entity affiliated with the parent  
18 corporation through ownership or control; or

19 (2) a health care facility and an entity affiliated with  
20 the health care facility through ownership.

21 "Health care practitioner." As defined in section 103 of the  
22 Health Care Facilities Act.

23 "Health care services." Medical, surgical, chiropractic,  
24 hospital, optometric, podiatric, pharmaceutical, ambulance,  
25 mental health, substance use disorder, therapeutic,  
26 preventative, diagnostic, curative, rehabilitative, palliative,  
27 custodial and other services relating to the prevention, cure or  
28 treatment of illness, injury or disease.

29 "Health care services revenue." The total revenue received  
30 for health care services in the previous 12 months.

1 "Insurer." As defined in 40 Pa.C.S. § 9103 (relating to  
2 definitions).

3 "Merger." A consolidation of two or more organizations,  
4 including two or more organizations joining through a common  
5 parent organization or two or more organizations forming a new  
6 organization. The term does not include a corporate  
7 reorganization.

8 "Provider organization." A corporation, partnership,  
9 business trust, association or organized group of entities,  
10 whether incorporated or not, that is in the business of health  
11 care delivery or management and that represents seven or more  
12 health care practitioners in contracting with insurers or third-  
13 party administrators for the payments of health care services.  
14 The term includes a physician organization, physician-hospital  
15 organization, independent practice association, provider network  
16 and accountable care organization.

17 "Third-party administrator." An entity that administers  
18 payments for health care services on behalf of a client in  
19 exchange for an administrative fee.

20 Section 8. Civil investigation.

21 (a) Power of Attorney General to conduct.--

22 (1) If the Attorney General has reason to believe that  
23 an entity, whether foreign or domestic, has engaged in or is  
24 engaging in a violation of this act or of a Federal antitrust  
25 law that may be enforced by the Attorney General, the  
26 Attorney General may initiate an investigation.

27 (2) As part of an investigation under this section, the  
28 Attorney General may administer oaths and affirmations,  
29 subpoena witnesses and documentary material, propound  
30 interrogatories to be answered in writing under oath and

1 collect evidence.

2 (3) The Attorney General may use the information  
3 obtained under this section as the Attorney General  
4 determines necessary in the civil enforcement of this act or  
5 Federal antitrust law that may be enforced by the Attorney  
6 General, including presentation before a court.

7 (4) An interrogatory or subpoena served under this  
8 subsection shall inform the party served of the right to file  
9 a petition as provided in subsection (b).

10 (b) Petition authorized.--

11 (1) Not later than five business days after the service  
12 of an interrogatory or subpoena, or at any time before the  
13 return date specified in the interrogatory or subpoena, the  
14 party served under this section may file in Commonwealth  
15 Court a petition for an order modifying or setting aside the  
16 interrogatory or subpoena.

17 (2) The party must serve the Attorney General with a  
18 copy of the petition.

19 (3) The petitioner may raise an objection or privilege  
20 that would be available under this act or upon service of a  
21 subpoena in a civil action.

22 (c) Location for production of documentary material.--

23 (1) If documentary material that the Attorney General  
24 seeks to obtain by subpoena is not located within this  
25 Commonwealth and is not reducible to electronic reproduction  
26 and transmission, the party subpoenaed may make the  
27 documentary material available to the Attorney General to  
28 examine the documentary material at the place where the  
29 documentary material is located.

30 (2) The Attorney General may designate representatives,

1 including officials of the state in which the documentary  
2 material is located, to inspect the documentary material on  
3 the Attorney General's behalf.

4 (3) The Attorney General may respond to similar requests  
5 from officials of other states and may inspect documentary  
6 material on their behalf.

7 (d) Investigation enforcement order.--

8 (1) The Attorney General may apply to Commonwealth Court  
9 for an order compelling compliance of any party who fails to  
10 obey a subpoena or answer an interrogatory issued under this  
11 section without lawful excuse and upon reasonable notice to  
12 all entities affected by the subpoena or interrogatory.

13 (2) The Attorney General may request that an individual  
14 who refuses to comply with a subpoena or answer an  
15 interrogatory on the grounds that the testimony or  
16 documentary material may incriminate the individual be  
17 ordered by the court to provide the testimony or documentary  
18 material.

19 (3) Except for a prosecution for perjury, an individual  
20 who complies with a court order to provide testimony or  
21 matter after asserting a privilege against self-incrimination  
22 to which the individual is entitled by law shall not have the  
23 testimony or documentary material provided, or evidence  
24 derived therefrom, or received against the individual used in  
25 a criminal investigation or proceeding.

26 (e) Duty to comply.--An entity upon which an interrogatory  
27 or subpoena is served under this section shall comply with the  
28 terms of the interrogatory or subpoena unless otherwise provided  
29 by this section or by court order.

30 (f) Liability.--

1 (1) An entity that:

2 (i) fails to appear with the intent to avoid, evade  
3 or prevent compliance, in whole or in part, with an  
4 investigation under this act or that removes from a  
5 place, conceals, withholds, mutilates, alters, destroys  
6 or by other means falsifies a matter or documentary  
7 material in the possession, custody or control of an  
8 entity subject to the request or subpoena; or

9 (ii) knowingly conceals relevant information with  
10 the intent to avoid, evade or prevent compliance shall be  
11 liable for a civil penalty as provided in this  
12 subsection.

13 (2) The Attorney General may, upon petition to  
14 Commonwealth Court, recover a civil penalty not to exceed  
15 \$25,000. If a civil penalty is assessed in or as the result  
16 of litigation, the Attorney General is entitled to reasonable  
17 attorney fees and costs.

18 (g) Access to information of other agencies and  
19 confidentiality.--

20 (1) If criminal or civil intelligence, records of  
21 investigations, investigative information or other  
22 information held by a Federal or State agency is available to  
23 the Attorney General on a confidential or restricted basis,  
24 the Attorney General may obtain and use the information  
25 unless otherwise prohibited by law.

26 (2) A record of an investigation or intelligence or  
27 investigative information that is exempt from disclosure  
28 under the act of February 14, 2008 (P.L.6, No.3), known as  
29 the Right-to-Know Law, shall remain confidential and be  
30 exempt from disclosure under that act.

1 (h) Records of investigation.--A written response, testimony  
2 or document obtained by the Attorney General under this section,  
3 or information derived directly or indirectly from a written  
4 response, testimony or document obtained by the Attorney  
5 General, shall be deemed a record of an investigation and shall  
6 be exempt from disclosure under the Right-to-Know Law.

7 Section 9. Criminal penalties.

8 An entity, including an agent or officer of the entity, that  
9 knowingly commits an unlawful act under section 4(a) or (b) is  
10 guilty of a felony of the third degree and, upon conviction,  
11 shall be sentenced to a term of imprisonment of not more than  
12 four years or sentenced to pay a fine of not more than  
13 \$1,000,000, or both. If the entity that knowingly committed an  
14 unlawful act under section 4(a) or (b) is a corporation, the  
15 corporation shall be sentenced to pay a fine of not more than  
16 \$1,000,000. An indictment or information based on a violation of  
17 any of the provisions of this act must be found within five  
18 years after the violation. No criminal proceeding barred by a  
19 prior limitation shall be revived by this act.

20 Section 10. Standing.

21 An individual or entity who has suffered damages as a result  
22 of prohibited acts enumerated in section 4 shall have standing  
23 to commence an action in a court of competent jurisdiction. An  
24 individual or entity that prevails in an action under this act  
25 shall be entitled to reasonable attorney fees, court costs and  
26 any other legal and equitable relief that the court deems  
27 appropriate to make the individual or entity whole.

28 Section 11. Cooperation with Federal Government and other  
29 states.

30 The Attorney General may cooperate with and coordinate

1 enforcement of this act and Federal antitrust law that may be  
2 enforced by the Attorney General with the Federal Government and  
3 the several states, including using and sharing information and  
4 evidence obtained under this act.

5 Section 12. Exceptions.

6 This act shall not make illegal an activity or conduct exempt  
7 under any statute of the United States or the Commonwealth.

8 Section 13. Applicability.

9 This act shall not apply to a cooperative association or an  
10 employee-owned enterprise, corporate or otherwise, of farmers,  
11 gardeners or dairy producers, including livestock farmers and  
12 fruit growers, nor to a contract, agreement or arrangement made  
13 by the association or enterprise, nor to a bona fide labor  
14 union.

15 Section 14. Action not barred as affecting or involving  
16 interstate or foreign commerce.

17 No action under this act shall be barred on the grounds that  
18 the activity or conduct complained of affects or involves  
19 interstate or foreign commerce.

20 Section 15. Remedies cumulative.

21 The remedies afforded by this act are cumulative.

22 Section 16. Effective date.

23 This act shall take effect in 60 days.