

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 828 Session of
2023

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APRIL 24, 2023

REFERRED TO COMMITTEE ON CONSUMER PROTECTION, TECHNOLOGY AND
UTILITIES, APRIL 24, 2023

AN ACT

1 Providing for unfair trade practices and for protection of
2 whistleblowers; conferring powers and imposing duties on the
3 Attorney General; establishing the Price-Fixing Consumer
4 Protection Fund; imposing penalties; and making an
5 appropriation.

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 Stop Price
10 Fixing Act.

11 Section 2. Definitions.

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

15 "Adverse action." Any of the following:

16 (1) When performed by a supplier or buyer, refusing to
17 deal with, threatening, harassing, directly or indirectly, or

1 in any other manner discriminating against, an individual or
2 an individual's employer.

3 (2) When performed by an employer, discharging,
4 demoting, suspending, threatening, harassing, directly or
5 indirectly, or in any other manner discriminating against, an
6 employee.

7 "Covered judicial or administrative action." A judicial or
8 administrative action brought by the Attorney General under the
9 Unfair Trade Practices and Consumer Protection Law that results
10 in monetary sanctions.

11 "Fund." The Price-Fixing Consumer Protection Fund
12 established under section 5(g)(1).

13 "Monetary sanctions." Money, including penalties,
14 disgorgement and interest, ordered to be paid as the result of a
15 covered judicial or administrative action.

16 "Original information." Information that is:

17 (1) derived from the independent knowledge or analysis
18 of a whistleblower;

19 (2) not known to the Attorney General from any other
20 source, unless the whistleblower is the original source of
21 the information; and

22 (3) not exclusively derived from an allegation made in a
23 judicial or administrative hearing, governmental report,
24 hearing, audit or investigation, or from the news media,
25 unless the whistleblower is a source of the information.

26 "Predispute arbitration agreement." An agreement to
27 arbitrate a dispute that had not yet arisen at the time the
28 agreement was made.

29 "Predispute joint-action waiver." An agreement, whether or
30 not part of a predispute arbitration agreement, that would

1 prohibit, or waive the right of, one of the parties to the
2 agreement to participate in a joint class or collective action
3 in a judicial, arbitral, administrative or other forum,
4 concerning a dispute that has not yet arisen at the time the
5 agreement was made.

6 "Related action." A covered judicial or administrative
7 action brought by an entity described in section 5(k)(1)(i),
8 (ii), (iii) and (iv) that is based upon the original information
9 provided by a whistleblower that led to the successful
10 enforcement of the Attorney General's action.

11 "Unfair Trade Practices and Consumer Protection Law." The
12 act of December 17, 1968 (P.L.1224, No.387), known as the Unfair
13 Trade Practices and Consumer Protection Law.

14 "Whistleblower." An individual who provides original
15 information relating to a violation of the Unfair Trade
16 Practices and Consumer Protection Law to the Attorney General in
17 a manner established, by rule or regulation, by the Attorney
18 General.

19 Section 3. Prohibition against price fixing.

20 (a) Offense defined.--It shall be a violation of this act to
21 enter into a contract or agreement or otherwise act, or conspire
22 to act, in restraint of trade or commerce or to monopolize any
23 part of a trade or commerce.

24 (b) Investigation and penalties.--The Office of Attorney
25 General shall investigate each complaint received concerning a
26 violation of this section. The following apply:

27 (1) If, after investigating the complaint, the Attorney
28 General finds that a violation of this section has occurred,
29 the Attorney General may bring an action to impose a civil
30 penalty of up to \$100,000 for each violation and to seek

1 other relief, including injunctive relief, restitution and
2 costs under the Unfair Trade Practices and Consumer
3 Protection Law.

4 (2) The civil penalty imposed under this subsection
5 shall be deposited into the fund.

6 (c) Procedures.--

7 (1) Prior to the initiation of a civil action under this
8 section, the Attorney General may require the attendance and
9 testimony of witnesses and the production of documents. For
10 this purpose, the Attorney General may issue subpoenas,
11 examine witnesses and receive evidence.

12 (2) If a person objects to or otherwise fails to comply
13 with a subpoena or request for testimony under this section,
14 the Attorney General may file in Commonwealth Court, or any
15 court of record of this Commonwealth, an action to enforce
16 the subpoena or request.

17 (3) Notice of a hearing under this section, along with a
18 copy of all pleadings in the action, shall be served upon the
19 person who may appear in opposition.

20 (d) Confidentiality.--Testimony taken or material produced
21 under this section shall be kept confidential by the Attorney
22 General except to the extent that:

23 (1) the testimony or material may be used in a judicial
24 proceeding;

25 (2) the disclosure is authorized by the court for good
26 cause shown; or

27 (3) confidentiality is waived by the person being
28 investigated and by the person who has testified, answered
29 interrogatories or produced materials.

30 (e) Appropriations and fines.--Appropriations for transfers

1 to the fund and fines paid and interest accrued on money
2 collected under subsection (b) shall be deposited into the fund.

3 Section 4. Circumstantial evidence of conspiracy.

4 (a) Evidence.--It shall be prima facie evidence of a
5 violation of section 3 of the Unfair Trade Practices and
6 Consumer Protection Law when, for the market in which the
7 alleged violation occurred, the following applies:

8 (1) the defendant raised the price of its product no
9 more than 200 days before or after another defendant raised
10 the price of its product; or

11 (2) it is more likely than not that an agreement exists
12 with the defendant to raise the price of its product more
13 than 200 days before or after another defendant raised the
14 price of its product and:

15 (i) the defendant invited another defendant to
16 increase the price of a product;

17 (ii) the defendant engaged in communications with
18 another defendant that may result in anticompetitive
19 harm;

20 (iii) the defendant engaged in actions that would be
21 against the defendant's own interests in the absence of a
22 violation of the Unfair Trade Practices and Consumer
23 Protection Law; or

24 (iv) the price of the product in the market in which
25 the alleged violation occurred is above that which would
26 be predicted in absence of a violation of the Unfair
27 Trade Practices and Consumer Protection Law.

28 (b) Inferences of collusion.--In a suit alleging a violation
29 of section 3 of the Unfair Trade Practices and Consumer
30 Protection Law, if the conduct alleged is consistent with the

doctrines of tacit collusion, oligopolistic price coordination or conscious parallelism shall not be sufficient cause in and of itself for a motion to dismiss or a motion for summary judgment if the plaintiff has plausibly alleged the actions described under section 3 of the Unfair Trade Practices and Consumer Protection Law.

(c) Industry bans.--A person who violates this act may, at the discretion of the court, be barred permanently or for a definite period of time from working in the industry in which the violation occurred.

(d) Invalidity of predispute arbitration agreements.--At the election of the person alleging conduct constituting a violation of this section, or the named representative of a class or in a collective action alleging the conduct, a predispute arbitration agreement or predispute joint-action waiver shall not be valid or enforceable with respect to a case which relates to a violation of this section.

(e) Determination of applicability.--An issue as to whether this act applies with respect to a dispute shall be determined under the laws of this Commonwealth. The applicability of this act to an agreement to arbitrate and the validity and enforceability of an agreement to which this act applies shall be determined by a court, rather than an arbitrator, regardless of whether the party resisting arbitration challenges the arbitration agreement specifically or in conjunction with other terms of the contract containing the agreement, and regardless of whether the agreement purports to delegate the determinations to an arbitrator.

Section 5. Whistleblower Protection.

(a) Award.--

1 (1) In any covered judicial or administrative action, or
2 related action, the Attorney General, under regulations
3 prescribed by the Attorney General and subject to subsection
4 (c), shall pay an award or awards to one or more
5 whistleblowers who voluntarily provided original information
6 to the Attorney General that led to the successful
7 enforcement of the covered judicial or administrative action,
8 or related action, in an aggregate amount equal to:

9 (i) Not less than 10%, in total, of what has been
10 collected of the monetary sanctions imposed in the action
11 or related actions.

12 (ii) Not more than 30%, in total, of what has been
13 collected of the monetary sanctions imposed in the action
14 or related actions.

15 (2) An amount awarded under paragraph (1) shall be paid
16 from the fund.

17 (b) Determination of award amount.--The following shall
18 apply in determining the amount of an award under subsection
19 (a):

20 (1) The amount of an award under subsection (a) shall be
21 determined by the Attorney General.

22 (2) In determining the amount of an award made under
23 subsection (a), the Attorney General shall take the following
24 into consideration:

25 (i) Significance of the information provided by the
26 whistleblower to the success of the covered judicial or
27 administrative action.

28 (ii) Degree of assistance provided by the
29 whistleblower and any legal representative of the
30 whistleblower in a covered judicial or administrative

1 action.

2 (iii) Programmatic interest of the Attorney General
3 in deterring violations of the Unfair Trade Practices and
4 Consumer Protection Law by making awards to
5 whistleblowers who provide information that leads to the
6 successful enforcement of this law.

7 (iv) Any additional relevant factors as the Attorney
8 General may establish by rule or regulation.

9 (3) In determining the amount of an award under
10 subsection (a), the Attorney General shall not take into
11 consideration the balance of the fund.

12 (c) Denial of award.--An award under subsection (a) may not
13 be made to a whistleblower who:

14 (1) is, or was at the time the whistleblower acquired
15 the original information submitted to the Attorney General, a
16 member, officer or employee of any of the following:

17 (i) The Office of Attorney General.

18 (ii) The United States Department of Justice.

19 (iii) A criminal justice agency, as defined under 18
20 Pa.C.S. § 9102 (relating to definitions);

21 (2) is convicted of a criminal violation related to the
22 judicial or administrative action for which the whistleblower
23 otherwise could receive an award under this section; or

24 (3) fails to submit original information to the Attorney
25 General in a form that the Attorney General may, by rule,
26 require.

27 (d) Representation.--

28 (1) A whistleblower who makes a claim for an award under
29 subsection (a) may be represented by counsel.

30 (2) A whistleblower who anonymously makes a claim for an

award under subsection (a) shall be represented by counsel if the whistleblower anonymously submits the original information upon which the claim is based.

(3) Prior to the payment of an award, a whistleblower shall disclose the identity of the whistleblower and provide other information as the Attorney General may require, directly or through counsel for the whistleblower.

(e) No contract necessary.--A contract with the Attorney General shall not be necessary for a whistleblower to receive an award under subsection (a), unless otherwise required by the Attorney General by rule or regulation.

(f) Appeals.--A determination made under this section, including whether, to whom or in what amount to make awards, shall be at the discretion of the Attorney General. The determination, except the determination of the amount of an award made in accordance with subsection (a), may be appealed to the appropriate court not more than 30 days after the determination is issued by the Attorney General.

(g) Price-Fixing Consumer Protection Fund.--

(1) The Price-Fixing Consumer Protection Fund is established in the State Treasury.

(2) Money in the fund is appropriated on a continuing basis to the Office of Attorney General, which shall be used for the following purposes:

(i) Paying awards to whistleblowers as provided in subsection (a).

(ii) Funding the activities of the Attorney General under this act.

(3) The following shall be deposited into the fund:

(i) Any monetary sanction collected by the Attorney

1 General in a judicial or administrative action brought by
2 the Attorney General under the Unfair Trade Practices and
3 Consumer Protection Law that is not otherwise distributed
4 to victims.

5 (ii) All income from investments made under
6 paragraph (5).

7 (4) If the money deposited into the fund under paragraph
8 (3) is not sufficient to satisfy an award made under
9 subsection (a), an amount equal to the unsatisfied portion of
10 the award, from any monetary sanction collected by the
11 Attorney General in the covered judicial or administrative
12 action on which the award is based, shall be deposited into
13 the fund.

14 (5) Money in the fund may be invested. The Attorney
15 General may request the State Treasurer to invest the portion
16 of the fund that is not, at the discretion of the Attorney
17 General, required to meet the current needs of the fund.
18 Money held or deposited by the State Treasurer may be
19 invested or reinvested in the same manner as other money in
20 the custody of the State Treasurer. All earnings received
21 from the investment or deposit of money in the fund shall be
22 paid into the fund. The interest on, and the proceeds from
23 the sale or redemption of, any obligations held in the fund
24 shall be credited to the fund.

25 (6) No later than October 30 of each fiscal year
26 beginning after the effective date of this paragraph, the
27 Attorney General shall submit a report to the Judiciary
28 Committee of the Senate and the Judiciary Committee of the
29 House of Representatives, which shall include the following
30 information:

(i) The whistleblower award program, established under this section, including:

(A) a description of the number of awards granted; and

(B) the types of cases in which awards were granted during the preceding fiscal year.

(ii) The balance of the fund at the beginning of the preceding fiscal year.

(iii) The amounts deposited into or credited to the fund during the preceding fiscal year.

(iv) The amount of earnings on investments made under paragraph (5) during the preceding fiscal year.

(v) The amount of money awarded to whistleblowers under subsection (a) in the preceding fiscal year.

(vi) The balance of the fund at the end of the preceding fiscal year.

(vii) A complete set of audited financial statements, which shall include the following:

(A) Balance sheet.

(B) Income statement.

(C) Cash flow analysis.

(h) Protection of whistleblowers.--

(1) An employer may not take an adverse action against a whistleblower, and a supplier or customer may not take an adverse action against a whistleblower or the whistleblower's employer, because of any act done by the whistleblower in:

(i) providing information to the Attorney General in accordance with this act; or

(ii) initiating, testifying in or assisting in any investigation or judicial or administrative action of the

1 Attorney General based upon or related to the
2 information.

3 (2) An individual who alleges employment termination or
4 other adverse action in violation of paragraph (1) may bring
5 an action under this subsection in the appropriate court for
6 relief as provided under paragraph (5).

7 (3) A subpoena requiring the attendance of a witness at
8 a trial or hearing conducted under this section may be served
9 at any place in this Commonwealth.

10 (4) An investigation of the Attorney General or covered
11 judicial or administrative action under this subsection may
12 not be brought:

13 (i) more than six years after the date on which the
14 violation of paragraph (1) occurred; or

15 (ii) more than three years after the date when the
16 facts material to the right of action are known by the
17 employee alleging a violation of paragraph (1).

18 (5) An individual who prevails in an action brought
19 under paragraph (2) shall be entitled to the following
20 relief:

21 (i) Reinstatement with the same seniority status
22 that the individual would have had, but for the illegal
23 employment action.

24 (ii) A monetary award that equals two times the
25 amount of backpay otherwise owed to the individual, with
26 interest.

27 (iii) Compensation for litigation costs, expert
28 witness fees and reasonable attorney fees.

29 (iv) Any other relief that the court determines is
30 appropriate.

1 (i) Confidentiality.--Except as otherwise provided in this
2 act, the Attorney General shall not disclose any information,
3 including information provided by a whistleblower to the
4 Attorney General, which could reasonably be expected to reveal
5 the identity of the whistleblower unless and until required to
6 be disclosed to a defendant or respondent in connection with a
7 public proceeding instituted by the Attorney General or any
8 entity described in subsection (j) and (k).

9 (j) Construction.--Nothing in this section shall limit the
10 ability of the Attorney General to present evidence to a grand
11 jury or to share evidence with potential witnesses or defendants
12 in the course of an ongoing criminal investigation.

13 (k) Availability of information to government agencies.--

14 (1) At the discretion of the Attorney General,
15 information submitted to the Attorney General by a
16 whistleblower under this act may be made available to the
17 following entities when determined by the Attorney General to
18 be necessary to accomplish the purposes of this act and to
19 protect investors:

20 (i) An appropriate regulatory authority.

21 (ii) A State regulatory authority.

22 (iii) A Federal enforcement agency.

23 (iv) The Public Company Accounting Oversight Board.

24 (2) Each entity described under paragraph (1) shall
25 maintain the information as confidential in accordance with
26 the requirements established under subsection (i).

27 (3) Nothing in this section shall be deemed to diminish
28 the rights, privileges or remedies of any whistleblower under
29 either Federal law or a collective bargaining agreement.

30 (l) Provision of false information.--A whistleblower shall

1 not be entitled to an award under this act if the whistleblower:

2 (1) knowingly and willfully makes a materially false or
3 fraudulent statement or representation; or

4 (2) uses a false writing or document which the
5 whistleblower knows to include a materially false or
6 fraudulent statement or entry.

7 (m) Rulemaking authority.--The Attorney General may issue
8 rules and regulations necessary or appropriate to implement the
9 provisions of this section, consistent with the purposes of this
10 section.

11 (n) Study of the whistleblower protection program.--The
12 Attorney General shall issue a report on the whistleblower
13 protections established under this act, to which the following
14 shall apply:

15 (1) The report shall include the following information:

16 (i) Whether the final rules and regulations issued
17 under this act have made the whistleblower protection
18 program clearly defined and user-friendly.

19 (ii) Whether the whistleblower protection program is
20 promoted on the publicly accessible Internet website of
21 the Attorney General and has been widely publicized.

22 (iii) Whether the Attorney General has promptly:

23 (A) Responded to:

24 (I) information provided by whistleblowers;

25 and

26 (II) applications for awards filed by
27 whistleblowers.

28 (B) Updated whistleblowers about the status of
29 applications submitted under this act.

30 (C) Otherwise communicated with interested

1 parties.

2 (iv) Whether the minimum and maximum award levels
3 are adequate to entice whistleblowers to come forward
4 with information and whether the rewards are so high as
5 to encourage illegitimate whistleblower claims.

6 (v) Whether the appeals process has been unduly
7 burdensome for the Attorney General.

8 (vi) Whether the funding mechanism for the fund is
9 adequate.

10 (vii) Any other information as the Attorney General
11 deems appropriate.

12 (2) The Attorney General shall submit the report no
13 later than 30 months after the effective date of this
14 paragraph to the Judiciary Committee of the Senate and the
15 Judiciary Committee of the House of Representatives.

16 (3) The Attorney General shall transmit the report to
17 the Legislative Reference Bureau for publication in the next
18 available issue of the Pennsylvania Bulletin.

19 (4) The report shall be posted on the publicly
20 accessible Internet website of the Attorney General.

21 Section 6. Implementation and transition provisions.

22 (a) Implementing rules.--The Attorney General shall
23 promulgate regulations implementing this act no later than 270
24 days after the effective date of this subsection.

25 (b) Original information.--Information provided to the
26 Attorney General in writing by a whistleblower shall not lose
27 the status of original information solely because the
28 whistleblower provided the information prior to the effective
29 date of the regulations, if the information is provided by the
30 whistleblower after the effective date of this subsection.

1 (c) Awards.--A whistleblower may receive an award in
2 accordance with this act, regardless of whether a statutory or
3 regulatory violation occurred, if judicial or administrative
4 action upon which the award is based occurred prior to the
5 effective date of this subsection.

6 Section 7. Effective date.

7 This act shall take effect in 60 days.