
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. **858** Session of
2017

INTRODUCED BY GREENLEAF, RAFFERTY AND COSTA, AUGUST 29, 2017

REFERRED TO JUDICIARY, AUGUST 29, 2017

AN ACT

1 Amending Title 12 (Commerce and Trade) of the Pennsylvania
2 Consolidated Statutes, in preliminary provisions, repealing
3 provisions relating to definitions and providing for short
4 title of title and for definitions; prohibiting certain acts
5 in restraint of trade or commerce; prescribing powers and
6 duties of the Attorney General; and establishing certain
7 civil cause of action.

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

10 Section 1. Section 101 of Title 12 of the Pennsylvania
11 Consolidated Statutes is repealed:

12 [§ 101. Definitions.

13 Subject to additional definitions contained in subsequent
14 provisions of this title which are applicable to specific
15 provisions of this title, the following words and phrases when
16 used in this title shall have the meanings given to them in this
17 section unless the context clearly indicates otherwise:

18 "Department." The Department of Community and Economic
19 Development of the Commonwealth.

20 "Secretary." The Secretary of Community and Economic
21 Development.]

1 Section 2. Title 12 is amended by adding sections to read:

2 § 102. Short title of title.

3 This title shall be known and may be cited as the Commerce
4 and Trade Code.

5 § 103. Definitions.

6 Subject to additional definitions contained in subsequent
7 provisions of this title which are applicable to specific
8 provisions of this title, the following words and phrases when
9 used in this title shall have the meanings given to them in this
10 section unless the context clearly indicates otherwise:

11 "Department." The Department of Community and Economic
12 Development of the Commonwealth.

13 "Secretary." The Secretary of Community and Economic
14 Development of the Commonwealth.

15 Section 3. Title 12 is amended by adding a chapter to read:

16 CHAPTER 9

17 FREE ENTERPRISE PROTECTION

18 Sec.

19 901. Scope of chapter.

20 902. Declaration of purpose.

21 903. Definitions.

22 904. Prohibited acts.

23 905. Powers and duties of Attorney General.

24 906. Proof of damages.

25 907. Procedure for distributing recovery.

26 908. Subpoenas.

27 909. Cooperation with Federal Government and other states.

28 910. Construction.

29 911. Consistency with Federal law.

30 912. Jurisdiction of Commonwealth Court.

1 913. Action not barred as affecting or involving interstate or
2 foreign commerce.

3 914. Remedies cumulative.

4 § 901. Scope of chapter.

5 This chapter provides for the protection of free enterprise
6 in this Commonwealth.

7 § 902. Declaration of purpose.

8 The purpose of this chapter is to promote free enterprise and
9 free trade in the marketplaces of this Commonwealth by
10 prohibiting restraints on trade which are secured through
11 monopolistic or collusive practices and which act or tend to act
12 to decrease competition between and among persons engaged in
13 commerce and trade, whether in manufacturing, distribution,
14 financing, service industries or related for-profit and
15 nonprofit pursuits.

16 § 903. Definitions.

17 The following words and phrases when used in this chapter
18 shall have the meanings given to them in this section unless the
19 context clearly indicates otherwise:

20 "Commodity." Any kind of real or personal property.

21 "Documentary material." The original or any copy of any
22 designated documents, including, but not limited to, writings,
23 drawings, graphs, charts, photographs, electronically created
24 data and other compilations of data.

25 "Person." A natural person, corporation, partnership,
26 association of persons, State agency, municipal authority or
27 other political subdivision.

28 "Service." An activity that is performed in whole or in part
29 for the purpose of financial gain. The term shall not include
30 labor which is performed by natural persons as employees of

1 others or a commodity.

2 "Trade or commerce." All economic activity involving or
3 relating to any commodity or service.

4 § 904. Prohibited acts.

5 The following acts are prohibited:

6 (1) To contract, combine or conspire in restraint of
7 trade or commerce.

8 (2) To contract, combine or conspire to establish a
9 minimum price below which a retailer, wholesaler or
10 distributor may not sell a commodity or service.

11 (3) To monopolize, attempt to monopolize or combine or
12 conspire with any other person or persons to monopolize any
13 part of trade or commerce.

14 (4) To acquire, directly or indirectly, the whole or any
15 part of the stock or other share, capital or assets of any
16 other person or persons where the effect of the acquisition
17 may be to lessen competition substantially or to tend to
18 create a monopoly in any line of trade or commerce.

19 § 905. Powers and duties of Attorney General.

20 (a) Civil action.--The Attorney General may bring a civil
21 action in the Commonwealth's proprietary capacity on behalf of
22 the Commonwealth, as parens patriae on behalf of any agency,
23 political subdivision or municipal authority or as parens
24 patriae on behalf of natural persons residing in this
25 Commonwealth to recover threefold the actual damages and the
26 costs of the suit, including reasonable attorney fees, for any
27 violation of section 904 (relating to prohibited acts).

28 (b) Limitation of actions.--A civil action for damages for a
29 violation of section 904 must be commenced within four years
30 after the accrual of a cause of action, except that no statute

1 of limitation shall bar any civil action for the recovery of
2 damages sustained by the Commonwealth.

3 (c) Equitable remedy.--The Attorney General may bring a
4 civil action in the Commonwealth's proprietary capacity on
5 behalf of the Commonwealth, as parens patriae on behalf of any
6 agency, political subdivision or municipal authority or as
7 parens patriae on behalf of natural persons residing in this
8 Commonwealth for injunctive relief or other equitable relief
9 against loss or damage, whether threatened or actual, for a
10 violation of section 904.

11 (d) Damages for indirect purchasers.--In a civil action
12 under this section, the fact that the Commonwealth or any
13 agency, political subdivision, municipal authority or natural
14 person who has sustained damages by reason of a violation of
15 section 904 has not dealt directly with the defendant shall not
16 bar or otherwise limit recovery, except to avoid duplicate
17 liability for the same injury.

18 § 906. Proof of damages.

19 In any action under section 905 (relating to powers and
20 duties of Attorney General), the Attorney General may recover
21 the aggregate damage sustained by the persons on whose behalf
22 the civil action has been brought without separately proving the
23 individual claims of each person. Proof of damages must be based
24 on:

25 (1) statistical or sampling methods;

26 (2) the pro rata allocation of illegal overcharges of
27 sales occurring within this Commonwealth; or

28 (3) such other reasonable system of estimating aggregate
29 damages as the Commonwealth Court may permit.

30 § 907. Procedure for distributing recovery.

1 The Attorney General shall distribute, allocate or otherwise
2 pay the amounts recovered under this chapter in accordance with
3 the laws of this Commonwealth or, in the absence of any
4 applicable Commonwealth law, as the Commonwealth Court may
5 authorize. Where it is impossible or economically impractical to
6 identify the persons on whose behalf a suit was brought, the
7 amounts recovered shall be paid to any charitable organization
8 in good standing with the Department of State whose interests
9 reasonably approximate the interests of the persons on whose
10 behalf the suit was brought. For the purposes of this section,
11 reasonable approximation shall be determined by evaluating:

12 (1) The purposes of the underlying laws claimed to have
13 been violated.

14 (2) The nature of the injury to the persons on whose
15 behalf the suit was brought.

16 (3) The characteristics and interests of the persons on
17 whose behalf the suit was brought.

18 (4) The geographical scope of the persons on whose
19 behalf the suit was brought.

20 (5) The reasons why the amounts recovered have gone
21 unclaimed.

22 (6) The closeness of the fit between the persons on
23 whose behalf the suit was brought and the cy pres recipient.

24 § 908. Subpoenas.

25 (a) Authority to issue.--Whenever the Attorney General
26 believes that a person may be in control of information relevant
27 to any civil investigation under this chapter, the Attorney
28 General may issue and serve subpoenas, administer oaths or
29 affirmations and examine witnesses and receive evidence. Each
30 subpoena shall state the subject matter of the civil

1 investigation, describe the conduct constituting the alleged
2 violation which is under investigation and list the provisions
3 of this chapter applicable to the alleged violation.

4 (b) Form and use.--

5 (1) The subpoena shall prescribe the date, time and
6 place at which oral testimony shall be taken, describe the
7 material to be produced with reasonable particularity so as
8 to fairly identify the documents subpoenaed and prescribe a
9 date within which the material is to be produced. Under terms
10 as the Attorney General shall prescribe, the documentary
11 material shall be available for inspection and copying by the
12 person who produced the material.

13 (2) The Attorney General may use the information in a
14 civil action brought under this chapter. Information which
15 contains trade secrets or other highly confidential matters
16 shall not be presented, except with the approval of the court
17 in which a proceeding is pending after adequate notice to the
18 person furnishing the documentary material.

19 (c) Applicability of rules.--Except as otherwise specified
20 by this chapter, compliance with the subpoena shall be governed
21 by the Pennsylvania Rules of Civil Procedure.

22 (d) Confidentiality.--Any testimony, documentary material or
23 other tangible evidence produced or answer made under this
24 chapter shall be kept confidential by the Attorney General prior
25 to the institution of a civil action brought under this chapter
26 for the alleged violation of the provisions of this chapter
27 under investigation, unless:

28 (1) confidentiality is waived by the person subpoenaed;

29 (2) disclosure is authorized by the Commonwealth Court;

30 or

1 (3) disclosure is made under section 909 (relating to
2 cooperation with Federal Government and other states).

3 (e) Failure to obey subpoena.--In the event a witness served
4 with a subpoena under this chapter by the Attorney General fails
5 or refuses to produce documentary material, to answer written
6 interrogatories or to give testimony, the Attorney General may
7 petition the Commonwealth Court for an order requiring the
8 witness to answer, testify or produce the documentary material
9 demanded.

10 (f) Prohibited acts.--Any person who obstructs compliance
11 with a subpoena of the Attorney General issued under authority
12 of this section or knowingly removes or falsifies any
13 documentary material that is the subject of a subpoena issued by
14 the Attorney General under authority of this section commits a
15 misdemeanor of the second degree.

16 § 909. Cooperation with Federal Government and other states.

17 The Attorney General may cooperate and coordinate enforcement
18 of the provisions of this chapter with the Federal Government
19 and other states, including, but not limited to, sharing
20 information and evidence obtained in accordance with section 908
21 (relating to subpoenas).

22 § 910. Construction.

23 Nothing in this chapter shall be construed as making illegal
24 any activity or conduct exempt under any Commonwealth statute or
25 any statute of the United States.

26 § 911. Consistency with Federal law.

27 If any provision of this chapter is identical to or similar
28 to that of a Federal antitrust statute, it shall be interpreted
29 in a manner consistent with comparable Federal antitrust law as
30 decided by the Federal courts whose jurisdiction includes this

1 Commonwealth.

2 § 912. Jurisdiction of Commonwealth Court.

3 The Commonwealth Court shall have original jurisdiction over
4 all actions for violations of this chapter.

5 § 913. Action not barred as affecting or involving interstate
6 or foreign commerce.

7 No action under this chapter shall be barred on the grounds
8 that the activities or conduct complained of in any way affects
9 or involves interstate or foreign commerce.

10 § 914. Remedies cumulative.

11 The remedies afforded by this chapter are cumulative.

12 Section 4. This act shall take effect in 60 days.