

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 175

Session of
1975

INTRODUCED BY MESSRS. SCHMITT, RENNINGER, MRS. GILLETTE, MESSRS. BRUNNER, A. K. HUTCHINSON, ZEARFOSS, MRS. TOLL, MESSRS. MANDERINO, SHANE, FINEMAN, ROMANELLI, LAUGHLIN, COHEN, TRELLO, ROSS, ABRAHAM, SCHEAFFER, IRVIS, SCHWEDER, TAYLOR, WOJDAK, DOYLE, GEORGE, GREENFIELD, MORRIS, BERLIN, PIEVSKY, MUSTO, SHUPNIK, GREEN, O'KEEFE, PERRY, LEDERER, LETTERMAN, MRS. KERNICK, MESSRS. COWELL, ZORD, REED, FEE, MILLIRON, PRATT, MENHORN, ZEARFOSS, BENNETT, KOWALYSHYN, WARGO, RUGGIERO, TADDONIO, O'DONNELL, MRKONIC, DOMBROWSKI AND ITKIN,
JANUARY 28, 1975

AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,
MARCH 18, 1975

AN ACT

1 Creating the Department of Consumer Advocate, establishing its
2 powers and duties, and providing the method of its financing.

3 The General Assembly of the Commonwealth of Pennsylvania
4 hereby enacts as follows:

5 Section 1. Short Title.--This act shall be known and may be
6 cited as the "Consumer Advocate Act."

7 Section 2. Definitions.--As used in this act:

8 "Commission" means the Pennsylvania Public Utility
9 Commission.

10 "Consumer" means any person (i) who makes a direct use or is
11 the ultimate recipient of a product or a service supplied by any
12 person subject to a regulatory agency or (ii) who may be a
13 direct user or ultimate recipient of a product or service

1 supplied by any person subject to a regulatory agency and may be
2 affected in any way by any action within the authority of a
3 regulatory agency. The term "consumer" includes any "consumer"
4 as defined in the act of April 28, 1937 (P.L.417, No.105), known
5 as the "Milk Marketing Law," and any "insured" as used in the
6 act of June 11, 1947 (P.L.538, No.246), known as "The Casualty
7 and Surety Rate Regulatory Act," and the act of June 11, 1947
8 (P.L.551, No.247), known as "The Fire, Marine and Inland Marine
9 Rate Regulatory Act," and any "person" or "corporation" as
10 defined in section 2 of the act of May 28, 1937 (P.L.1053,
11 No.286), known as the "Public Utility Law."

12 "Department" means the Department of Consumer Advocate.

13 "Public utility" means public utility as defined in section
14 2(17), act of May 28, 1937 (P.L.1053, No.286), known as the
15 "Public Utility Law."

16 "Regulatory agencies" means the Milk Marketing Board, the
17 Pennsylvania Public Utility Commission and the Insurance
18 Department.

19 Section 3. Department of Consumer Advocate Established.--(A) <—
20 There is hereby established the Department of Consumer Advocate
21 to represent the interest of consumers before State Regulatory
22 Agencies of this Commonwealth.

23 (B) THERE IS HEREBY ESTABLISHED WITHIN THE DEPARTMENT OF <—
24 CONSUMER ADVOCATE AN OFFICE KNOWN AS THE OFFICE OF FARM ADVOCACY
25 WHOSE SOLE INTEREST AND FUNCTION SHALL BE TO PROMOTE THE VIEWS
26 AND INTERESTS OF PRIMARY PRODUCERS OF FARM PRODUCTS BEFORE THE
27 MILK MARKETING BOARD.

28 Section 4. Department of Consumer Advocate.--The Department
29 of Consumer Advocate shall be headed by the Consumer Advocate
30 who shall be appointed by the Governor and shall serve at the

1 pleasure of the Governor. The Consumer Advocate shall be a
2 person who by reason of training, experience and attainment is
3 qualified to represent the interest of consumers. His
4 compensation shall be set by the Executive Board as defined in
5 sections 204 and 709, act of April 9, 1929 (P.L.177, No.175),
6 known as "The Administrative Code of 1929." THE SALARY OF THE <—
7 CONSUMER ADVOCATE SHALL NOT EXCEED \$40,000 PER ANNUM.

8 NO INDIVIDUAL WHO SERVES AS A CONSUMER ADVOCATE SHALL SEEK OR
9 ACCEPT EMPLOYMENT IN ANY INDUSTRY OR BUSINESS SUBJECT TO THE
10 AUTHORITY OF THE CONSUMER ADVOCATE DURING THE TENURE OF THE
11 APPOINTMENT AND FOR A PERIOD OF TWO YEARS IMMEDIATELY SUBSEQUENT
12 TO THE APPOINTMENT.

13 ANY INDIVIDUAL WHO IS APPOINTED TO THE POSITION OF CONSUMER
14 ADVOCATE SHALL NOT SEEK ELECTION NOR ACCEPT APPOINTMENT TO ANY
15 POLITICAL OFFICE DURING THE TENURE AS CONSUMER ADVOCATE AND FOR
16 A PERIOD OF TWO YEARS AFTER THE APPOINTMENT IS SERVED OR
17 TERMINATED.

18 Section 5. Assistant Consumer Advocates; Employees.--The
19 Consumer Advocate shall appoint with the approval of the
20 Governor, attorneys as assistant consumer advocates and such
21 additional clerical, technical and professional staff as may be
22 appropriate, and may contract for such additional services as
23 shall be necessary for the performance of his function. The
24 compensation of assistant consumer advocates and such clerical,
25 technical and professional staff shall be set by the Executive
26 Board.

27 Section 6. Powers and Duties of the Consumer Advocate.--(a)
28 The Consumer Advocate shall have the power and the duty to
29 represent the interest of consumers before the regulatory
30 agencies in any matter properly before such agencies, initiating

1 proceedings if in his judgment such may be necessary, and before
2 any court in connection with any matter involving regulation by
3 the regulatory agencies, whether on appeal or otherwise
4 initiated. Specifically and without limitation, the Consumer
5 Advocate shall be an affected party before each regulatory
6 agency and an aggrieved party on appeal from any action or
7 decision by a regulatory agency.

8 THE CONSUMER ADVOCATE SHALL HAVE THE POWER AND DUTY TO <—
9 INVESTIGATE AND REPRESENT THE CONSUMER'S INTEREST UPON
10 COMPLAINTS BY CONSUMERS CONCERNING THE QUALITY, AVAILABILITY,
11 PRICE AND SERVICE OF ANY CORPORATION, PARTNERSHIP, SOLE
12 PROPRIETORSHIP, ASSOCIATION OR OTHER BUSINESS ENTITY WHICH
13 PRODUCES, PROCESSES, MINES OR DISTRIBUTES ENERGY SOURCES.

14 (b) The Consumer Advocate may exercise discretion in
15 determining the interests of consumers which will be advocated
16 in any particular proceeding and in determining whether or not
17 to participate in or initiate any particular proceeding and in
18 so determining, shall consider the public interest, the
19 resources available and the substantiality of the effect of the
20 proceeding on the interest of consumers. The Consumer Advocate
21 may refrain from intervening when in the judgment of the
22 Consumer Advocate such is not necessary to represent adequately
23 the interest of consumers EXCEPT THAT THE OFFICE OF FARM <—

24 ADVOCACY SHALL INTERVENE IN ALL PROCEEDINGS BEFORE THE MILK
25 MARKETING BOARD FOR THE BENEFIT OF THE PRIMARY PRODUCERS OF
26 MILK. Upon petition of 20% or 2,500 of the consumers, whichever
27 is less, who make direct use or are ultimate recipients of a
28 product or service supplied by a person subject to a regulatory
29 agency, the Consumer Advocate shall participate in a proceeding
30 involving such person. ~~or provide a written statement of his~~ <—

1 ~~reasons for refraining from intervening.~~

2 (c) Any action brought by the Consumer Advocate before a
3 court or an agency of this Commonwealth shall be brought in the
4 name of the person serving as Consumer Advocate and shall not be
5 brought in the name of the Commonwealth. The Consumer Advocate
6 may name a consumer or group of consumers in whose name the
7 action may be brought or may join with a consumer or group of
8 consumers in bringing the action.

9 (D) THE OFFICE OF FARM ADVOCACY SHALL NOT BE CONSTRUED AS <—
10 CREATING A CONFLICT OF INTEREST WITHIN THE DEPARTMENT OF
11 CONSUMER ADVOCATE. IN ADDITION THE OFFICE OF FARM ADVOCACY SHALL
12 RECEIVE AN APPROPRIATION EQUAL TO THE AMOUNT OF FUNDS SPENT BY
13 THE CONSUMER ADVOCATE IN ANY PROCEEDINGS BEFORE THE MILK
14 MARKETING BOARD.

15 Section 7. Reports.--The Consumer Advocate shall annually
16 transmit to the Governor and the General Assembly and shall make
17 available to the public an annual report on the conduct of the
18 department. The Consumer Advocate shall make recommendations as
19 may from time to time be necessary or desirable to protect the
20 interest of consumers.

21 Section 8. Subpoenas.--(a) Whenever the Consumer Advocate
22 has reason to believe that any person may have knowledge, or be
23 in possession, custody or control of any documentary material,
24 pertinent to a pending proposal or proceeding before a
25 regulatory agency, the Consumer Advocate may issue in writing
26 and cause to be served upon the person a subpoena which:

27 (1) compels the attendance of such person and requires that
28 person to submit to examination and give testimony under oath;

29 (2) requires the production of documentary material
30 pertinent to the investigation for inspection or copying; and

(3) requires answers to written interrogatories to be furnished under oath.

(b) The Consumer Advocate may issue successive subpoenas to the same person in order to obtain additional information pertinent to an ongoing proceeding.

(c) Any subpoena issued hereunder shall be subject to invalidation by the appropriate regulatory agency upon good and proper cause shown filed within ten days of its service, except that any such invalidation shall be subject to immediate appeal by the Department of Consumer Advocate to the Commonwealth Court.

Section 9. Duties of Regulatory Agencies.--In dealing with any proposed action which may substantially affect the interest of consumers, including but not limited to a proposed change of rates and the adoption of rules, regulations, guidelines, orders, standards or final policy decisions, each regulatory agency shall:

(1) Notify the Consumer Advocate when notice of the proposed action is given to the public or at a time fixed by agreement between the Consumer Advocate and the regulatory agency in a manner to assure the Consumer Advocate reasonable notice and adequate time to determine whether to intervene in such matter.

(2) Consistent with its other statutory responsibilities, take such action with due consideration to the interest of consumers.

Section 10. Savings Provision; Construction.--(a) Nothing contained herein shall in any way limit the right of any consumer to bring a proceeding before either a regulatory agency or a court.

(b) Nothing contained herein shall be construed to impair

1 the statutory authority or responsibility of any regulatory
2 agency to protect and promote the interest of consumers.

3 ~~Section 11. Assessment Upon Public Utilities, Disposition,~~ <—
4 ~~Appropriation and Disbursement of Such Assessments.—(a) Before~~
5 ~~July 1 of each year, the Consumer Advocate shall estimate its~~
6 ~~total expenditures in the administration of this act in so far~~
7 ~~as it relates to public utilities for the fiscal year beginning~~
8 ~~that date, which estimate shall not exceed two hundredths of one~~
9 ~~percent (.02%) of the total gross intrastate operating revenues~~
10 ~~of the public utilities under the jurisdiction of the~~
11 ~~Pennsylvania Public Utility Commission for the preceding~~
12 ~~calendar year. Such estimate shall be submitted to the Governor,~~
13 ~~and to the appropriation committees of the House and Senate~~
14 ~~through their respective chairmen, for their respective~~
15 ~~approvals of such estimate in the amount submitted or such~~
16 ~~lesser amount as each of them may determine: Provided, That if~~
17 ~~the Governor or either committee, through its chairman, shall~~
18 ~~not notify the Consumer Advocate in writing of his or its action~~
19 ~~within 30 days after such submission, the estimate as submitted~~
20 ~~shall be deemed approved by him or by such committee, as the~~
21 ~~case may be. The least of the amounts so approved by the three~~
22 ~~approving authorities shall be the final estimate; and approval~~
23 ~~of such least amount shall constitute compliance with section~~
24 ~~604 of the act of April 9, 1929 (P.L.177, No.175), known as "The~~
25 ~~Administrative Code of 1929." The Department of Consumer~~
26 ~~Advocate shall subtract from the final estimate, the estimated~~
27 ~~balance of the appropriation to be carried over into such fiscal~~
28 ~~year from the preceding one. The remainder so determined, herein~~
29 ~~called the total assessment, shall be allocated to, and paid by,~~
30 ~~such public utilities in the manner hereafter prescribed. The~~

1 ~~Consumer Advocate or its designated representative shall, when~~
2 ~~requested, appear before the Senate and the House appropriation~~
3 ~~committees.~~

4 ~~(b) For each fiscal year beginning with the fiscal year~~
5 ~~following the first full calendar year of the operation of the~~
6 ~~Department of Consumer Advocate, the allocation shall be made as~~
7 ~~follows:~~

8 ~~(1) The Department of Consumer Advocate shall determine for~~
9 ~~the preceding calendar year the amount of expenditures directly~~
10 ~~attributable, or in its judgment properly allocable to its~~
11 ~~activities in connection with each group of utilities furnishing~~
12 ~~the same kind of service, and debit the amount so determined to~~
13 ~~such group. For each prior fiscal year the aforesaid allocation~~
14 ~~shall be based upon the expenditure experience if any of the~~
15 ~~Department of Consumer Advocate and its expenditure estimate for~~
16 ~~the balance of the first 12 months of its operation.~~

17 ~~(2) The Department of Consumer Advocate shall then allocate~~
18 ~~the total assessment prescribed by subsection (a) to each group~~
19 ~~in the proportion which the sum of the debits made to it bears~~
20 ~~to the sum of the debits made to all groups. The Department of~~
21 ~~Consumer Advocate shall transmit to the Pennsylvania Public~~
22 ~~Utility Commission the result of the aforesaid allocation.~~

23 ~~(c) The Pennsylvania Public Utility Commission shall~~
24 ~~thereafter complete the assessment procedure and collect the~~
25 ~~assessments as follows: Each public utility within a group shall~~
26 ~~then be assessed for and shall pay to the Pennsylvania Public~~
27 ~~Utility Commission such proportion of the amount allocated to~~
28 ~~its group as the gross intrastate operating revenues of the~~
29 ~~public utility for the preceding calendar year bear to the total~~
30 ~~gross intrastate operating revenues of its group for that year.~~

~~1 The Pennsylvania Public Utility Commission shall give notice by
2 registered or certified mail to each public utility of the
3 amount lawfully charged against it under the provisions of this
4 section, which amount shall be paid by the public utility within
5 30 days of receipt of such notice, unless the commission
6 specifies on the notices sent to all public utilities an
7 installment plan of payment, in which case each public utility
8 shall pay each installment on or before the date specified
9 therefor by the commission. Within 15 days after receipt of such
10 notice, the public utility against which such assessment has
11 been made may file with the commission objections setting out in
12 detail the grounds upon which the objector regards such
13 assessment to be excessive, erroneous, unlawful or invalid. The
14 commission, after notice to the objector, shall hold a hearing
15 upon such objections. After such hearing, the commission shall
16 record upon its minutes its findings on the objections and shall
17 transmit to the objector, by registered or certified mail,
18 notice of the amount, if any, charged against it in accordance
19 with such findings, which amount or any installment thereof then
20 due, shall be paid by the objector within ten days after receipt
21 of notice of the findings of the commission with respect to such
22 objections. If any payment prescribed by this subsection is not
23 made as aforesaid, the commission may suspend or revoke
24 certificates of public convenience, certify automobile
25 registrations to the Secretary of Transportation for suspension
26 or revocation or, through the Department of Justice, may
27 institute an appropriate action at law for the amount lawfully
28 assessed, together with any additional cost incurred by the
29 commission or the Department of Justice by virtue of such
30 failure to pay.~~

1 ~~(d) No suit or proceeding shall be maintained in any court~~
2 ~~for the purpose of restraining or in anywise delaying the~~
3 ~~collection or payment of any assessment made under subsections~~
4 ~~(a), (b) and (c), but every public utility against which an~~
5 ~~assessment is made shall pay the same as provided in subsection~~
6 ~~(c) of this section. Any public utility making any such payment~~
7 ~~may, at any time within two years from the date of payment, sue~~
8 ~~the Commonwealth in an action at law to recover the amount paid,~~
9 ~~or any part thereof, upon the ground that the assessment was~~
10 ~~excessive, erroneous, unlawful, or invalid, in whole or in part,~~
11 ~~provided objections, as hereinbefore provided, were filed with~~
12 ~~the commission, and payment of the assesssment was made under~~
13 ~~protest either as to all or part thereof. In any action for~~
14 ~~recovery of any payments made under this section, the claimant~~
15 ~~shall be entitled to raise every relevant issue of law, but the~~
16 ~~findings of fact made by the commission, pursuant to this~~
17 ~~section, shall be prima facie evidence of the facts therein~~
18 ~~stated. Any records, books, data, documents, and memoranda~~
19 ~~relating to the expenses of the commission shall be admissible~~
20 ~~in evidence in any court, and shall be prima facie evidence of~~
21 ~~the truth of their contents. If it is finally determined in any~~
22 ~~such action that all or any part of the assessment for which~~
23 ~~payment was made under protest was excessive, erroneous,~~
24 ~~unlawful, or invalid, the Department of Consumer Advocate shall~~
25 ~~make a refund to the claimant out of the appropriation specified~~
26 ~~herein as directed by the court.~~

27 ~~(e) The procedure in this section providing for the~~
28 ~~determination of the lawfulness of assessments and the recovery~~
29 ~~back of payments made pursuant to such assessments shall be~~
30 ~~exclusive of all other remedies and procedures.~~

1 ~~(f) It is the intent and purpose of this section that each~~
2 ~~public utility shall advance to the Department of Consumer~~
3 ~~Advocate its reasonable share of the cost of administering this~~
4 ~~act. The Department of Consumer Advocate shall keep records of~~
5 ~~the costs incurred in connection with the administration and~~
6 ~~enforcement of this act, or any other act. The Department of~~
7 ~~Consumer Advocate and the Pennsylvania Public Utility Commission~~
8 ~~shall also keep a record of the manner in which it shall have~~
9 ~~computed the amount assessed against every public utility. Such~~
10 ~~records shall be open to inspection by all interested parties.~~
11 ~~The determination of such costs and assessments by the~~
12 ~~Department of Consumer Advocate and the Pennsylvania Public~~
13 ~~Utility Commission, and the records and data upon which the same~~
14 ~~are made, shall be considered prima facie correct; and in any~~
15 ~~proceeding instituted to challenge the reasonableness of~~
16 ~~correctness of any assessment under this section, the party~~
17 ~~challenging the same shall have the burden of proof.~~

18 ~~(g) All assessments received, collected, or recovered under~~
19 ~~this act shall be paid by the commission into the General Fund~~
20 ~~of the State Treasury through the Department of Revenue.~~

21 ~~(h) All such assessments having been advanced by public~~
22 ~~utilities for the purpose of defraying the cost of the~~
23 ~~administration and performance of the duties of the Consumer~~
24 ~~Advocate relating to proceedings before the Pennsylvania Public~~
25 ~~Utility Commission, related judicial proceedings and other such~~
26 ~~matters handled by the Department of Consumer Advocate shall be~~
27 ~~held in trust solely for that purpose, and shall be earmarked~~
28 ~~for the use of, and are hereby appropriated to, the Department~~
29 ~~of Consumer Advocate for disbursement solely for that purpose.~~

30 ~~(i) All requisitions upon such appropriation shall be signed~~

1 ~~by the Consumer Advocate or such deputies as he may designate in~~
2 ~~writing to the State Treasurer, and shall be presented to the~~
3 ~~State Treasurer and dealt with by him and the Treasury~~
4 ~~Department in the manner prescribed by The Fiscal Code.~~

5 Section ~~12.~~ 11. General Fund Appropriation.--~~In addition to~~ <—
6 ~~the moneys appropriated in section 11,~~ the THE sum of \$200,000 <—
7 for the fiscal year ending June 30, 1975 is hereby appropriated
8 to the Department of Consumer Advocate.

9 Section ~~13.~~ 12. Effective Date.--This act shall take effect <—
10 immediately.