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Senate of Pennsylvania

May 23, 2012

TO: ALL SENATORS

FROM: Stewart J. Greenleaf *Stewart*

SUBJECT: Cosponsorship – **Antitrust legislation**

During the Senate Appropriations Committee budget hearing for the Attorney General's Office, Attorney General Linda Kelly commented that Pennsylvania is the only state without an antitrust statute. In cooperation with the Office of Attorney General, I am introducing a comprehensive antitrust law.

The Attorney General's Office has authority to bring federal actions to recover damages for consumers and state agencies but the lack of a state antitrust statute causes three main problems. Without an antitrust statute, the Attorney General's Office:

1. Does not have the ability to subpoena documents. Since one of the key violations of antitrust laws, a conspiracy to restrain trade, involves secretive conduct, the Attorney General's Office is often unable to fully investigate issues involving collusion because it has no way to compel production of documents and testimony. The Office can only investigate a case by getting witnesses and targets to voluntarily provide information which rarely happens.

2. May lose control over litigation. If the Attorney General's Office has to bring an action in federal court, as opposed to state court, the Office can be dragged into federal multi-district litigation in a distant court where the litigation is controlled by a committee of lawyers appointed by the court. These lawyers may not have the interests of Pennsylvania consumers or state agencies as a priority.

3. May not be able to recover damages. Where the unlawful conduct, especially price fixing, occurs upstream in the chain of distribution from the parties the Commonwealth and consumers deal with directly, Pennsylvania may not recover damages. This is because federal law prohibits collecting damages by indirect purchasers. This means that where there is an agreement to fix prices of a product among manufacturers, and that product is sold to wholesalers, then to retailers, before being purchased by the Commonwealth or consumers, the Office cannot collect damages.

The law we are introducing is designed to authorize only the Attorney General to file a civil action for an antitrust violation. The purpose of the law is to allow for a full and fair recovery to satisfy claims arising from an antitrust injury sustained by the Commonwealth and its residents and to provide the investigative tools to satisfactorily achieve this objective. The language is derived from other states' statutes and federal law.

The proposed statute is intended to make illegal any contract, conspiracy or combination in restraint of trade and any monopolization in restraint of trade. The statute would also make illegal any mergers or acquisitions that lessens competition substantially in any line of commerce. The statute provides for criminal penalties for obstructing compliance with a subpoena and for knowingly removing or falsifying documents to be produced. Any such obstruction of falsification would constitute a misdemeanor of the second degree.

The proposed statute incorporates exemptions judicially recognized under federal antitrust laws.

The Commonwealth Court would have original jurisdiction for all actions for violations of the statute.

If you would like to cosponsor this legislation, please contact Pat Snively of my office by e-mailing her at psnively@pasen.gov.