

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 191 Session of 1991

INTRODUCED BY BROUJOS, BOYES, JOSEPHS, FREEMAN, OLIVER, DeLUCA, TANGRETTI, COY, MELIO, DeWEESE, KUKOVICH, PETRARCA, PESCI, CALTAGIRONE, VEON, LINTON, McNALLY, FREIND, CAPPABIANCA, JAROLIN, NAHILL, RITTER, BOWLEY, G. SNYDER, KOSINSKI, HAYDEN, BLAUM, TIGUE, STABACK, D. W. SNYDER, COLE, BATTISTO, PISTELLA, COHEN, DALEY, COWELL, CAWLEY, GIGLIOTTI, HALUSKA, MAIALE, RUDY, STISH, STURLA, MIHALICH, KASUNIC, MICHLOVIC, STETLER, HERMAN, ITKIN, WOZNIAK, GEORGE, LLOYD, BUTKOVITZ, MRKONIC, ROEBUCK, THOMAS, DONATUCCI, KAISER, GAMBLE, TRELLO, COLAFELLA AND SURRA, JANUARY 30, 1991

REFERRED TO COMMITTEE ON JUDICIARY, JANUARY 30, 1991

AN ACT

1 Prohibiting contracts, combinations and conspiracies in  
2 restraint of trade or commerce; prohibiting monopolies and  
3 attempts to monopolize trade or commerce; prescribing powers  
4 and duties of certain State officers and agencies; providing  
5 for remedies, fines and penalties for violations of the act;  
6 and barring certain causes of action.

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11 The General Assembly of the Commonwealth of Pennsylvania  
12 hereby enacts as follows:

13 Section 1. Short title.

14 This act shall be known and may be cited as the Pennsylvania  
15 Antitrust Act.

16 Section 2. Declaration of policy.

17 The General Assembly finds and declares that the purpose of  
18 this act is to promote the public interest by a competitive  
19 economic environment and to protect the economic welfare of  
20 consumers, large and small businesses and the Commonwealth.

21 Section 3. Definitions.

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

25 "Person." An individual, corporation, business trust,  
26 partnership, association or any other legal entity. The term  
27 includes a political subdivision.

28 "Political subdivision." The term includes an agency, a  
29 board, a commission or an authority of a political subdivision.

30 "Relevant market." The geographical area of actual or

1 potential competition in a line of trade or commerce, all or any  
2 part of which is within this Commonwealth.

3 "Trade or commerce." The conduct of a business for profit or  
4 not-for-profit producing or providing goods, commodities,  
5 property or services and includes, without limitation,  
6 advertising, franchising, solicitation, offering for sale, lease  
7 or distribution of a service or property, tangible or  
8 intangible, real, personal or mixed, or any other article of  
9 commerce.

10 "Trade secret." Anything which constitutes, represents,  
11 evidences or records secret or confidential scientific,  
12 technical, merchandising, production, management or commercial  
13 information.

14 Section 4. Contract, combination or conspiracy to restrain or  
15 monopolize trade.

16 A contract, combination or conspiracy between two or more  
17 persons in restraint of, or to monopolize, trade or commerce in  
18 a relevant market is unlawful.

19 Section 5. Establishment, maintenance or use of a monopoly.

20 The establishment, maintenance or use of a monopoly, or any  
21 attempt to establish a monopoly of trade or commerce in a  
22 relevant market by any person, for the purpose of excluding or  
23 limiting competition or controlling, fixing or maintaining  
24 prices, is unlawful.

25 Section 6. Exclusions.

26 (a) Human labor.--Labor of a human being is not a commodity  
27 or an article of commerce.

28 (b) Cooperative organizations.--This act shall not be  
29 construed to forbid the existence and operation of any labor,  
30 agricultural or horticultural organization instituted for the

1 purpose of mutual help, while lawfully carrying out its  
2 legitimate objects.

3 (c) Commonwealth and political subdivisions.--This act does  
4 not apply to the Commonwealth or political subdivisions, or  
5 officials or employees of the Commonwealth or political  
6 subdivisions acting in their official capacities.

7 (d) Public utilities.--This act does not apply to activities  
8 of, or to the rates charged by, a rural electric cooperative  
9 corporation, as defined in the act of June 21, 1937 (P.L.1969,  
10 No.389), known as the Electric Cooperative Corporation Act, or a  
11 public utility as defined in 66 Pa.C.S. § 102 (relating to  
12 definitions).

13 (e) Competitively bid State contracts.--Persons bidding on a  
14 contract let or to be let for competitive bidding by a  
15 governmental agency, to the extent that those activities are  
16 regulated by the act of October 28, 1983 (P.L.176, No.45), known  
17 as the Antibid-Rigging Act, shall not be liable in actions under  
18 this act.

19 Section 7. Investigation.

20 (a) Required attendance.--

21 (1) Whenever the Office of Attorney General believes  
22 that a person may be in possession, custody or control of  
23 documentary material or may have information relevant to the  
24 subject matter of an investigation for the purpose of  
25 ascertaining whether a person is or has been engaged in a  
26 violation of this act, he may require the attendance and  
27 testimony of witnesses and the production of books, accounts,  
28 papers, records, documents and files relating to the  
29 investigation; and, for this purpose, the Attorney General or  
30 his representatives may sign subpoenas, administer oaths or

1 affirmations, examine witnesses and receive evidence during  
2 the investigation.

3 (2) A request for information shall state the subject  
4 matter of the investigation, the conduct constituting the  
5 alleged violation which is under investigation and the  
6 provisions of this act applicable to the alleged violation. A  
7 request for documentary material shall describe the material  
8 to be produced with reasonable particularity so as to fairly  
9 identify the documents demanded, provide a return date within  
10 which the material is to be produced and identify the member  
11 of the Attorney General's staff to whom the material shall be  
12 given.

13 (3) In case of disobedience of a subpoena or the  
14 contumacy of a witness appearing before the Attorney General  
15 or his representative, the Attorney General or his  
16 representative may, for good cause shown, invoke the aid of a  
17 court of record of the Commonwealth, and the court may  
18 thereupon issue an order requiring the person subpoenaed to  
19 obey the subpoena or to give evidence or to produce books,  
20 accounts, papers, records, documents and files relative to  
21 the matter in question. Failure to obey an order of the court  
22 may be punished by the court as a contempt.

23 (b) Confidentiality.--

24 (1) No information, procedure, testimony or documentary  
25 material produced under a demand under this section shall,  
26 unless otherwise ordered by a court for good cause shown, be  
27 produced for inspection or copying by, nor shall the contents  
28 thereof be disclosed to, a person other than the Attorney  
29 General or his representative without the consent of the  
30 person who produced the information or material; except that

1 the Attorney General or his representative shall disclose  
2 information or documentary material produced under this  
3 section or information derived therefrom to officials of a  
4 governmental agency affected by the alleged violation, and,  
5 at the discretion of the Attorney General, may disclose to  
6 the United States Department of Justice, the Federal Trade  
7 Commission, another state or territory of the United States  
8 or the District of Columbia, for use by that agency or entity  
9 in connection with an investigation or proceeding within its  
10 jurisdiction and authority, upon the prior certification of  
11 an appropriate official of the agency that the information  
12 shall be maintained in confidence other than use for official  
13 purposes.

14 (2) Under reasonable terms and conditions as the  
15 Attorney General or his representative shall prescribe, the  
16 documentary material shall be available for inspection and  
17 copying by the person who produced the material or a duly  
18 authorized representative of that person. The Attorney  
19 General or his representative may use such documentary  
20 material or information or copies thereof as he determines  
21 necessary in the enforcement of this act, including  
22 presentation before any court. Material which contains trade  
23 secrets or other highly confidential matter shall not be  
24 presented except with the approval of the court in which a  
25 proceeding is pending after adequate notice to the person  
26 furnishing the material.

27 (c) Limited disclosure.--At the Attorney General's  
28 discretion, the Attorney General may disclose information  
29 discovered under this section to the United States Department of  
30 Justice, the District of Columbia, another agency of the

1 Commonwealth or a political subdivision, upon the prior  
2 certification of an appropriate official of the requestor that  
3 the information will be maintained in confidence other than use  
4 for official purposes and the requestor will abide by the  
5 provisions of subsection (b).

6 (d) Wrongful disclosure of information.--Any person who  
7 publishes or communicates any procedure, testimony or material  
8 produced, which is required to be kept confidential pursuant to  
9 this section, commits a misdemeanor of the third degree.

10 Section 8. Violations; injunctive or equitable relief; civil  
11 penalties.

12 The Attorney General may bring an action for appropriate  
13 injunctive or other equitable relief and civil penalties in the  
14 name of the Commonwealth for a violation of this act. The court  
15 may assess for benefit of the Commonwealth a civil penalty of  
16 not more than \$100,000 for each violation of this act and for  
17 the cost of suit, including reasonable attorney fees.

18 Section 9. Damages and injunctive relief.

19 (a) Commonwealth or political subdivision.--The Commonwealth  
20 or a political subdivision threatened with injury or injured  
21 directly or indirectly in its business or property by a  
22 violation of this act may bring an action for appropriate  
23 injunctive or other equitable relief, damages sustained by  
24 reason of a violation of this act, and, as determined by the  
25 court, interest on the damages from the date of the complaint,  
26 taxable costs and reasonable attorney fees.

27 (b) Other persons.--Any other person threatened with injury  
28 or injured directly or indirectly in his or her business or  
29 property by a violation of this act may bring an action for  
30 appropriate injunctive or other equitable relief against

1 immediate irreparable harm, damages sustained by reason of a  
2 violation of this act, and, as determined by the court, interest  
3 on the damages from the date of the complaint, taxable costs and  
4 reasonable attorney fees.

5 (c) Damages.--Damages recoverable under this section by  
6 persons shall be three times the actual damages sustained  
7 thereby, taxable costs and reasonable attorney fees. Damages  
8 recoverable under this section by the Commonwealth shall be  
9 actual damages sustained, taxable costs and reasonable attorney  
10 fees. Damages are subject to the following:

11 (1) Limitations on damages recoverable under the  
12 National Cooperative Research Act of 1984 (Public Law 98-462,  
13 15 U.S.C. § 4301 et seq.) and the Export Trading Company Act  
14 of 1982 (Public Law 97-290, 15 U.S.C. § 4001 et seq.) shall  
15 apply to actions under this section.

16 (2) If the conduct which gives rise to a violation of  
17 this act also gives rise to a violation of the act of October  
18 28, 1983 (P.L.176, No.45), known as the Antibid-Rigging Act,  
19 the amount awarded as compensation under this section shall  
20 not duplicate the amount awarded under the Antibid-Rigging  
21 Act.

22 (d) Liability.--Liability under this section shall be joint  
23 and several. Persons subject to liability under this section  
24 shall be entitled to contribution under 42 Pa.C.S. Ch. 83 Subch.  
25 B (relating to contribution among tort-feasors).  
26 Section 10. Criminal penalties.

27 (a) Institution of criminal action.--The Attorney General  
28 shall have the authority to institute criminal proceedings for  
29 violations of sections 4 and 5.

30 (b) Entity penalty.--A partnership, corporation, association



1 or other entity which violates section 4 or 5 commits a felony  
2 of the third degree and shall, upon conviction, be sentenced to  
3 pay a fine of not more than \$1,000,000.

4 (c) Individual penalty.--An individual who violates section  
5 4 or 5 commits a felony of the third degree and shall, upon  
6 conviction, be sentenced to pay a fine of not more than \$100,000  
7 or to imprisonment for not more than three years, or both.

8 (d) Disposition of funds.--All fines collected pursuant to  
9 this section shall be paid into the State Treasury.

10 (e) Double jeopardy.--A criminal prosecution under this  
11 section may not be brought against a person previously charged  
12 by information or indictment with a criminal violation of the  
13 act of October 28, 1983 (P.L.176, No.45), known as the Antibid-  
14 Rigging Act, or of a Federal antitrust statute if either  
15 prosecution is based upon substantially the same conduct upon  
16 which a prosecution under this section could be based and  
17 jeopardy has attached under the prosecution.

18 Section 11. Judgment in favor of Commonwealth as prima facie  
19 evidence.

20 A final judgment or decree determining that a person has  
21 violated this act in an action brought by the Commonwealth under  
22 section 8, 9(a) or 10 other than a consent judgment or decree  
23 entered before any testimony has been taken, is prima facie  
24 evidence against the person in any other action against the  
25 person under section 9 as to all matters with respect to which  
26 the judgment or decree would be an estoppel between the parties  
27 to the action. This section does not affect the application of  
28 collateral estoppel or issue preclusion.

29 Section 12. Limitation of actions.

30 (a) Actions under sections 8 and 10.--An action under

1 section 8 or 10 is barred if not commenced within four years  
2 after the claim for relief or cause of action accrues.

3 (b) Actions under section 9.--An action to recover damages  
4 under section 9 is barred if not commenced within four years  
5 after the claim for relief or cause of action accrues, or within  
6 one year after the conclusion of any timely action brought by  
7 the Commonwealth under section 9(a) or 10 which is based in  
8 whole or in part on any matter complained of in the action for  
9 damages, whichever is later.

10 Section 13. Cumulative remedies.

11 The remedies provided in this act are cumulative.

12 Section 14. Uniformity of application and construction.

13 This act shall be applied and construed to effectuate its  
14 general purpose to make uniform the law with respect to the  
15 subject of this act among those states that enact similar  
16 provisions.

17 Section 15. Severability.

18 If any portion of this act or the application of this act to  
19 any person or circumstances is found to be invalid by a court,  
20 such invalidity shall not affect the remaining portions of  
21 applications of this act which can be given effect without the  
22 invalid portion or application, provided the remaining portions  
23 are not determined by the court to be inoperable, and to this  
24 end this act is declared to be severable.

25 Section 16. Effective date.

26 This act shall take effect in 60 days.