
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1796 Session of
2005

INTRODUCED BY BAKER, CLYMER, ARGALL, MARSICO, ARMSTRONG,
BALDWIN, BOYD, CAPPELLI, CAUSER, CRAHALLA, CREIGHTON,
DENLINGER, FAIRCHILD, GINGRICH, GRELL, HERMAN, HERSHEY,
HICKERNELL, JAMES, KAUFFMAN, M. KELLER, McILHATTAN,
McNAUGHTON, MUSTIO, NAILOR, PICKETT, RAPP, RUBLEY, SAYLOR,
SCAVELLO, STERN, R. STEVENSON, T. STEVENSON, TURZAI, WILT,
SIPTROTH AND R. MILLER, JUNE 28, 2005

REFERRED TO COMMITTEE ON JUDICIARY, JUNE 28, 2005

AN ACT

1 Amending Title 4 (Amusements) of the Pennsylvania Consolidated
2 Statutes, further providing for general and specific powers
3 of the Pennsylvania Gaming Control Board and for enforcement
4 by the Bureau of Investigation and Enforcement; and
5 prohibiting certain activities relating to corrupt
6 organizations.

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

9 Section 1. Sections 1202(b)(2), 1402(a)(4) and 1517(d) of
10 Title 4 of the Pennsylvania Consolidated Statutes are amended to
11 read:

12 § 1202. General and specific powers.

13 * * *

14 (b) Specific powers.--The board shall have the specific
15 power and duty:

16 * * *

17 (2) To enter into an agreement with the Pennsylvania

1 State Police for the reimbursement of actual costs as
2 [approved by the board to] determined by the Pennsylvania
3 State Police for the investigations. Investigations shall
4 include information in the possession of the Attorney
5 General.

6 * * *

7 § 1402. Gross terminal revenue deductions.

8 (a) Deductions.--After determining the appropriate
9 assessments for each slot machine licensee, the department shall
10 deduct the following costs, expenses or payments from each
11 account established under section 1401 (relating to slot machine
12 licensee deposits):

13 * * *

14 (4) The costs and expenses to be incurred by the
15 Pennsylvania State Police and the Office of Attorney General
16 and not otherwise reimbursed under this part in carrying out
17 their respective responsibilities under this act [based upon
18 a budget submitted by the Pennsylvania State Police and the
19 Attorney General to, and approved by, the board].

20 * * *

21 § 1517. Enforcement.

22 * * *

23 [(d) Criminal action.--

24 (1) The district attorneys of the several counties shall
25 have authority to investigate and to institute criminal
26 proceedings for any violation of this part.

27 (2) In addition to the authority conferred upon the
28 Attorney General by the act of October 15, 1980 (P.L.950,
29 No.164), known as the Commonwealth Attorneys Act, the
30 Attorney General shall have the authority to investigate and

1 to institute criminal proceedings for any violation of this
2 part or any series of such violations involving any county of
3 this Commonwealth and another state. No person charged with a
4 violation of this part by the Attorney General shall have
5 standing to challenge the authority of the Attorney General
6 to investigate or prosecute the case, and, if any such
7 challenge is made, the challenge shall be dismissed and no
8 relief shall be available in the courts of this Commonwealth
9 to the person making the challenge.]

10 * * *

11 (d) Criminal action.--The Attorney General shall have
12 concurrent prosecutorial jurisdiction with the county district
13 attorney for violations of this subchapter. No person charged
14 with a violation of this subchapter by the Attorney General
15 shall have standing to challenge the authority of the Attorney
16 General to prosecute the case. If a challenge is made, the
17 challenge shall be dismissed and no relief shall be available in
18 the courts of this Commonwealth to the person making the
19 challenge.

20 * * *

21 Section 2. Title 4 is amended by adding a section to read:

22 § 1517.1. Corrupt organizations.

23 (a) Findings of fact.--The General Assembly finds that:

24 (1) organized crime is a highly sophisticated,
25 diversified, and widespread phenomenon which annually drains
26 billions of dollars from the national economy by various
27 patterns of unlawful conduct including the illegal use of
28 force, fraud, and corruption;

29 (2) organized crime exists on a large scale within the
30 Commonwealth of Pennsylvania, engaging in the same patterns

1 of unlawful conduct which characterize its activities
2 nationally;

3 (3) the vast amounts of money and power accumulated by
4 organized crime are increasingly used to infiltrate and
5 corrupt legitimate businesses operating within the
6 Commonwealth, together with all of the techniques of
7 violence, intimidation, and other forms of unlawful conduct
8 through which such money and power are derived;

9 (4) in furtherance of such infiltration and corruption,
10 organized crime utilizes and applies to its unlawful purposes
11 laws of the Commonwealth of Pennsylvania conferring and
12 relating to the privilege of engaging in various types of
13 business and designed to insure that such businesses are
14 conducted in furtherance of the public interest and the
15 general economic welfare of the Commonwealth;

16 (5) such infiltration and corruption provide an outlet
17 for illegally obtained capital, harm innocent investors,
18 entrepreneurs, merchants and consumers, interfere with free
19 competition, and thereby constitute a substantial danger to
20 the economic and general welfare of the Commonwealth of
21 Pennsylvania; and

22 (6) in order to successfully resist and eliminate this
23 situation, it is necessary to provide new remedies and
24 procedures.

25 (b) Prohibited activities.--

26 (1) It shall be unlawful for any person who has received
27 any income derived, directly or indirectly, from a pattern of
28 racketeering activity in which such person participated as a
29 principal, to use or invest, directly or indirectly, any part
30 of such income, or the proceeds of such income, in the

1 acquisition of any interest in, or the establishment or
2 operation of, any enterprise: Provided, however, That a
3 purchase of securities on the open market for purposes of
4 investment, and without the intention of controlling or
5 participating in the control of the issuer, or of assisting
6 another to do so, shall not be unlawful under this subsection
7 if the securities of the issue held by the purchaser, the
8 members of his immediate family, and his or their accomplices
9 in any pattern of racketeering activity after such purchase,
10 do not amount in the aggregate to 1% of the outstanding
11 securities of any one class, and do not confer, either in law
12 or in fact, the power to elect one or more directors of the
13 issuer: Provided, further, That if, in any proceeding
14 involving an alleged investment in violation of this
15 subsection, it is established that over half of the
16 defendant's aggregate income for a period of two or more
17 years immediately preceding such investment was derived from
18 a pattern of racketeering activity, a rebuttable presumption
19 shall arise that such investment included income derived from
20 such pattern of racketeering activity.

21 (2) It shall be unlawful for any person through a
22 pattern of racketeering activity to acquire or maintain,
23 directly or indirectly, any interest in or control of any
24 enterprise.

25 (3) It shall be unlawful for any person employed by or
26 associated with any enterprise to conduct or participate,
27 directly or indirectly, in the conduct of such enterprise's
28 affairs through a pattern of racketeering activity.

29 (4) It shall be unlawful for any person to conspire to
30 violate any of the provisions of paragraphs (1), (2) or (3)

1 of this subsection.

2 (c) Grading.--Whoever violates any provision of subsection
3 (b) of this section is guilty of a felony of the first degree. A
4 violation of this subsection shall be deemed to continue so long
5 as the person who committed the violation continues to receive
6 any benefit from the violation.

7 (d) Civil remedies.--

8 (1) The several courts of common pleas, and the
9 Commonwealth Court, shall have jurisdiction to prevent and
10 restrain violations of subsection (b) of this section by
11 issuing appropriate orders, including but not limited to:

12 (i) ordering any person to divest himself of any
13 interest direct or indirect, in the enterprise; imposing
14 reasonable restrictions on the future activities or
15 investments of any person, including but not limited to,
16 prohibiting any person from engaging in the same type of
17 endeavor as the enterprise engaged in; and

18 (ii) making due provision for the rights of innocent
19 persons, ordering the dissolution of the enterprise,
20 ordering the denial, suspension or revocation of charters
21 of domestic corporations, certificates of authority
22 authorizing foreign corporations to do business within
23 the Commonwealth of Pennsylvania, licenses, permits, or
24 prior approval granted to any enterprise by any
25 department or agency of the Commonwealth of Pennsylvania;
26 or prohibiting the enterprise from engaging in any
27 business.

28 (2) In any proceeding under this subsection, the court
29 shall proceed as soon as practicable to the hearing and
30 determination thereof. Pending final determination, the court

1 may enter preliminary or special injunctions, or take such
2 other actions, including the acceptance of satisfactory
3 performance bonds, as it may deem proper.

4 (3) A final judgment or decree rendered in favor of the
5 Commonwealth of Pennsylvania in any criminal proceeding under
6 this section shall estop the defendant from denying the
7 essential allegations of the criminal offense in any
8 subsequent civil proceeding under this subsection.

9 (4) Proceedings under this subsection, at pretrial,
10 trial and appellate levels, shall be governed by the
11 Pennsylvania Rules of Civil Procedure and all other rules and
12 procedures relating to civil actions, except to the extent
13 inconsistent with the provisions of this section.

14 (e) Enforcement.--

15 (1) The Attorney General shall have the power and duty
16 to enforce the provisions of this section, including the
17 authority to issue civil investigative demands pursuant to
18 subsection (f), institute proceedings under subsection (d),
19 and to take such actions as may be necessary to ascertain and
20 investigate alleged violations of this section.

21 (2) The Attorney General and the district attorneys of
22 the several counties shall have concurrent authority to
23 institute criminal proceedings under the provisions of this
24 section.

25 (3) Nothing contained in this subsection shall be
26 construed to limit the regulatory or investigative authority
27 of any department or agency of the Commonwealth whose
28 functions might relate to persons, enterprises, or matters
29 falling within the scope of this section.

30 (f) Civil investigative demand.--

1 (1) Whenever the Attorney General has reason to believe
2 that any person or enterprise may be in possession, custody,
3 or control of any documentary material relevant to a
4 racketeering investigation, he may issue in writing, and
5 cause to be served upon such person or enterprise, a civil
6 investigative demand requiring the production of such
7 material for examination.

8 (2) Each such demand shall:

9 (i) state the nature of the conduct constituting the
10 alleged racketeering violation which is under
11 investigation, the provision of law applicable thereto
12 and the connection between the documentary material
13 demanded and the conduct under investigation;

14 (ii) describe the class or classes of documentary
15 material to be produced thereunder with such definiteness
16 and certainty as to permit such material to be fairly
17 identified;

18 (iii) state that the demand is returnable forthwith
19 or prescribe a return date which will provide a
20 reasonable period of time within which the material so
21 demanded may be assembled and made available for
22 inspection and copying or reproduction;

23 (iv) identify a racketeering investigator to whom
24 such material shall be made available; and

25 (v) contain the following statement printed
26 conspicuously at the top of the demand: "You have the
27 right to seek the assistance of any attorney and he may
28 represent you in all phases of the racketeering
29 investigation of which this civil investigative demand is
30 a part."

1 (3) No such demand shall:

2 (i) contain any requirement which would be held to
3 be unreasonable if contained in a subpoena duces tecum
4 issued by any court in connection with a grand jury
5 investigation of such alleged racketeering violation; or

6 (ii) require the production of any documentary
7 evidence which would be privileged from disclosure if
8 demanding by a subpoena duces tecum issued by any court in
9 connection with a grand jury investigation of such
10 alleged racketeering violation.

11 (4) Service of any such demand or any petition filed
12 under this subsection shall be made in the manner prescribed
13 by the Pennsylvania Rules of Civil Procedure for service of
14 writs and complaints.

15 (5) A verified return by the individual serving any such
16 demand or petition setting forth the manner of such service
17 shall be prima facie proof of such service. In the case of
18 service by registered or certified mail, such return shall be
19 accompanied by the return post office receipt of delivery of
20 such demand.

21 (6) (i) Any party upon whom any demand issued under
22 this subsection has been duly served shall make such
23 material available for inspection and copying or
24 reproduction to the racketeering investigator designated
25 therein at the principal place of business of such party,
26 or at such other place as such investigator and such
27 party thereafter may agree or as the court may direct
28 pursuant to this subsection, on the return date specified
29 in such demand. Such party may upon agreement of the
30 investigator substitute copies of all or any part of such

1 material for the originals thereof.

2 (ii) The racketeering investigator to whom any
3 documentary material is so delivered shall take physical
4 possession thereof, and shall be responsible for the use
5 made thereof and for its return pursuant to this
6 subsection. The investigator may cause the preparation of
7 such copies of such documentary material as may be
8 required for official use. While in the possession of the
9 investigator, no material so produced shall be available
10 for examination, without the consent of the party who
11 produced such material, by any individual other than the
12 Attorney General or any racketeering investigator. Under
13 such reasonable terms and conditions as the Attorney
14 General shall prescribe, documentary material while in
15 the possession of the investigator shall be available for
16 examination by the party who produced such material or
17 any duly authorized representatives of such party.

18 (iii) Upon completion of:

19 (A) the racketeering investigation for which any
20 documentary material was produced under this
21 subsection; and

22 (B) any case or proceeding arising from such
23 investigation;

24 the investigator shall return to the party who produced
25 such material all such material other than copies thereof
26 made pursuant to this subsection which have not passed
27 into the control of any court or grand jury through
28 introduction into the record of such case or proceeding.

29 (iv) When any documentary material has been produced
30 by any party under this subsection for use in any

1 racketeering investigation, and no case or proceeding
2 arising therefrom has been instituted within a reasonable
3 time after completion of the examination and analysis of
4 all evidence assembled in the course of such
5 investigation, such party shall be entitled, upon written
6 demand made upon the Attorney General, to the return of
7 all documentary material, other than copies thereof made
8 pursuant to this subsection, so produced by such party.

9 (7) Whenever any person or enterprise fails to comply
10 with any civil investigative demand duly served upon him
11 under this subsection or whenever satisfactory copying or
12 reproduction of any such material cannot be done and such
13 party refuses to surrender such material, the Attorney
14 General may file, in the court of common pleas for any county
15 in which such party resides or transacts business, and serve
16 upon such party a petition for an order of such court for the
17 enforcement of this subsection, except that if such person
18 transacts business in more than one county such petition
19 shall be filed in the county in which party maintains his or
20 its principal place of business.

21 (8) Within 20 days after the service of any such demand
22 upon any person or enterprise, or at any time before the
23 return date specified in the demand, whichever period is
24 shorter, such party may file, in the court of common pleas of
25 the county within which such party resides or transacts
26 business, and serve upon the Attorney General a petition for
27 an order of such court modifying or setting aside such
28 demand. The time allowed for compliance with the demand in
29 whole or in part as deemed proper and ordered by the court
30 shall not run during the pendency of such petition in the

1 court. Such petition shall specify each ground upon which the
2 petitioner relies in seeking such relief, and may be based
3 upon any failure of such demand to comply with the provisions
4 of this subsection or upon any constitutional or other legal
5 right or privilege of such party.

6 (9) At any time during which the Attorney General is in
7 custody or control of any documentary material delivered by
8 any party in compliance with any such demand, such party may
9 file, in the court of common pleas of the county within which
10 such documentary material was delivered, and serve upon the
11 Attorney General a petition for an order of such court
12 requiring the performance of any duty imposed by this
13 subsection.

14 (10) Whenever any petition is filed in any court of
15 common pleas under this subsection, such court shall have
16 jurisdiction to hear and determine the matter so presented,
17 and, after a hearing at which all parties are represented, to
18 enter such order or orders as may be required to carry into
19 effect the provisions of this subsection.

20 (g) Immunity.--Whenever any individual refuses, on the basis
21 of his privilege against self-incrimination, to comply with a
22 civil investigative demand issued pursuant to subsection (f) or
23 to testify or produce other information in any proceeding under
24 subsection (d), the Attorney General may invoke the provisions
25 of 42 Pa.C.S. § 5947 (relating to immunity of witnesses).

26 (h) Definitions.--As used in this section:

27 (1) "Racketeering activity" means:

28 (i) any act which is indictable under any of the
29 following provisions of 18 Pa.C.S.:

30 Chapter 25 (relating to criminal homicide)

1 Section 2706 (relating to terroristic threats)
2 Chapter 29 (relating to kidnapping)
3 Chapter 33 (relating to arson, criminal mischief
4 and other, property destruction)
5 Chapter 37 (relating to robbery)
6 Chapter 39 (relating to theft and related
7 offenses)
8 Section 4108 (relating to commercial bribery and
9 breach of duty to act disinterestedly)
10 Section 4109 (relating to rigging publicly
11 exhibited contest)
12 Section 4117 (relating to insurance fraud)
13 Chapter 47 (relating to bribery and corrupt
14 influence)
15 Chapter 49 (relating to falsification and
16 intimidation)
17 Section 5111 (relating to dealing in proceeds of
18 unlawful activities)
19 Section 5512 (relating to lotteries, etc.)
20 through 5514 (relating to pool selling and
21 bookmaking)
22 Chapter 59 (relating to public indecency)
23 (ii) any offense indictable under section 13 of the
24 act of April 14, 1972 (P.L.233, No.64), known as The
25 Controlled Substance, Drug, Device and Cosmetic Act
26 (relating to the sale and dispensing of narcotic drugs);
27 (iii) any conspiracy to commit any of the offenses
28 set forth in subparagraphs (i) and (ii) of this
29 paragraph; or
30 (iv) the collection of any money or other property

1 in full or partial satisfaction of a debt which arose as
2 the result of the lending of money or other property at a
3 rate of interest exceeding 25% per annum or the
4 equivalent rate for a longer or shorter period, where not
5 otherwise authorized by law.

6 (v) any criminal violation of this part.

7 Any act which otherwise would be considered racketeering
8 activity by reason of the application of this paragraph,
9 shall not be excluded from its application solely because the
10 operative acts took place outside the jurisdiction of this
11 Commonwealth, if such acts would have been in violation of
12 the law of the jurisdiction in which they occurred.

13 (2) "Person" means any individual or entity capable of
14 holding a legal or beneficial interest in property.

15 (3) "Enterprise" means any individual, partnership,
16 corporation, association or other legal entity, and any union
17 or group of individuals associated in fact although not a
18 legal entity, engaged in commerce and includes legitimate as
19 well as illegitimate entities and governmental entities.

20 (4) "Pattern of racketeering activity" refers to a
21 course of conduct requiring two or more acts of racketeering
22 activity one of which occurred after the effective date of
23 this section.

24 (5) "Racketeering investigator" means an attorney,
25 investigator or investigative body so designated in writing
26 by the Attorney General and charged with the duty of
27 enforcing or carrying into effect the provisions of this
28 section.

29 (6) "Racketeering investigation" means any inquiry
30 conducted by any racketeering investigator for the purpose of

1 ascertaining whether any person has been involved in any
2 violation of this section or of any order, judgment, or
3 decree of any court duly entered in any case or proceeding
4 arising under this section.

5 (7) "Documentary material" means any book, paper,
6 record, recording, tape, report, memorandum, written
7 communication, or other document relating to the business
8 affairs of any person or enterprise.

9 (8) "Organized crime" means any person or combination of
10 persons engaging in or having the purpose of engaging in
11 conduct which violates any provision of subsection (b) and
12 also includes "organized crime" as defined in 18 Pa.C.S. §
13 5702 (relating to definitions).

14 Section 3. This act shall take effect in 60 days.