

THE GENERAL ASSEMBLY OF PENNSYLVANIA

# HOUSE BILL

## No. 175

Session of  
1975

INTRODUCED BY MESSRS. SCHMITT, RENNINGER, MRS. GILLETTE, MESSRS. BRUNNER, A. K. HUTCHINSON, ZEARFOSS, MRS. TOLL, MESSRS. MANDERINO, SHANE, FINEMAN, ROMANELLI, LAUGHLIN, COHEN, TRELLO, ROSS, ABRAHAM, SCHEAFFER, IRVIS, SCHWEDER, TAYLOR, WOJDAK, DOYLE, GEORGE, GREENFIELD, MORRIS, BERLIN, PIEVSKY, MUSTO, SHUPNIK, GREEN, O'KEEFE, PERRY, LEDERER, LETTERMAN, MRS. KERNICK, MESSRS. COWELL, ZORD, REED, FEE, MILLIRON, PRATT, MENHORN, ZEARFOSS, BENNETT, KOWALYSHYN, WARGO, RUGGIERO AND TADDONIO, JANUARY 28, 1975

REFERRED TO COMMITTEE ON CONSUMER PROTECTION, JANUARY 28, 1975

### AN ACT

1 Creating the Department of Consumer Advocate, establishing its  
2 powers and duties, and providing the method of its financing.

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

5 Section 1. Short Title.--This act shall be known and may be  
6 cited as the "Consumer Advocate Act."

7 Section 2. Definitions.--As used in this act:

8 "Consumer" means any person (i) who makes a direct use or is  
9 the ultimate recipient of a product or a service supplied by any  
10 person subject to a regulatory agency or (ii) who may be a  
11 direct user or ultimate recipient of a product or service  
12 supplied by any person subject to a regulatory agency and may be  
13 affected in any way by any action within the authority of a  
14 regulatory agency. The term "consumer" includes any "consumer"

1 as defined in the act of April 28, 1937 (P.L.417, No.105), known  
2 as the "Milk Marketing Law," and any "insured" as used in the  
3 act of June 11, 1947 (P.L.538, No.246), known as "The Casualty  
4 and Surety Rate Regulatory Act," and any "person" or  
5 "corporation" as defined in section 2 of the act of May 28, 1937  
6 (P.L.1053, No.286), known as the "Public Utility Law."

7 "Regulatory agencies" means the Milk Marketing Board, the  
8 Pennsylvania Public Utility Commission and the Insurance  
9 Department.

10 Section 3. Department of Consumer Advocate Established.--  
11 There is hereby established the Department of Consumer Advocate  
12 to represent the interests of consumers before State Regulatory  
13 Agencies of this Commonwealth.

14 Section 4. Department of Consumer Advocate.--The Department  
15 of Consumer Advocate shall be headed by the Consumer Advocate  
16 who shall be appointed by the Governor and shall serve at the  
17 pleasure of the Governor. The Consumer Advocate shall be a  
18 person who by reason of training, experience and attainment is  
19 qualified to represent the interests of consumers. His  
20 compensation shall be set by the Executive Board.

21 Section 5. Assistant Consumer Advocates; Employees.--The  
22 Consumer Advocate shall appoint with the approval of the  
23 Governor, attorneys as assistant consumer advocates and such  
24 additional clerical, technical and professional staff as may be  
25 appropriate, and may contract for such additional services as  
26 shall be necessary for the performance of his function. The  
27 compensation of assistant consumer advocates and such  
28 professional and clerical staff shall be set by the Executive  
29 Board.

30 Section 6. Powers and Duties of the Consumer Advocate.--(a)

1 The Consumer Advocate shall have the power and the duty to  
2 represent the interests of consumers before the regulatory  
3 agencies in any matter properly before such agencies, initiating  
4 proceedings if in his judgment such may be necessary, and before  
5 any court in connection with any matter involving regulation by  
6 the regulatory agencies, whether on appeal or otherwise  
7 initiated. Specifically and without limitation, the Consumer  
8 Advocate shall be an affected party before each regulatory  
9 agency and an aggrieved party on appeal from any action or  
10 decision by a regulatory agency.

11 (b) The Consumer Advocate may exercise discretion in  
12 determining whether or not to participate in or initiate any  
13 particular proceeding and in so determining, may consider the  
14 resources available and the substantiality of the effect of the  
15 proceeding on the interest of consumers. The Consumer Advocate  
16 may refrain from intervening when in the judgment of the  
17 Consumer Advocate such is not necessary to represent adequately  
18 the interest of consumers.

19 (c) Any action brought by the Consumer Advocate before a  
20 court or an agency of this Commonwealth shall be brought in the  
21 name of the person serving as Consumer Advocate and shall not be  
22 brought in the name of the Commonwealth. The Consumer Advocate  
23 may name a consumer or group of consumers in whose name the  
24 action may be brought or may join with a consumer or group of  
25 consumers in bringing the action.

26 Section 7. Reports.--The Consumer Advocate shall annually  
27 transmit to the Governor and the General Assembly and shall make  
28 available to the public an annual report on the conduct of the  
29 department. The Consumer Advocate shall make recommendations as  
30 may from time to time be necessary or desirable to protect the

1 interest of consumers.

2 Section 8. Subpoenas.--(a) Whenever the Consumer Advocate  
3 has reason to believe that any person may have knowledge, or be  
4 in possession, custody or control of any documentary material,  
5 pertinent to a pending proposal or proceeding before a  
6 regulatory agency, the Consumer Advocate may issue in writing  
7 and cause to be served upon the person a subpoena which:

8 (1) compels the attendance of such person and requires that  
9 person to submit to examination and give testimony under oath;

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

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

14 (b) The Consumer Advocate may issue successive subpoenas to  
15 the same person in order to obtain additional information  
16 pertinent to an ongoing proceeding.

17 Section 9. Duties of Regulatory Agencies.--In dealing with  
18 any proposed action which may substantially affect the interest  
19 of consumers, including but not limited to a proposed change of  
20 rates and the adoption of rules, regulations, guidelines,  
21 orders, standards or final policy decisions, each regulatory  
22 agency shall:

23 (1) Notify the Consumer Advocate when notice of the proposed  
24 action is given to the public or at a time fixed by agreement  
25 between the Consumer Advocate and the regulatory agency in a  
26 manner to assure the Consumer Advocate reasonable notice and  
27 adequate time to determine whether to intervene in such matter.

28 (2) Consistent with its other statutory responsibilities,  
29 take such action with due consideration to the interest of  
30 consumers.

1       Section 10.   Savings Provision; Construction.--(a) Nothing  
2   contained herein shall in any way limit the right of any  
3   consumer to bring a proceeding before either a regulatory agency  
4   or a court.

5       (b)   Nothing contained herein shall be construed to impair  
6   the statutory authority or responsibility of any regulatory  
7   agency to protect and promote the interest of consumers.

8       Section 11.   Appropriation; Surcharge by Pennsylvania Public  
9   Utility Commission.--(a) For the administration and performance  
10  of the duties of the Consumer Advocate relating to proceedings  
11  before the Pennsylvania Public Utility Commission, related  
12  judicial proceedings and other such matters handled by the  
13  Department of Consumer Advocate, there is hereby appropriated to  
14  the Department of Consumer Advocate for each fiscal year, an  
15  amount equal to 10% of the budget of the Pennsylvania Public  
16  Utility Commission, and such amount shall be added as a  
17  surcharge to the regulatory expenses assessed by the  
18  Pennsylvania Public Utility Commission pursuant to section 1201  
19  of the act of May 28, 1937 (P.L.1053, No.286), known as the  
20  "Public Utility Law." Any funds appropriated hereunder that are  
21  unexpended or unencumbered at the end of the fiscal year shall  
22  be deducted from the appropriation for the succeeding fiscal  
23  year.

24       (b)   The Consumer Advocate shall maintain a record of all  
25  expenditures and shall allocate a proportion thereof to reflect  
26  on a reasonable basis the cost of proceeding before the  
27  Pennsylvania Public Utility Commission and related judicial  
28  proceedings and other such matters handled by the Department of  
29  Consumer Advocate.

30       (c)   In addition to the moneys appropriated in subsection

1 (a), the sum of \$1,800,000 is hereby appropriated to the  
2 Department of Consumer Advocate.  
3 Section 12. Effective Date.--This act shall take effect  
4 immediately.