

AN ACT

1 Providing for unfair trade practices and for protection of
2 whistleblowers; promulgating regulations; establishing the
3 Price-Fixing Consumer Protection Fund; and making an
4 appropriation.

5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 Section 1. Short title.

8 This act shall be known and may be cited as the Stop Price
9 Fixing Act.

10 Section 2. Definitions.

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

14 "Adverse action." Any of the following:

15 (1) When performed by a supplier or buyer, refusing to
16 deal with, threatening, harassing, directly or indirectly, or
17 in any other manner discriminating against, an individual or
18 an individual's employer.

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

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

"Fund." The Price-Fixing Consumer Protection Fund established under section 4(g)(1).

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

"Original information." Information that is:

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

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

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

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

"Predispute joint-action waiver." An agreement, whether or not part of a predispute arbitration agreement, that would prohibit, or waive the right of, one of the parties to the agreement to participate in a joint class or collective action

1 in a judicial, arbitral, administrative or other forum,
2 concerning a dispute that has not yet arisen at the time the
3 agreement was made.

4 "Related action." With respect to any judicial or
5 administrative action brought by the Attorney General under the
6 Unfair Trade Practices and Consumer Protection Law, any judicial
7 or administrative action brought by an entity described in
8 section 4(k)(1)(i), (ii), (iii) and (iv) that is based upon the
9 original information provided by a whistleblower that led to the
10 successful 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 information
15 relating to a violation of the Unfair Trade Practices and
16 Consumer Protection Law to the Attorney General in a manner
17 established, by rule or regulation, by the Attorney General.
18 Section 3. Circumstantial evidence of conspiracy.

19 (a) Presumption of conspiracy.--

20 (1) A court shall presume that a defendant violated
21 section 3 of the Unfair Trade Practices and Consumer
22 Protection Law when, for the market in which the alleged
23 violation occurred:

24 (i) either:

25 (A) the defendant raised the price of its
26 product no more than 200 days before or after another
27 defendant raised the price of its product; or

28 (B) it is more likely than not that an agreement
29 exists with the defendant to raise the price of a
30 product more than 200 days before or after another

defendant raised the price of a product; and

(ii) either:

(A) the defendant invited another defendant to increase the price of a product;

(B) the defendant engaged in communications with another defendant that may result in anticompetitive harm;

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

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

(2) A defendant may rebut the presumption under paragraph (1) with evidence that the defendant did not engage in the actions described in paragraph (1).

(b) Inferences of collusion.--In a suit alleging a violation of section 3 of the Unfair Trade Practices and Consumer Protection Law, a court shall not dismiss the suit on a motion to dismiss or motion for summary judgment solely because the conduct alleged is consistent with the doctrines of tacit collusion, oligopolistic price coordination or conscious parallelism where 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

1 definite period of time, from working in the industry in which
2 the violation occurred.

3 (d) Invalidity of predispute arbitration agreements.--At the
4 election of the person alleging conduct constituting a violation
5 of this section, or the named representative of a class or in a
6 collective action alleging such conduct, no predispute
7 arbitration agreement or predispute joint-action waiver shall be
8 valid or enforceable with respect to a case which relates to a
9 violation of this section.

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

21 Section 4. Whistleblower Protection.

22 (a) Award.--

23 (1) In any covered judicial or administrative action, or
24 related action, the Attorney General, under regulations
25 prescribed by the Attorney General and subject to subsection
26 (c), shall pay an award or awards to one or more
27 whistleblowers who voluntarily provided original information
28 to the Attorney General that led to the successful
29 enforcement of the covered judicial or administrative action,
30 or related action, in an aggregate amount equal to:

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

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

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

(b) Determination of award amount.--The following shall apply in determining the amount of an award under subsection

(a):

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

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

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

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

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

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

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

(c) Denial of award.--No award under subsection (a) shall be made to a whistleblower who:

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

(i) The Office of Attorney General.

(ii) The United States Department of Justice.

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

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

(3) fails to submit information to the Attorney General in such form as the Attorney General may, by rule, require.

(d) Representation.--

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

(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 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.--No contract with the Attorney General is necessary for a whistleblower to receive an award

1 under subsection (a), unless otherwise required by the Attorney
2 General by rule or regulation.

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

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

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

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

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

18 (ii) Funding the activities of the Attorney General.

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

20 (i) Any monetary sanction collected by the Attorney
21 General in a judicial or administrative action brought by
22 the Attorney General under the Unfair Trade Practices and
23 Consumer Protection Law that is not otherwise distributed
24 to victims.

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

27 (4) If the money deposited into the fund under paragraph
28 (3) is not sufficient to satisfy an award made under
29 subsection (a), an amount equal to the unsatisfied portion of
30 the award, from any monetary sanction collected by the

1 Attorney General in the covered judicial or administrative
2 action on which the award is based, shall be deposited into
3 the fund.

4 (5) Money in the fund may be invested. The Attorney
5 General may request the State Treasurer to invest the portion
6 of the fund that is not, at the discretion of the Attorney
7 General, required to meet the current needs of the fund.
8 Money held or deposited by the State Treasurer may be
9 invested or reinvested in the same manner as other money in
10 the custody of the State Treasurer. All earnings received
11 from the investment or deposit of money in the fund shall be
12 paid into the fund. The interest on, and the proceeds from
13 the sale or redemption of, any obligations held in the fund
14 shall be credited to the fund.

15 (6) No later than October 30 of each fiscal year
16 beginning after the effective date of this paragraph, the
17 Attorney General shall submit a report to the Judiciary
18 Committee of the Senate and the Judiciary Committee of the
19 House of Representatives, which shall include the following
20 information:

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

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

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

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

29 (iii) The amounts deposited into or credited to the
30 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) No employer may take an adverse action against a whistleblower, and no supplier or customer may 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 Attorney General based upon or related to the information.

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

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

(4) An action under this subsection may not be brought:

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

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

6 (5) An individual who prevails in an action brought
7 under paragraph (2) shall be entitled to the following
8 relief:

9 (i) Reinstatement with the same seniority status
10 that the individual would have had, but for the illegal
11 employment action.

12 (ii) A monetary award that equals two times the
13 amount of backpay otherwise owed to the individual, with
14 interest.

15 (iii) Compensation for litigation costs, expert
16 witness fees and reasonable attorney fees.

17 (iv) Any other relief that the court determines is
18 appropriate.

19 (i) Confidentiality.--Except as otherwise provided in this
20 act, the Attorney General shall not disclose any information,
21 including information provided by a whistleblower to the
22 Attorney General, which could reasonably be expected to reveal
23 the identity of the whistleblower unless and until required to
24 be disclosed to a defendant or respondent in connection with a
25 public proceeding instituted by the Attorney General or any
26 entity described in subsection (j) and (k).

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

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

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

(i) An appropriate regulatory authority.

(ii) A State regulatory authority.

(iii) Federal enforcement agency.

(iv) The Public Company Accounting Oversight Board.

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

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

(l) Provision of false information.--A whistleblower shall not be entitled to an award under this act if the whistleblower:

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

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

(m) Rulemaking authority.--The Attorney General shall have the authority to issue rules and regulations as may be necessary or appropriate to implement the provisions of this section consistent with the purposes of this section.

(n) Study of the whistleblower protection program.--The Attorney General shall issue a report on the whistleblower

1 protections established under this act, to which the following
2 shall apply:

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

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

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

10 (iii) Whether the Attorney General has promptly:

11 (A) Responded to:

12 (I) information provided by whistleblowers;

13 and

14 (II) applications for awards filed by
15 whistleblowers.

16 (B) Updated whistleblowers about the status of
17 applications submitted under this act.

18 (C) Otherwise communicated with interested
19 parties.

20 (iv) Whether the minimum and maximum award levels
21 are adequate to entice whistleblowers to come forward
22 with information and whether the rewards are so high as
23 to encourage illegitimate whistleblower claims.

24 (v) Whether the appeals process has been unduly
25 burdensome for the Attorney General.

26 (vi) Whether the funding mechanism for the fund is
27 adequate.

28 (vii) Any other information as the Attorney General
29 deems appropriate.

30 (2) The Attorney General shall submit the report no

1 later than 30 months after the effective date of this
2 paragraph to the Judiciary Committee of the Senate and the
3 Judiciary Committee of the House of Representatives. The
4 report shall be published in the Pennsylvania Bulletin and on
5 the Attorney General's publicly accessible Internet website.

6 Section 5. Implementation and transition provisions.

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

10 (b) Original information.--Information provided to the
11 Attorney General in writing by a whistleblower shall not lose
12 the status of original information solely because the
13 whistleblower provided the information prior to the effective
14 date of the regulations, if the information is provided by the
15 whistleblower after the effective date of this subsection.

16 (c) Awards.--A whistleblower may receive an award pursuant
17 to this act, regardless of whether a statutory or regulatory
18 violation occurred, if judicial or administrative action upon
19 which the award is based occurred prior to the effective date of
20 this subsection.

21 Section 6. Effective date.

22 This act shall take effect in 60 days.