

Handout #1

THOMAS R. CALTAGIRONE, MEMBER
HOUSE POST OFFICE BOX 209 210
ROOM 106, SOUTH OFFICE BUILDING
HARRISBURG, PENNSYLVANIA 17120-0028
PHONE: (717) 787-3525



COMMITTEES

JUDICIARY CHAIRMAN

127 SOUTH TENTH STREET
READING, PENNSYLVANIA 19602
PHONE: (215) 376-1529

House of Representatives
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

AGENDA

August 4, 1993

**Public Hearing on Senate Bill 307
Antitrust Legislation
Room 140 Main Capitol Building
10:00 AM**

John H. Broujos, former Member, PA House of Representatives

John Dankowsky, PA Business Roundtable

Jay Tolson, Fischer Porter Corporation

Sam Marshall, Vice President and Counsel, PA Insurance Federation

Rebecca Cummings, PA Chamber of Business and Industry



HOUSE OF REPRESENTATIVES
DEMOCRATIC COMMITTEE

BILL ANALYSIS

BILL NO. SB 307 P.N. 1202 SPONSOR: Lewis
COMMITTEE: Judiciary DATE: August 3, 1993

Proposal: SB 307 would enact the PA Antitrust Act.

Existing Law: Pennsylvania is the only state which does not presently have a state antitrust statute. However, the Federal antitrust laws would apply to most actions which could be pursued under state antitrust law. Also, the Pennsylvania Anti-bidrigging Act would apply to some conduct which would fall within the purview of the provisions of SB 307.

Analysis: SB 307 provides that a contract, combination or conspiracy in restraint of trade or commerce in the Commonwealth is unlawful, and that it shall also be unlawful to monopolize, or attempt to monopolize, or to combine or to conspire to monopolize, a part of trade or commerce in this Commonwealth. Any person violating these provisions would be guilty of a felony of the third degree. A partnership, corporation, association or other entity would be subject to a fine not exceeding one million dollars. An individual violating these provisions would be subject to a fine of not more than \$100,000 and imprisonment for not more than three years. The Attorney General would be the only official authorized to prosecute an action for such criminal violations.

In lieu of criminal prosecutions for a restraint of trade or a monopoly, the attorney general may elect to pursue an action for a civil penalty. A partnership, corporation, association or other entity would be liable in such a civil action for a penalty of not more than one million dollars, plus costs of suit, including a reasonable attorney fee. An individual would be liable in a civil action for a penalty of not more than \$100,000, plus costs of suit, including a reasonable attorney fee.

In determining both civil and criminal penalties, the court would be required to consider the prior criminal record of the violator, and the size and amount of any contract involved. All fines and penalties collected would be paid into the General Fund. An action brought by the attorney general, whether civil or criminal, would be subject to a four year statute of limitations. A criminal prosecution could not be brought against

The attorney general is given general investigative authority to investigate any violation of the Act. The attorney general is provided with investigative subpoena power "prior to the institution of a civil action." No criminal prosecution may be brought by the attorney general based principally upon information or documents obtained in a civil investigation. Any information obtained by the attorney general in the conduct of an investigation is subject to strict rules of confidentiality, as delineated in the bill.

SB 307 provides that the provisions of the bill which parallel provisions of the federal antitrust statute shall be construed consistently with pertinent federal statutes and federal judicial opinions interpreting those federal statutes. The provisions of the bill would take effect in 60 days after passage.

Prepared by: William H. Andring, Esq.
House Judiciary Committee

THE GENERAL ASSEMBLY OF PENNSYLVANIA *Handout #3*

SENATE BILL

No. 307

Session of
1993

INTRODUCED BY LEWIS, SCANLON, JONES, BORTNER, REIBMAN, SCHWARTZ,
STAPLETON, PECORA, HART AND PORTERFIELD, JANUARY 27, 1993

AS AMENDED ON THIRD CONSIDERATION, MAY 4, 1993

AN ACT

1 Prohibiting unreasonable restraints of trade; imposing
2 penalties; and providing for enforcement.

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

5 Section 1. Short title.

6 This act shall be known and may be cited as the Pennsylvania
7 Antitrust Act.

8 Section 2. Declaration of policy.

9 The General Assembly finds and declares ~~as follows:~~ ←

10 ~~(1) The~~ THAT THE purpose of this act is to promote the ←
11 public benefits of a competitive economic environment and to
12 protect the economic welfare of consumers, businesses and the
13 Commonwealth.

14 ~~(2) The provisions of this act which parallel provisions~~ ←
15 ~~of Federal antitrust statutes shall be construed consistently~~
16 ~~with pertinent Federal statutes and Federal judicial opinions~~
17 ~~interpreting those Federal statutes.~~

18 Section 3. Definitions.

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

4 "Attorney General." Includes a designated deputy.

5 "Person." An individual, partnership, corporation,
6 association or other entity. The term includes a political
7 subdivision.

8 "Political subdivision." Includes an agency, a board, a
9 commission or an authority of a political subdivision.

10 "Trade secret." Anything which constitutes, represents,
11 evidences or records secret or confidential scientific,
12 technical, merchandising, production, management or commercial
13 information.

14 Section 4. Unreasonable restraints of trade.

15 A contract, combination or conspiracy in restraint of trade
16 or commerce in this Commonwealth is unlawful.

17 Section 5. Monopolies.

18 It shall be unlawful to monopolize, or attempt to monopolize,
19 or to combine or conspire to monopolize, a part of trade or
20 commerce in this Commonwealth.

21 Section 6. Acquisitions and mergers.

22 It shall be unlawful to acquire, directly or indirectly, the
23 whole or any part of the stock, or other share capital, or
24 assets or any other entity, where the effect of the acquisition
25 may be to substantially lessen competition or tend to create a
26 monopoly in any line of trade or commerce in this Commonwealth. ←

27 Section 7. Penalties.

28 (a) Criminal penalty.--

29 (1) A partnership, corporation, association or other
30 entity which violates section 4 or 5 commits a felony of the

1 third degree and shall, upon conviction, be sentenced to pay
 2 a fine of not more than \$1,000,000.
 3 (2) An individual who violates section 4 or 5 commits a
 4 felony of the third degree and shall, upon conviction, be
 5 sentenced to pay a fine of not more than \$100,000 or to
 6 imprisonment for not more than three years, or both.
 7 (b) Enforcement.--The Attorney General shall have standing
 8 and authority to prosecute an action for a criminal penalty.
 9 (c) Alternative civil penalty.--In lieu of criminal
 10 prosecution under subsection (b), the Attorney General may elect
 11 to bring an action for a civil penalty. In an action under this
 12 subsection:
 13 (1) An individual who violates section 4 OR 5 shall be
 14 liable for a penalty of not more than \$100,000 for each
 15 violation and for the cost of suit, including a reasonable
 16 attorney fee.
 17 (2) A partnership, corporation, association or other
 18 entity which violates section 4 OR 5 shall be liable for a
 19 penalty of not more than \$1,000,000 for each violation and
 20 for the cost of the suit, including a reasonable attorney
 21 fee.
 22 (3) The following shall apply:
 23 (i) Any person, partnership, corporation,
 24 association or other entity who fails to comply with
 25 section 5 or 6 shall be liable for a civil penalty of not
 26 more than \$50,000 for each day during which the person is
 27 in violation of this section. The maximum penalty under
 28 this subparagraph shall be \$1,000,000.
 29 (ii) Upon violation of section 6 by any person,
 30 partnership, corporation, association or other entity, in

1 ~~addition to any other remedy provided in this section,~~
2 ~~the court may issue an injunction or order the~~
3 ~~divestiture of stock or assets in the manner and within~~
4 ~~the time fixed by order of the court.~~

5 (d) Factors to be considered.--In determining the
6 appropriate sanctions to be imposed under this section, the
7 court shall consider at least the following factors:

- 8 (1) The prior criminal record of the violator.
9 (2) The size and amount of the contract involved, if
10 any.

11 (e) Disposition of fines and penalties.--Criminal fines and
12 civil penalties collected under this section shall be paid into
13 the State Treasury and deposited in the appropriate fund.

14 (f) Limitation of action.--An action under this section must
15 be commenced within four years after the violation of this act
16 is committed.

17 (g) Double jeopardy.--A criminal prosecution under this
18 section may not be brought against a person previously charged
19 by information or indictment with a criminal violation of the
20 act of October 28, 1983 (P.L.176, No.45), known as the Antibid-
21 Rigging Act, or of a Federal antitrust statute if either
22 prosecution is based upon substantially the same conduct upon
23 which a prosecution under this section could be based and
24 jeopardy has attached under the prosecution.

25 (h) Other actions.--An action under this section does not
26 bar administrative sanctions, A CIVIL ACTION FOR INJUNCTIVE
27 RELIEF UNDER SECTION 8 or a civil action for damages or
28 injunctive relief under section 8 9.

29 ~~Section 8. Damages and injunctive relief.~~

30 SECTION 8. INJUNCTIVE RELIEF.

30 action by or on behalf of the Commonwealth or the person
 29 which all appeals have been exhausted has been entered in an
 28 on any transactions or occurrences if a final judgment as to
 27 or continue to maintain a civil action under this act based
 26 (3) Neither the Commonwealth nor any person may maintain
 25 injury.

24 consolidation, to avoid duplicate liability for the same
 23 court shall take necessary steps, including transfer and
 22 an action by the Commonwealth as an indirect purchaser, the
 21 to bring a civil action for damages or injunctive relief. In
 20 result of an act prohibited by this act, shall have the right
 19 purchaser, when injured in its business or property as a
 18 (2) The Commonwealth, whether a direct or indirect
 17 relief.

16 a right to bring a civil action for damages or injunctive
 15 result of an act prohibited by section 9 THIS ACT shall have
 14 (1) A person injured in his business or property as a
 13 (a) Cause of action.--

12 SECTION 9. PRIVATE CAUSE OF ACTION.
 11 ACT IS COMMITTED.

10 MUST BE COMMENCED WITHIN FOUR YEARS AFTER THE VIOLATION OF THIS
 9 (C) COMMENCEMENT OF ACTION.--AN ACTION UNDER THIS SECTION
 8 OF THE COURT.

7 STOCK OR ASSETS IN THE MANNER AND WITHIN THE TIME FIXED BY ORDER
 6 PROVIDED IN THIS SECTION, THE COURT MAY ORDER THE DIVESTITURE OF
 5 SECTION 6 BY ANY PERSON, IN ADDITION TO ANY OTHER REMEDY

4 (B) DIVESTITURE OF STOCK OR ASSETS.--UPON VIOLATION OF
 3 PROHIBITED BY THIS ACT.

2 BRING A CIVIL ACTION AGAINST ANY PERSON TO RESTRAIN THE CONDUCT
 1 (A) ACTION BY ATTORNEY GENERAL.--THE ATTORNEY GENERAL MAY

1 under the antitrust laws of the United States or another
2 state for injury arising from the same transactions,
3 occurrences or circumstances.

4 (b) Limitation of action.--A cause of action arises under
5 this section at the time the conduct in violation of this act is
6 discovered or should have been discovered or, for a continuing
7 violation, at the time the latest violation of this act is
8 discovered or should have been discovered. An action under this
9 section must be brought within four years of the date when the
10 cause of action arises. During the pendency of an action under
11 section 7 and for one year after the action is completed, the
12 limitation under this subsection is tolled if the action under
13 this section is based in whole or in part on any matter
14 complained of in the action under section 7, provided that,
15 whenever the running of the statute of limitations in respect of
16 a cause of action arising under this section is tolled
17 hereunder, any action to enforce that cause of action shall be
18 forever barred unless commenced either within the period of
19 suspension or within four years after the cause of action
20 accrued.

21 (c) Damages.--Damages recoverable under this act by the
22 Commonwealth shall be actual damages sustained plus the cost of
23 suit, including reasonable attorney fees. Damages recoverable
24 under this act by persons shall be three times the actual
25 damages sustained plus taxable costs and reasonable attorney
26 fees. Damages are subject to the following:

27 (1) No person shall be awarded any damages, including
28 treble damages, if a court of another jurisdiction has
29 already entered judgment on a claim by the person arising out
30 of the same transaction or occurrence.

1 (2) If the conduct which gives rise to a violation of
2 this act also gives rise to a violation of the act of October
3 28, 1983 (P.L. 176, No. 45), known as the Antitid-Rigging Act,
4 the amount awarded as civil damages or compensation under
5 this act shall not duplicate the amount awarded under the
6 Antitid-Rigging Act.
7 (d) Costs in injunction actions.--In an injunction action in
8 which the plaintiff substantially prevails, the court shall
9 award the cost of suit, including a reasonable attorney fee.
10 (e) Liability.--Liability under this section shall be joint
11 and several. Persons subject to liability under this act shall
12 be entitled to contribution in accordance with 42 Pa.C.S. Ch. 83
13 Subch. B (relating to contribution among tort-feasors).
14 (f) Notice to Attorney General.--Within ten days of filing a
15 complaint under this section, the plaintiff shall serve a copy
16 of the complaint upon the Attorney General by registered mail. A
17 copy of the certificate of service shall be filed with the
18 court.
19 (g) Collateral estoppel.--A criminal conviction for a
20 violation of section 4 or 5 shall be prima facie evidence as to
21 liability of the convicted participants in a civil action under
22 this section. This subsection does not apply to pleas of no
23 contest OR TO CONSENT DECREES. Nothing contained in this
24 subsection shall be construed to impose a limitation on the
25 application of collateral estoppel.
26 (h) Authority of Attorney General.--The Attorney General
27 shall have authority under this section:
28 (1) To bring all actions on behalf of the Commonwealth.
29 (2) To bring an action as parens patriae on behalf of
30 individuals who have suffered an injury to their property by

<—

1 reason of a violation of this act and who resided in this
2 Commonwealth when the violation occurred.

3 (3) To bring an action on behalf of a political
4 subdivision, if requested to do so by the political
5 subdivision.

6 Section 9 10. Exemptions.

7 (a) Sovereign immunity.--The Commonwealth shall not be
8 liable in actions under this act. Commonwealth officials and
9 employees acting in their official capacities shall not be
10 liable for penalties under section 7 or for damages, costs and
11 attorney fees under section 8 9.

12 (b) Governmental and official immunity.--Political
13 subdivisions ~~and officials~~ SHALL NOT BE LIABLE IN ACTIONS UNDER
14 THIS ACT. OFFICIALS and employees of political subdivisions
15 acting in their official capacities shall not be liable for
16 penalties under section 7 or for damages, costs and attorney
17 fees under section 8 9.

18 (c) State action.--Conduct which results from a clearly
19 articulated and affirmatively expressed State policy and which
20 is actively supervised by the Commonwealth shall not constitute
21 a violation of this act.

22 (d) Labor organizations.--The existence and operation of a
23 labor organization and the exercise of lawful activities of a
24 labor organization shall not constitute a violation of this act.

25 (e) Cooperative associations.--The collective activities of
26 an agricultural or a horticultural cooperative association to
27 process, prepare for market, handle and market members'
28 products, whether or not the activities restrain competition
29 among the members of the association, shall not constitute a
30 violation of this act.

1 (f) Business of insurance.--This act does not apply to the
2 business of insurance to the extent that the business:
3 (1) is regulated by the Insurance Commissioner; and
4 (2) does not constitute a boycott, coercion or
5 intimidation or an agreement to boycott, coerce or
6 intimidate.
7 (g) Public utilities.-- This act does not apply to
8 activities of, or to the rates charged by, an electric
9 cooperative corporation, as defined in 15 Pa.C.S. Ch. 73
10 (relating to electric cooperative corporations), or a public
11 utility, as defined in 66 Pa.C.S. § 102 (relating to
12 definitions), to the extent that those activities or rates are
13 subject to the review of the Pennsylvania Public Utility
14 Commission or a comparable Federal agency. Upon the filing of a
15 complaint against a public utility pursuant to this act, the
16 public utility may request from the Commonwealth Court a
17 declaratory order outlining the extent to which the activity or
18 rates subject to the complaint are subject to the review of the
19 Commission or, if the public utility's conduct or activities are
20 subject primarily to the jurisdiction of a comparable Federal
21 Agency, the public utility may request from that Agency a
22 declaratory order outlining the extent to which the activity or
23 rates subject to the complaint are subject to the Agency's
24 JURISDICTION. This public utility exemption is in addition to
25 other exemptions granted to public utilities in this act,
26 including subsections (c) and (1).
27 (h) Banks and savings institutions.--This act does not apply
28 to the activities of banks or savings institutions, their
29 affiliates or subsidiaries to the extent that such activities
30 are authorized, regulated or supervised under Federal or State

1 banking or savings institution laws or regulations.

2 (i) Federal or State exempt activities.--Any activity or
3 conduct authorized by or exempt from Pennsylvania statutory or
4 common law, or exempt from the provisions of the antitrust laws
5 of the United States, shall be exempt from the provisions of
6 this act. ANY ACTIVITY OR CONDUCT SUBJECT TO ANY OTHER FEDERAL
7 STATUTE THAT LIMITS, MODIFIES OR OTHERWISE AFFECTS THE
8 APPLICABILITY OF ONE OR MORE PROVISIONS OF THE FEDERAL ANTITRUST
9 STATUTES, OR FEDERAL JUDICIAL OPINIONS INTERPRETING THOSE
10 STATUTES, SHALL TO THAT EXTENT BE EXEMPT FROM THE PROVISIONS OF
11 THIS ACT.

12 (J) NOT-FOR-PROFIT HEALTH CARE FACILITIES.--ANY AGREEMENT OR
13 CONDUCT BY A NOT-FOR-PROFIT HEALTH CARE FACILITY WHICH IS LIKELY
14 TO REDUCE HEALTH CARE COSTS OR IMPROVE THE QUALITY OF PATIENT
15 CARE SHALL NOT CONSTITUTE A VIOLATION OF THIS ACT UNLESS THE
16 DEPARTMENT OF HEALTH DETERMINES THAT SUCH AGREEMENT OR CONDUCT
17 IS INCONSISTENT WITH THE STATE HEALTH PLAN OF THE COMMONWEALTH.
18 THE DEPARTMENT OF HEALTH MAY, AT THE REQUEST OF A HEALTH CARE
19 FACILITY, ISSUE ADVISORY OPINIONS CONCERNING WHETHER OR NOT A
20 SPECIFIC AGREEMENT OR CONDUCT IS INCONSISTENT WITH THE STATE
21 HEALTH PLAN OF THE COMMONWEALTH.

22 Section ~~10~~ 11. Investigation.

23 (a) General power.--If the Attorney General has reason to
24 believe that a violation of this act has occurred, the Attorney
25 General shall have authority to investigate on behalf of the
26 Commonwealth, its citizens or a political subdivision.

27 (b) Attendance and production of documents.--Prior to the
28 institution of a civil action, the Attorney General is
29 authorized to require the attendance and testimony of witnesses
30 and the production of documents. For this purpose, the Attorney

1 General may issue subpoenas, examine witnesses and receive
2 evidence. If a person objects to or otherwise fails to comply
3 with a subpoena or request for testimony, the Attorney General
4 may file in Commonwealth Court an action to enforce the subpoena
5 or request. Notice of hearing the action and a copy of all
6 pleadings shall be served upon the person, who may appear in
7 opposition.
8 (c) Confidentiality.--
9 (1) Any testimony taken or material produced shall be
10 kept confidential by the Attorney General except to the
11 extent he may use information in a judicial proceeding or if
12 the disclosure is authorized by the court for good cause
13 shown or confidentiality is waived by the person being
14 investigated and by the person who has testified, answered
15 interrogatories or produced materials.
16 (2) At the Attorney General's discretion, the Attorney
17 General may disclose information discovered under this
18 section to the United States Department of Justice, the
19 Federal Trade Commission, another state or territory of the
20 United States, the District of Columbia and another agency of
21 the Commonwealth, upon the prior certification of an
22 appropriate official of the recipient that the information
23 will be maintained in confidence other than use for official
24 purposes and that the recipient will abide by the provisions
25 of paragraph (1). However, trade secrets may not be disclosed
26 by the Attorney General without the approval of the
27 Commonwealth Court, after notice to the person who produced
28 the information.
29 (3) The Attorney General may use information, including
30 documents, obtained under this section in an action brought

1 under this act or Federal antitrust statutes; however,
2 information relating to trade secrets may not be made public
3 in an action without the approval of the court in which the
4 action is pending, after notice to the person who produced
5 the information.

6 (d) Limitation on use.--No criminal prosecution under this
7 act may be brought by the Attorney General based principally
8 upon information or documents obtained in a civil investigation
9 under this section.

10 (e) Wrongful disclosure of information.--Any person who
11 publishes or communicates any procedure, testimony or material
12 produced, which is required to be kept confidential pursuant to
13 this section, commits a misdemeanor of the third degree.

14 SECTION 12. CONSISTENCY WITH FEDERAL LAW. ←

15 THE PROVISIONS OF THIS ACT WHICH PARALLEL PROVISIONS OF
16 FEDERAL ANTITRUST STATUTES SHALL BE CONSTRUED CONSISTENTLY WITH
17 PERTINENT FEDERAL STATUTES AND FEDERAL JUDICIAL OPINIONS
18 INTERPRETING THOSE FEDERAL STATUTES.

19 Section ~~12~~ 13. Effective date. ←

20 This act shall take effect in 60 days.