

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2012 Session of 2024

INTRODUCED BY PISCIOTTANO, VENKAT, ISAACSON, MADDEN, SANCHEZ, SCHLOSSBERG, KHAN, DELLOSO, HOWARD, MERSKI, N. NELSON, BOYD, KRAJEWSKI, GREEN, CERRATO AND MATZIE, FEBRUARY 5, 2024

AS REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF REPRESENTATIVES, AS AMENDED, APRIL 17, 2024

AN ACT

1 ~~Providing for cause of action for antitrust conduct, for indirect purchaser recovery under State antitrust laws and for premerger notice of health care mergers and transactions, and imposing penalties.~~ <--

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7 AMENDING TITLE 12 (COMMERCE AND TRADE) OF THE PENNSYLVANIA
8 CONSOLIDATED STATUTES, PROVIDING FOR CAUSE OF ACTION FOR
9 ANTITRUST CONDUCT, FOR INDIRECT PURCHASER RECOVERY UNDER
10 STATE ANTITRUST LAWS AND FOR PREMERGER NOTICE OF HEALTH CARE
11 MERGERS AND TRANSACTIONS; AND IMPOSING PENALTIES.

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12 The General Assembly of the Commonwealth of Pennsylvania
13 hereby enacts as follows:

14 ~~Section 1. Short title.~~

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15 ~~This act shall be known and may be cited as the Pennsylvania~~
16 ~~Open Markets Act.~~

17 ~~Section 2. Declaration of purpose.~~

18 ~~The purpose of this act is to promote free enterprise and~~
19 ~~free trade in the marketplaces of this Commonwealth by~~
20 ~~prohibiting restraints of trade that are secured through~~
21 ~~monopolistic or collusive practices and that act or tend to act~~
22 ~~to decrease competition between and among persons engaged in~~
23 ~~commerce and trade.~~

24 ~~Section 3. Definitions.~~

25 ~~The following words and phrases when used in this act shall~~
26 ~~have the meanings given to them in this section unless the~~
27 ~~context clearly indicates otherwise:~~

28 ~~"Acquisition." An agreement, arrangement or activity, the~~
29 ~~consummation of which results in a person acquiring, directly or~~
30 ~~indirectly, the control of another person or the ability to~~
31 ~~influence the competitive conduct of the target firm, and~~
32 ~~includes the acquisition of voting securities and noncorporate~~

1 ~~interests, such as assets, capital stock, membership interests~~
2 ~~or equity interests.~~

3 ~~"Contracting affiliation." The formation of a relationship~~
4 ~~between two or more entities that permits the entities to~~
5 ~~negotiate jointly with insurers or third party administrators~~
6 ~~over rates for professional medical services or for one entity~~
7 ~~to negotiate on behalf of the other entity with insurers or~~
8 ~~third party administrators over rates for professional medical~~
9 ~~services.~~

10 ~~"Hart Scott Rodino Act." Title II of the Clayton Antitrust~~
11 ~~Act (Public Law 63 212, 15 U.S.C. § 18a).~~

12 ~~"Health care facility." As defined in section 103 of the act~~
13 ~~of July 19, 1979 (P.L.130, No.48), known as the Health Care~~
14 ~~Facilities Act.~~

15 ~~"Health care facility system." Either of the following:~~

16 ~~(1) a parent corporation of one or more health care~~
17 ~~facilities and an entity affiliated with the parent~~
18 ~~corporation through ownership or control; or~~

19 ~~(2) a health care facility and an entity affiliated with~~
20 ~~the health care facility through ownership.~~

21 ~~"Health care practitioner." As defined in section 103 of the~~
22 ~~Health Care Facilities Act.~~

23 ~~"Health care services." Medical, surgical, chiropractic,~~
24 ~~hospital, optometric, podiatric, pharmaceutical, ambulance,~~
25 ~~mental health, substance use disorder, therapeutic,~~
26 ~~preventative, diagnostic, curative, rehabilitative, palliative,~~
27 ~~eustodial and other services relating to the prevention, cure or~~
28 ~~treatment of illness, injury or disease.~~

29 ~~"Health care services revenue." The total revenue received~~
30 ~~for health care services in the previous 12 months.~~

1 ~~"Insurer." As defined in 40 Pa.C.S. § 9103 (relating to~~
2 ~~definitions).~~

3 ~~"Merger." A consolidation of two or more organizations,~~
4 ~~including two or more organizations joining through a common~~
5 ~~parent organization or two or more organizations forming a new~~
6 ~~organization. The term does not include a corporate~~
7 ~~reorganization.~~

8 ~~"Monopoly." The power to control prices and exclude~~
9 ~~competition as a seller.~~

10 ~~"Monopsony." The power to control prices and exclude~~
11 ~~competition as a buyer.~~

12 ~~"Person." A natural person, corporation, trust, partnership,~~
13 ~~an incorporated or unincorporated association, the Commonwealth,~~
14 ~~a State agency, municipal authority, political subdivision and~~
15 ~~any other legal entity.~~

16 ~~"Provider organization." A corporation, partnership,~~
17 ~~business trust, association or organized group of persons,~~
18 ~~whether incorporated or not, that is in the business of health~~
19 ~~care delivery or management and that represents seven or more~~
20 ~~health care practitioners in contracting with insurers or third~~
21 ~~party administrators for the payments of health care services.~~
22 ~~The term includes a physician organization, physician hospital~~
23 ~~organization, independent practice association, provider network~~
24 ~~and accountable care organization.~~

25 ~~"Third party administrator." An entity that administers~~
26 ~~payments for health care services on behalf of a client in~~
27 ~~exchange for an administrative fee.~~

28 ~~"Trade or commerce." Economic activity directly or~~
29 ~~indirectly affecting the people of this Commonwealth.~~

30 ~~Section 4. Prohibited acts.~~

1 ~~(a) Restraints of trade. A contract, a combination in the~~
2 ~~form of trust or otherwise or a conspiracy in restraint of trade~~
3 ~~or commerce, is unlawful.~~

4 ~~(b) Monopolize or monopsonize. It is unlawful for a person~~
5 ~~to monopolize or monopsonize, to attempt to monopolize or~~
6 ~~monopsonize or to combine or conspire with another person to~~
7 ~~monopolize or monopsonize, in any part of trade or commerce.~~

8 ~~(c) Acquisitions. It is unlawful for a person to acquire,~~
9 ~~directly or indirectly, the whole or any part of the stock,~~
10 ~~share capital or other equity interest of another person or the~~
11 ~~whole or any part of the assets of another person if any of the~~
12 ~~following apply:~~

13 ~~(1) The effect of the acquisition is substantially to~~
14 ~~lessen competition.~~

15 ~~(2) The effect of the acquisition tends to create a~~
16 ~~monopoly or monopsony of any part of trade or commerce.~~

17 ~~(d) Market power. It is unlawful for any person or persons~~
18 ~~with market power in the conduct of any business, trade or~~
19 ~~commerce, in a labor market, or in the furnishing of a service~~
20 ~~in this Commonwealth, to abuse that market power.~~

21 ~~Section 5. Enforcement by Attorney General.~~

22 ~~(a) Action on behalf of Commonwealth. If the Attorney~~
23 ~~General has reason to believe that a person, foreign or~~
24 ~~domestic, has engaged in, is engaging in or is about to engage~~
25 ~~in an act or practice that is unlawful under this act, the~~
26 ~~Attorney General may bring a civil action in the name of the~~
27 ~~Commonwealth against the person to:~~

28 ~~(1) Obtain a declaratory judgment that the action or~~
29 ~~practice violates this act.~~

30 ~~(2) Enjoin an act or practice that violates this act by~~

1 ~~issuing a temporary restraining order, an ex parte temporary~~
2 ~~restraining order or a preliminary or permanent injunction,~~
3 ~~without bond.~~

4 ~~(3) Recover a civil penalty of not less than \$100,000~~
5 ~~for each violation of this act or of an injunction, judgment~~
6 ~~or consent agreement issued or entered into under this act.~~

7 ~~(4) Obtain an order requiring divestiture of assets:~~

8 ~~(i) acquired in violation of this act and after the~~
9 ~~court determines that divestiture is necessary to avoid~~
10 ~~the creation or continuation of a monopoly or to avoid a~~
11 ~~likely substantial lessening of competition that results~~
12 ~~from a transaction found to be in violation of this act;~~

13 ~~or~~

14 ~~(ii) to restore competition to a line of commerce~~
15 ~~that has been eliminated by a violation of this act.~~

16 ~~(5) Recover actual damages, restitution or disgorgement~~
17 ~~on behalf of the Commonwealth and its agencies that are~~
18 ~~injured either directly or indirectly through a violation of~~
19 ~~this act.~~

20 ~~(b) Action on behalf of natural person. The Attorney~~
21 ~~General may bring a civil action in the name of the Commonwealth~~
22 ~~on behalf of a natural person injured directly or indirectly to~~
23 ~~recover damages, restitution or disgorgement through a violation~~
24 ~~of this act.~~

25 ~~(c) Recovery authorized. The Attorney General shall recover~~
26 ~~the costs of an investigation, expert costs and reasonable~~
27 ~~attorney fees and costs if successful in an action initiated~~
28 ~~under this section.~~

29 ~~(d) Jurisdiction. A civil action under this section may be~~
30 ~~brought in Commonwealth Court and in the court of common pleas~~

1 ~~of the county in which a party resides or has a principal place~~
2 ~~of business.~~

3 ~~(c) Investigation.—~~

4 ~~(1) If the Attorney General has reason to believe that a~~
5 ~~person, whether foreign or domestic, has engaged in or is~~
6 ~~engaging in a violation of this act or of a Federal antitrust~~
7 ~~law that may be enforced by the Attorney General, the~~
8 ~~Attorney General may initiate an investigation.~~

9 ~~(2) As part of an investigation under this section, the~~
10 ~~Attorney General may administer oaths and affirmations,~~
11 ~~subpoena witnesses and documentary material, propound~~
12 ~~interrogatories to be answered in writing under oath and~~
13 ~~collect evidence.~~

14 ~~(3) The Attorney General may use the information~~
15 ~~obtained under this section as the Attorney General~~
16 ~~determines necessary in the civil enforcement of this act or~~
17 ~~Federal antitrust law that may be enforced by the Attorney~~
18 ~~General, including presentation before a court.~~

19 ~~(4) The Attorney General may cooperate with and~~
20 ~~coordinate enforcement of this act and a Federal antitrust~~
21 ~~law may be enforced by the Attorney General with the Federal~~
22 ~~Government and the several states, including using and~~
23 ~~sharing information and evidence obtained under this act.~~

24 ~~Section 6. Measurement of damages.~~

25 ~~(a) General rule.—In an action brought under this act, the~~
26 ~~prevailing party shall recover treble damages sustained,~~
27 ~~reasonable attorney fees and costs, expert witness fees and~~
28 ~~investigative costs.~~

29 ~~(b) Method.—In an action under this act, damages may be~~
30 ~~proved and assessed in the aggregate by statistical or sampling~~

1 ~~methods, by the computation of illegal overcharges or~~
2 ~~underpayment or by another reasonable system of estimating~~
3 ~~aggregate damages as the court may permit without the necessity~~
4 ~~of separately proving the individual claim of, or amount of~~
5 ~~damage to, persons on whose behalf the suit was brought.~~

6 ~~(c) Computation. Damages may be proved and assessed in the~~
7 ~~aggregate by statistical or sampling methods, by the computation~~
8 ~~of illegal overcharges or by another reasonable system of~~
9 ~~estimating aggregate damages as the court may permit, without~~
10 ~~the necessity of separately proving the individual claim of, or~~
11 ~~amount of damage to, persons on whose behalf the suit was~~
12 ~~brought.~~

13 ~~(d) Interest. Damages for injuries by reason of anything~~
14 ~~prohibited under this act shall include interest computed from~~
15 ~~the date on which the injury is sustained, at a rate equal to~~
16 ~~the statutory rate for postjudgment interest, and the cost of~~
17 ~~suit, including reasonable attorney fees.~~

18 ~~Section 7. Premerger notification regarding health care.~~

19 ~~(a) General notification. A person conducting business in~~
20 ~~this Commonwealth that is required to file the notification and~~
21 ~~report form for certain mergers and acquisitions under the Hart~~
22 ~~Scott Rodino Act shall provide the same notice and documentation~~
23 ~~in its entirety to the Office of Attorney General at the same~~
24 ~~time that notice is filed with the Federal Trade Commission or~~
25 ~~the United States Department of Justice.~~

26 ~~(b) Health care notification.~~

27 ~~(1) It is the intent of the General Assembly to ensure~~
28 ~~that competition beneficial to consumers in health care~~
29 ~~markets across this Commonwealth remains vigorous and robust.~~

30 ~~(2) The General Assembly supports the intent through~~

1 ~~this section, which provides the Office of Attorney General~~
2 ~~with notice of all material health care transactions in this~~
3 ~~Commonwealth, so that the Office of Attorney General has the~~
4 ~~information necessary to determine whether an investigation~~
5 ~~under this act is warranted for potential anticompetitive~~
6 ~~conduct and consumer harm.~~

7 ~~(3) In addition to requiring notice under subsection (a)~~
8 ~~for transactions not involving health care, this section is~~
9 ~~also intended to supplement the Hart Scott Rodino Act by~~
10 ~~requiring notice of health care transactions not reportable~~
11 ~~under the reporting thresholds of the Hart Scott Rodino Act~~
12 ~~and by providing the Office of Attorney General with a copy~~
13 ~~of filings made in accordance with the Hart Scott Rodino Act.~~

14 ~~(c) Notice of material change.~~

15 ~~(1) Not less than 120 days prior to the effective date~~
16 ~~of a health care transaction that results in a material~~
17 ~~change, the parties to the health care transaction shall~~
18 ~~submit written notice to the Office of Attorney General of~~
19 ~~the material change.~~

20 ~~(2) For the purposes of this section, a material change~~
21 ~~includes a merger, acquisition or contracting affiliation~~
22 ~~between two or more entities of the following types:~~

23 ~~(i) health care facilities;~~

24 ~~(ii) health care facility systems; or~~

25 ~~(iii) provider organizations.~~

26 ~~(3) A material change includes proposed changes~~
27 ~~identified in paragraph (1) between a Pennsylvania entity and~~
28 ~~an out of State entity where the out of State entity~~
29 ~~generates at least \$10,000,000 in health care services~~
30 ~~revenue from patients residing in this Commonwealth and the~~

1 ~~entities are of the types identified in paragraph (2). A~~
2 ~~party to a material change that is licensed or operating in~~
3 ~~this Commonwealth shall submit a notice as required under~~
4 ~~this section.~~

5 ~~(4) For purposes of paragraph (2), a merger, acquisition~~
6 ~~or contracting affiliation between two or more health care~~
7 ~~facilities, health care facility systems or provider~~
8 ~~organizations only qualifies as a material change if the~~
9 ~~health care facilities, health care facility systems or~~
10 ~~provider organizations did not previously have common~~
11 ~~ownership or a contracting affiliation.~~

12 ~~(d) Notice requirements.~~

13 ~~(1) The written notice provided by the parties, as~~
14 ~~required by subsection (c), shall include:~~

15 ~~(i) The names of the parties and their current~~
16 ~~business addresses.~~

17 ~~(ii) Identification of all locations where health~~
18 ~~care services are currently provided by each party.~~

19 ~~(iii) Identification of all health care~~
20 ~~practitioners who currently provide health care services~~
21 ~~for each party.~~

22 ~~(iv) A brief description of the nature and purpose~~
23 ~~of the proposed material change.~~

24 ~~(v) The anticipated effective date of the proposed~~
25 ~~material change.~~

26 ~~(2) Nothing in this section shall be construed to~~
27 ~~prohibit the parties to a material change from voluntarily~~
28 ~~providing additional information to the Office of Attorney~~
29 ~~General.~~

30 ~~(e) Requests for additional information.~~

1 ~~(1) The Office of Attorney General must make a request~~
2 ~~for additional information from the parties under this act~~
3 ~~within 30 days of the date notice is received under~~
4 ~~subsections (a), (c) and (d).~~

5 ~~(2) Nothing in this subsection shall be construed to~~
6 ~~preclude the Office of Attorney General from conducting an~~
7 ~~investigation or enforcing Federal or State antitrust laws at~~
8 ~~a later date.~~

9 ~~(f) Health care premerger notification. A health care~~
10 ~~practitioner or provider organization conducting business in~~
11 ~~this Commonwealth that files a premerger notification with the~~
12 ~~Federal Trade Commission or the United States Department of~~
13 ~~Justice, in compliance with the Hart Scott Rodino Act, shall~~
14 ~~provide a copy of the filing to the Office of Attorney General.~~
15 ~~Providing a copy of the Hart Scott Rodino Act filing to the~~
16 ~~Office of Attorney General satisfies the notice requirement~~
17 ~~under subsection (d).~~

18 ~~(g) Materials submitted to the Office of Attorney General.~~

19 ~~(1) Information submitted to the Office of Attorney~~
20 ~~General under this section shall be maintained and used by~~
21 ~~the Office of Attorney General in the same manner and under~~
22 ~~the same protections as provided under this act.~~

23 ~~(2) Nothing in this section shall be construed to limit~~
24 ~~the Office of Attorney General's authority under this act.~~

25 ~~(3) Failure to comply with this section does not provide~~
26 ~~a private cause of action.~~

27 ~~(h) Penalty for noncompliance. A person that fails to~~
28 ~~comply with this section is liable to the Commonwealth for a~~
29 ~~civil penalty of not more than \$200 per day for each day of~~
30 ~~noncompliance.~~

1 ~~Section 8. Civil investigation.~~

2 ~~(a) Power of Attorney General to conduct.~~

3 ~~(1) If the Attorney General has reason to believe that a~~
4 ~~person, whether foreign or domestic, has engaged in or is~~
5 ~~engaging in a violation of this act or of a Federal antitrust~~
6 ~~law that may be enforced by the Attorney General, the~~
7 ~~Attorney General may initiate an investigation.~~

8 ~~(2) As part of an investigation under this section, the~~
9 ~~Attorney General may administer oaths and affirmations,~~
10 ~~subpoena witnesses and documentary material, propound~~
11 ~~interrogatories to be answered in writing under oath and~~
12 ~~collect evidence.~~

13 ~~(3) The Attorney General may use the information~~
14 ~~obtained under this section as the Attorney General~~
15 ~~determines necessary in the civil enforcement of this act or~~
16 ~~Federal antitrust law that may be enforced by the Attorney~~
17 ~~General, including presentation before a court.~~

18 ~~(4) An interrogatory or subpoena served under this~~
19 ~~subsection shall inform the party served of the right to file~~
20 ~~a petition as provided in subsection (b).~~

21 ~~(b) Petition authorized.~~

22 ~~(1) Not later than five business days after the service~~
23 ~~of an interrogatory or subpoena, or at any time before the~~
24 ~~return date specified in the interrogatory or subpoena, the~~
25 ~~party served under this section may file in Commonwealth~~
26 ~~Court a petition for an order modifying or setting aside the~~
27 ~~interrogatory or subpoena.~~

28 ~~(2) The party must serve the Attorney General with a~~
29 ~~copy of the petition.~~

30 ~~(3) The petitioner may raise an objection or privilege~~

1 ~~that would be available under this act or upon service of a~~
2 ~~subpoena in a civil action.~~

3 ~~(c) Location for production of documentary material.—~~

4 ~~(1) If documentary material that the Attorney General~~
5 ~~seeks to obtain by subpoena is not located within this~~
6 ~~Commonwealth and is not reducible to electronic reproduction~~
7 ~~and transmission, the party subpoenaed may make the~~
8 ~~documentary material available to the Attorney General to~~
9 ~~examine the documentary material at the place where the~~
10 ~~documentary material is located.~~

11 ~~(2) The Attorney General may designate representatives,~~
12 ~~including officials of the state in which the documentary~~
13 ~~material is located, to inspect the documentary material on~~
14 ~~the Attorney General's behalf.~~

15 ~~(3) The Attorney General may respond to similar requests~~
16 ~~from officials of other states and may inspect documentary~~
17 ~~material on their behalf.~~

18 ~~(d) Investigation enforcement order.—~~

19 ~~(1) The Attorney General may apply to Commonwealth Court~~
20 ~~for an order compelling compliance of a party who fails to~~
21 ~~obey a subpoena or answer an interrogatory issued under this~~
22 ~~section without lawful excuse and upon reasonable notice to~~
23 ~~all persons affected by the subpoena or interrogatory.~~

24 ~~(2) The Attorney General may request that an individual~~
25 ~~who refuses to comply with a subpoena or answer an~~
26 ~~interrogatory on the grounds that the testimony or~~
27 ~~documentary material may incriminate the individual be~~
28 ~~ordered by the court to provide the testimony or documentary~~
29 ~~material.~~

30 ~~(3) Except for a prosecution for perjury, an individual~~

1 ~~who complies with a court order to provide testimony or~~
2 ~~matter after asserting a privilege against self-incrimination~~
3 ~~to which the individual is entitled by law shall not have the~~
4 ~~testimony or documentary material provided, or evidence~~
5 ~~derived therefrom, or received against the individual used in~~
6 ~~a criminal investigation or proceeding.~~

7 ~~(e) Duty to comply. A person, whether foreign or domestic,~~
8 ~~upon whom an interrogatory or subpoena is served pursuant to~~
9 ~~this section shall comply with the terms of the interrogatory or~~
10 ~~subpoena unless otherwise provided by this section or by court~~
11 ~~order.~~

12 ~~(f) Liability.~~

13 ~~(1) A person who:~~

14 ~~(i) fails to appear with the intent to avoid, evade~~
15 ~~or prevent compliance, in whole or in part, with an~~
16 ~~investigation under this act or who removes from a place,~~
17 ~~conceals, withholds, mutilates, alters, destroys or by~~
18 ~~other means falsifies a matter or documentary material in~~
19 ~~the possession, custody or control of a person, subject~~
20 ~~to the request or subpoena; or~~

21 ~~(ii) knowingly conceals relevant information with~~
22 ~~the intent to avoid, evade or prevent compliance shall be~~
23 ~~liable for a civil penalty as provided in this~~
24 ~~subsection.~~

25 ~~(2) The Attorney General may, upon petition to~~
26 ~~Commonwealth Court, recover a civil penalty not to exceed~~
27 ~~\$25,000. If a civil penalty is assessed in or as the result~~
28 ~~of litigation, the Attorney General is entitled to reasonable~~
29 ~~attorney fees and costs.~~

30 ~~(g) Access to information of other agencies and~~

1 ~~confidentiality.~~

2 ~~(1) If criminal or civil intelligence, records of~~
3 ~~investigations, investigative information or other~~
4 ~~information held by a Federal or State agency is available to~~
5 ~~the Attorney General on a confidential or restricted basis,~~
6 ~~the Attorney General may obtain and use the information~~
7 ~~unless otherwise prohibited by law.~~

8 ~~(2) A record of an investigation or intelligence or~~
9 ~~investigative information that is exempt from disclosure~~
10 ~~under the act of February 14, 2008 (P.L.6, No.3), known as~~
11 ~~the Right to Know Law, shall remain confidential and be~~
12 ~~exempt from disclosure under that act.~~

13 ~~(h) Records of investigation. A written response, testimony~~
14 ~~or document obtained by the Attorney General under this section,~~
15 ~~or information derived directly or indirectly from a written~~
16 ~~response, testimony or document obtained by the Attorney~~
17 ~~General, shall be deemed a record of an investigation and shall~~
18 ~~be exempt from disclosure under the Right to Know Law.~~

19 ~~Section 9. Criminal penalties.~~

20 ~~A person, including an agent or officer of the person, who~~
21 ~~knowingly commits an unlawful act under section 4(a) or (b) is~~
22 ~~guilty of a felony of the third degree and, upon conviction,~~
23 ~~shall be sentenced to a term of imprisonment of not more than~~
24 ~~four years or sentenced to pay a fine of not more than~~
25 ~~\$1,000,000, or both. If the person who knowingly committed an~~
26 ~~unlawful act under section 4(a) or (b) is a corporation, the~~
27 ~~corporation shall be sentenced to pay a fine of not more than~~
28 ~~\$1,000,000. An indictment or information based on a violation of~~
29 ~~a of the provisions of this act must be found within five years~~
30 ~~after the violation. No criminal proceeding barred by a prior~~

1 ~~limitation shall be revived by this act.~~

2 ~~Section 10. Standing.~~

3 ~~An individual or entity who has suffered damages as a result~~
4 ~~of prohibited acts enumerated in section 4 shall have standing~~
5 ~~to commence an action in a court of competent jurisdiction.~~

6 ~~Section 11. Antitrust enforcement by private parties.~~

7 ~~(a) Election. The plaintiff in an action commenced under~~
8 ~~this act may elect to sue for and recover either treble damages~~
9 ~~sustained or the full amount of the plaintiff's overcharge or~~
10 ~~underpayment without regard to any portion of the overcharge or~~
11 ~~underpayment that was recovered upon resale. An action under~~
12 ~~this section may be brought by a person injured in the person's~~
13 ~~business or property under this act, regardless of whether the~~
14 ~~person dealt directly or indirectly with the defendant. A remedy~~
15 ~~under this section is in addition to any other remedy under law~~
16 ~~and may not diminish or offset any other remedy. Proof of~~
17 ~~liability as a result of anticompetitive conduct in violation of~~
18 ~~this act shall not require proof of individual reliance.~~

19 ~~(b) Class action. An action brought under this section may~~
20 ~~be maintained as a class action pursuant to the Pennsylvania~~
21 ~~Rules of Civil Procedure.~~

22 ~~Section 12. Cooperation with Federal Government and other~~
23 ~~states.~~

24 ~~The Attorney General may cooperate with and coordinate~~
25 ~~enforcement of this act and Federal antitrust law that may be~~
26 ~~enforced by the Attorney General with the Federal Government and~~
27 ~~the several states, including using and sharing information and~~
28 ~~evidence obtained under this act.~~

29 ~~Section 13. Exceptions.~~

30 ~~This act shall not make illegal an activity or conduct exempt~~

1 ~~under any statute of the United States or the Commonwealth.~~

2 ~~Section 14. Applicability.~~

3 ~~This act shall not apply to a cooperative association or an~~
4 ~~employee owned enterprise, corporate or otherwise, of farmers,~~
5 ~~gardeners or dairy producers, including livestock farmers and~~
6 ~~fruit growers, nor to a contract, agreement or arrangement made~~
7 ~~by the association or enterprise, nor to a bona fide labor~~
8 ~~union.~~

9 ~~Section 15. Action not barred as affecting or involving~~
10 ~~interstate or foreign commerce.~~

11 ~~An action under this act may not be barred on the grounds~~
12 ~~that the activity or conduct complained of affects or involves~~
13 ~~interstate or foreign commerce.~~

14 ~~Section 16. Remedies cumulative.~~

15 ~~The remedies afforded by this act are cumulative.~~

16 ~~Section 17. Effective date.~~

17 ~~This act shall take effect in 60 days.~~

18 SECTION 1. TITLE 12 OF THE PENNSYLVANIA CONSOLIDATED
19 STATUTES IS AMENDED BY ADDING A CHAPTER TO READ:

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20 CHAPTER 9

21 PENNSYLVANIA OPEN MARKETS

22 SEC.

23 901. SCOPE OF CHAPTER.

24 902. DECLARATION OF PURPOSE.

25 903. DEFINITIONS.

26 904. PROHIBITED ACTS.

27 905. ENFORCEMENT BY ATTORNEY GENERAL.

28 906. MEASUREMENT OF DAMAGES.

29 907. PREMERGER NOTIFICATION REGARDING HEALTH CARE.

30 908. CIVIL INVESTIGATION.

1 909. CRIMINAL PENALTIES.

2 910. STANDING.

3 911. ANTITRUST ENFORCEMENT BY PRIVATE PARTIES.

4 912. COOPERATION WITH FEDERAL GOVERNMENT AND OTHER STATES.

5 913. EXCEPTIONS.

6 914. APPLICABILITY.

7 915. ACTION NOT BARRED AS AFFECTING OR INVOLVING INTERSTATE OR
8 FOREIGN COMMERCE.

9 916. REMEDIES CUMULATIVE.

10 § 901. SCOPE OF CHAPTER.

11 THIS CHAPTER RELATES TO OPEN MARKETS IN THIS COMMONWEALTH.

12 § 902. DECLARATION OF PURPOSE.

13 THE PURPOSE OF THIS CHAPTER IS TO PROMOTE FREE ENTERPRISE AND
14 FREE TRADE IN THE MARKETPLACES OF THIS COMMONWEALTH BY
15 PROHIBITING RESTRAINTS OF TRADE THAT ARE SECURED THROUGH
16 MONOPOLISTIC OR COLLUSIVE PRACTICES AND THAT ACT OR TEND TO ACT
17 TO DECREASE COMPETITION BETWEEN AND AMONG PERSONS ENGAGED IN
18 COMMERCE AND TRADE.

19 § 903. DEFINITIONS.

20 THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS CHAPTER
21 SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE
22 CONTEXT CLEARLY INDICATES OTHERWISE:

23 "ACQUISITION." AN AGREEMENT, ARRANGEMENT OR ACTIVITY, THE
24 CONSUMMATION OF WHICH RESULTS IN A PERSON ACQUIRING, DIRECTLY OR
25 INDIRECTLY, THE CONTROL OF ANOTHER PERSON OR THE ABILITY TO
26 INFLUENCE THE COMPETITIVE CONDUCT OF THE TARGET FIRM, AND
27 INCLUDES THE ACQUISITION OF VOTING SECURITIES AND NONCORPORATE
28 INTERESTS, SUCH AS ASSETS, CAPITAL STOCK, MEMBERSHIP INTERESTS
29 OR EQUITY INTERESTS.

30 "CONTRACTING AFFILIATION." THE FORMATION OF A RELATIONSHIP

1 BETWEEN TWO OR MORE ENTITIES THAT PERMITS THE ENTITIES TO
2 NEGOTIATE JOINTLY WITH INSURERS OR THIRD-PARTY ADMINISTRATORS
3 OVER RATES FOR PROFESSIONAL MEDICAL SERVICES OR FOR ONE ENTITY
4 TO NEGOTIATE ON BEHALF OF THE OTHER ENTITY WITH INSURERS OR
5 THIRD-PARTY ADMINISTRATORS OVER RATES FOR PROFESSIONAL MEDICAL
6 SERVICES.

7 "HART-SCOTT-RODINO ACT." TITLE II OF THE CLAYTON ANTITRUST
8 ACT (PUBLIC LAW 63-212, 15 U.S.C. § 18A).

9 "HEALTH CARE FACILITY." AS DEFINED IN SECTION 103 OF THE ACT
10 OF JULY 19, 1979 (P.L.130, NO.48), KNOWN AS THE HEALTH CARE
11 FACILITIES ACT.

12 "HEALTH CARE FACILITY SYSTEM." EITHER OF THE FOLLOWING:

13 (1) A PARENT CORPORATION OF ONE OR MORE HEALTH CARE
14 FACILITIES AND AN ENTITY AFFILIATED WITH THE PARENT
15 CORPORATION THROUGH OWNERSHIP OR CONTROL; OR

16 (2) A HEALTH CARE FACILITY AND AN ENTITY AFFILIATED WITH
17 THE HEALTH CARE FACILITY THROUGH OWNERSHIP.

18 "HEALTH CARE PRACTITIONER." AS DEFINED IN SECTION 103 OF THE
19 HEALTH CARE FACILITIES ACT.

20 "HEALTH CARE SERVICES." MEDICAL, SURGICAL, CHIROPRACTIC,
21 HOSPITAL, OPTOMETRIC, PODIATRIC, PHARMACEUTICAL, AMBULANCE,
22 MENTAL HEALTH, SUBSTANCE USE DISORDER, THERAPEUTIC,
23 PREVENTATIVE, DIAGNOSTIC, CURATIVE, REHABILITATIVE, PALLIATIVE,
24 CUSTODIAL AND OTHER SERVICES RELATING TO THE PREVENTION, CURE OR
25 TREATMENT OF ILLNESS, INJURY OR DISEASE.

26 "HEALTH CARE SERVICES REVENUE." THE TOTAL REVENUE RECEIVED
27 FOR HEALTH CARE SERVICES IN THE PREVIOUS 12 MONTHS.

28 "INSURER." AS DEFINED IN 40 PA.C.S. § 9103 (RELATING TO
29 DEFINITIONS).

30 "MERGER." A CONSOLIDATION OF TWO OR MORE ORGANIZATIONS,

1 INCLUDING TWO OR MORE ORGANIZATIONS JOINING THROUGH A COMMON
2 PARENT ORGANIZATION OR TWO OR MORE ORGANIZATIONS FORMING A NEW
3 ORGANIZATION. THE TERM DOES NOT INCLUDE A CORPORATE
4 REORGANIZATION.

5 "MONOPOLY." THE POWER TO CONTROL PRICES AND EXCLUDE
6 COMPETITION AS A SELLER.

7 "MONOPSONY." THE POWER TO CONTROL PRICES AND EXCLUDE
8 COMPETITION AS A BUYER.

9 "PERSON." A NATURAL PERSON, CORPORATION, TRUST, PARTNERSHIP,
10 AN INCORPORATED OR UNINCORPORATED ASSOCIATION, THE COMMONWEALTH,
11 A STATE AGENCY, MUNICIPAL AUTHORITY, POLITICAL SUBDIVISION AND
12 ANY OTHER LEGAL ENTITY.

13 "PROVIDER ORGANIZATION." A CORPORATION, PARTNERSHIP,
14 BUSINESS TRUST, ASSOCIATION OR ORGANIZED GROUP OF PERSONS,
15 WHETHER INCORPORATED OR NOT, THAT IS IN THE BUSINESS OF HEALTH
16 CARE DELIVERY OR MANAGEMENT AND THAT REPRESENTS TWO OR MORE
17 HEALTH CARE PRACTITIONERS IN CONTRACTING WITH INSURERS OR THIRD-
18 PARTY ADMINISTRATORS FOR THE PAYMENTS OF HEALTH CARE SERVICES.
19 THE TERM INCLUDES A PHYSICIAN ORGANIZATION, PHYSICIAN-HOSPITAL
20 ORGANIZATION, INDEPENDENT PRACTICE ASSOCIATION, PROVIDER NETWORK
21 AND ACCOUNTABLE CARE ORGANIZATION.

22 "THIRD-PARTY ADMINISTRATOR." AN ENTITY THAT ADMINISTERS
23 PAYMENTS FOR HEALTH CARE SERVICES ON BEHALF OF A CLIENT IN
24 EXCHANGE FOR AN ADMINISTRATIVE FEE.

25 "TRADE OR COMMERCE." ECONOMIC ACTIVITY DIRECTLY OR
26 INDIRECTLY AFFECTING THE PEOPLE OF THIS COMMONWEALTH.

27 § 904. PROHIBITED ACTS.

28 (A) RESTRAINTS OF TRADE.--A CONTRACT, A COMBINATION IN THE
29 FORM OF TRUST OR OTHERWISE OR A CONSPIRACY IN RESTRAINT OF TRADE
30 OR COMMERCE, IS UNLAWFUL.

1 (B) MONOPOLIZE OR MONOPSONIZE.--IT IS UNLAWFUL FOR A PERSON
2 TO MONOPOLIZE OR MONOPSONIZE, TO ATTEMPT TO MONOPOLIZE OR
3 MONOPSONIZE OR TO COMBINE OR CONSPIRE WITH ANOTHER PERSON TO
4 MONOPOLIZE OR MONOPSONIZE, IN ANY PART OF TRADE OR COMMERCE.

5 (C) ACQUISITIONS.--IT IS UNLAWFUL FOR A PERSON TO ACQUIRE,
6 DIRECTLY OR INDIRECTLY, THE WHOLE OR ANY PART OF THE STOCK,
7 SHARE CAPITAL OR OTHER EQUITY INTEREST OF ANOTHER PERSON OR THE
8 WHOLE OR ANY PART OF THE ASSETS OF ANOTHER PERSON IF ANY OF THE
9 FOLLOWING APPLY:

10 (1) THE EFFECT OF THE ACQUISITION IS SUBSTANTIALLY TO
11 LESSEN COMPETITION.

12 (2) THE EFFECT OF THE ACQUISITION TENDS TO CREATE A
13 MONOPOLY OR MONOPSONY OF ANY PART OF TRADE OR COMMERCE.

14 (D) MARKET POWER.--IT IS UNLAWFUL FOR ANY PERSON OR PERSONS
15 WITH MARKET POWER IN THE CONDUCT OF ANY BUSINESS, TRADE OR
16 COMMERCE, IN A LABOR MARKET, OR IN THE FURNISHING OF A SERVICE
17 IN THIS COMMONWEALTH, TO ABUSE THAT MARKET POWER.

18 § 905. ENFORCEMENT BY ATTORNEY GENERAL.

19 (A) ACTION ON BEHALF OF COMMONWEALTH.--IF THE ATTORNEY
20 GENERAL HAS REASON TO BELIEVE THAT A PERSON, FOREIGN OR
21 DOMESTIC, HAS ENGAGED IN, IS ENGAGING IN OR IS ABOUT TO ENGAGE
22 IN AN ACT OR PRACTICE THAT IS UNLAWFUL UNDER THIS CHAPTER, THE
23 ATTORNEY GENERAL MAY BRING A CIVIL ACTION IN THE NAME OF THE
24 COMMONWEALTH AGAINST THE PERSON TO:

25 (1) OBTAIN A DECLARATORY JUDGMENT THAT THE ACTION OR
26 PRACTICE VIOLATES THIS CHAPTER.

27 (2) ENJOIN AN ACT OR PRACTICE THAT VIOLATES THIS CHAPTER
28 BY ISSUING A TEMPORARY RESTRAINING ORDER, AN EX PARTE
29 TEMPORARY RESTRAINING ORDER OR A PRELIMINARY OR PERMANENT
30 INJUNCTION, WITHOUT BOND.

1 (3) RECOVER A CIVIL PENALTY OF NOT LESS THAN \$100,000
2 FOR EACH VIOLATION OF THIS CHAPTER OR OF AN INJUNCTION,
3 JUDGMENT OR CONSENT AGREEMENT ISSUED OR ENTERED INTO UNDER
4 THIS CHAPTER.

5 (4) OBTAIN AN ORDER REQUIRING DIVESTITURE OF ASSETS:

6 (I) ACQUIRED IN VIOLATION OF THIS CHAPTER AND AFTER
7 THE COURT DETERMINES THAT DIVESTITURE IS NECESSARY TO
8 AVOID THE CREATION OR CONTINUATION OF A MONOPOLY OR TO
9 AVOID A LIKELY SUBSTANTIAL LESSENING OF COMPETITION THAT
10 RESULTS FROM A TRANSACTION FOUND TO BE IN VIOLATION OF
11 THIS CHAPTER; OR

12 (II) TO RESTORE COMPETITION TO A LINE OF COMMERCE
13 THAT HAS BEEN ELIMINATED BY A VIOLATION OF THIS CHAPTER.

14 (5) RECOVER ACTUAL DAMAGES, RESTITUTION OR DISGORGEMENT
15 ON BEHALF OF THE COMMONWEALTH AND ITS AGENCIES THAT ARE
16 INJURED EITHER DIRECTLY OR INDIRECTLY THROUGH A VIOLATION OF
17 THIS CHAPTER.

18 (B) ACTION ON BEHALF OF NATURAL PERSON.--THE ATTORNEY
19 GENERAL MAY BRING A CIVIL ACTION IN THE NAME OF THE COMMONWEALTH
20 ON BEHALF OF A NATURAL PERSON INJURED DIRECTLY OR INDIRECTLY TO
21 RECOVER DAMAGES, RESTITUTION OR DISGORGEMENT THROUGH A VIOLATION
22 OF THIS CHAPTER.

23 (C) RECOVERY AUTHORIZED.--THE ATTORNEY GENERAL SHALL RECOVER
24 THE COSTS OF AN INVESTIGATION, EXPERT COSTS AND REASONABLE
25 ATTORNEY FEES AND COSTS IF SUCCESSFUL IN AN ACTION INITIATED
26 UNDER THIS SECTION.

27 (D) JURISDICTION.--A CIVIL ACTION UNDER THIS SECTION MAY BE
28 BROUGHT BY THE ATTORNEY GENERAL IN COMMONWEALTH COURT OR IN THE
29 COURT OF COMMON PLEAS OF THE COUNTY IN WHICH A PARTY RESIDES OR
30 HAS A PRINCIPAL PLACE OF BUSINESS.

1 (E) INVESTIGATION.--

2 (1) IF THE ATTORNEY GENERAL HAS REASON TO BELIEVE THAT A
3 PERSON, WHETHER FOREIGN OR DOMESTIC, HAS ENGAGED IN OR IS
4 ENGAGING IN A VIOLATION OF THIS CHAPTER OR OF A FEDERAL
5 ANTITRUST LAW THAT MAY BE ENFORCED BY THE ATTORNEY GENERAL,
6 THE ATTORNEY GENERAL MAY INITIATE AN INVESTIGATION.

7 (2) AS PART OF AN INVESTIGATION UNDER THIS SECTION, THE
8 ATTORNEY GENERAL MAY ADMINISTER OATHS AND AFFIRMATIONS,
9 SUBPOENA WITNESSES AND DOCUMENTARY MATERIAL, PROPOUND
10 INTERROGATORIES TO BE ANSWERED IN WRITING UNDER OATH AND
11 COLLECT EVIDENCE.

12 (3) THE ATTORNEY GENERAL MAY USE THE INFORMATION
13 OBTAINED UNDER THIS SECTION AS THE ATTORNEY GENERAL
14 DETERMINES NECESSARY IN THE CIVIL ENFORCEMENT OF THIS CHAPTER
15 OR FEDERAL ANTITRUST LAW THAT MAY BE ENFORCED BY THE ATTORNEY
16 GENERAL, INCLUDING PRESENTATION BEFORE A COURT.

17 (4) THE ATTORNEY GENERAL MAY COOPERATE WITH AND
18 COORDINATE ENFORCEMENT OF THIS CHAPTER AND A FEDERAL
19 ANTITRUST LAW MAY BE ENFORCED BY THE ATTORNEY GENERAL WITH
20 THE FEDERAL GOVERNMENT AND THE SEVERAL STATES, INCLUDING
21 USING AND SHARING INFORMATION AND EVIDENCE OBTAINED UNDER
22 THIS CHAPTER.

23 § 906. MEASUREMENT OF DAMAGES.

24 (A) GENERAL RULE.--IN AN ACTION BROUGHT UNDER THIS CHAPTER,
25 THE PREVAILING PARTY SHALL RECOVER TREBLE DAMAGES SUSTAINED,
26 REASONABLE ATTORNEY FEES AND COSTS, EXPERT WITNESS FEES AND
27 INVESTIGATIVE COSTS.

28 (B) METHOD.--IN AN ACTION UNDER THIS CHAPTER, DAMAGES MAY BE
29 PROVED AND ASSESSED IN THE AGGREGATE BY STATISTICAL OR SAMPLING
30 METHODS, BY THE COMPUTATION OF ILLEGAL OVERCHARGES OR

1 UNDERPAYMENT OR BY ANOTHER REASONABLE SYSTEM OF ESTIMATING
2 AGGREGATE DAMAGES AS THE COURT MAY PERMIT WITHOUT THE NECESSITY
3 OF SEPARATELY PROVING THE INDIVIDUAL CLAIM OF, OR AMOUNT OF
4 DAMAGE TO, PERSONS ON WHOSE BEHALF THE SUIT WAS BROUGHT.

5 (C) INTEREST.--DAMAGES FOR INJURIES BY REASON OF ANYTHING
6 PROHIBITED UNDER THIS CHAPTER SHALL INCLUDE INTEREST COMPUTED
7 FROM THE DATE ON WHICH THE INJURY IS SUSTAINED, AT A RATE EQUAL
8 TO THE STATUTORY RATE FOR POSTJUDGMENT INTEREST, AND THE COST OF
9 SUIT, INCLUDING REASONABLE ATTORNEY FEES.

10 § 907. PREMERGER NOTIFICATION REGARDING HEALTH CARE.

11 (A) GENERAL NOTIFICATION.--A PERSON CONDUCTING BUSINESS IN
12 THIS COMMONWEALTH THAT IS REQUIRED TO FILE THE NOTIFICATION AND
13 REPORT FORM FOR CERTAIN MERGERS AND ACQUISITIONS UNDER THE HART-
14 SCOTT-RODINO ACT SHALL PROVIDE THE SAME NOTICE AND DOCUMENTATION
15 IN ITS ENTIRETY TO THE OFFICE OF ATTORNEY GENERAL AT THE SAME
16 TIME THAT NOTICE IS FILED WITH THE FEDERAL TRADE COMMISSION OR
17 THE UNITED STATES DEPARTMENT OF JUSTICE.

18 (B) HEALTH CARE NOTIFICATION.--

19 (1) IT IS THE INTENT OF THE GENERAL ASSEMBLY TO ENSURE
20 THAT COMPETITION BENEFICIAL TO CONSUMERS IN HEALTH CARE
21 MARKETS ACROSS THIS COMMONWEALTH REMAINS VIGOROUS AND ROBUST.

22 (2) THE GENERAL ASSEMBLY SUPPORTS THE INTENT THROUGH
23 THIS SECTION, WHICH PROVIDES THE OFFICE OF ATTORNEY GENERAL
24 WITH NOTICE OF ALL MATERIAL HEALTH CARE TRANSACTIONS IN THIS
25 COMMONWEALTH, SO THAT THE OFFICE OF ATTORNEY GENERAL HAS THE
26 INFORMATION NECESSARY TO DETERMINE WHETHER AN INVESTIGATION
27 UNDER THIS CHAPTER IS WARRANTED FOR POTENTIAL ANTICOMPETITIVE
28 CONDUCT AND CONSUMER HARM.

29 (3) IN ADDITION TO REQUIRING NOTICE UNDER SUBSECTION (A)
30 FOR TRANSACTIONS NOT INVOLVING HEALTH CARE, THIS SECTION IS

1 ALSO INTENDED TO SUPPLEMENT THE HART-SCOTT-RODINO ACT BY
2 REQUIRING NOTICE OF HEALTH CARE TRANSACTIONS NOT REPORTABLE
3 UNDER THE REPORTING THRESHOLDS OF THE HART-SCOTT-RODINO ACT
4 AND BY PROVIDING THE OFFICE OF ATTORNEY GENERAL WITH A COPY
5 OF FILINGS MADE IN ACCORDANCE WITH THE HART-SCOTT-RODINO ACT.

6 (C) NOTICE OF MATERIAL CHANGE.--

7 (1) NOT LESS THAN 120 DAYS PRIOR TO THE EFFECTIVE DATE
8 OF A HEALTH CARE TRANSACTION THAT RESULTS IN A MATERIAL
9 CHANGE, THE PARTIES TO THE HEALTH CARE TRANSACTION SHALL
10 SUBMIT WRITTEN NOTICE TO THE OFFICE OF ATTORNEY GENERAL OF
11 THE MATERIAL CHANGE.

12 (2) FOR THE PURPOSES OF THIS SECTION, A MATERIAL CHANGE
13 INCLUDES A MERGER, ACQUISITION OR CONTRACTING AFFILIATION
14 BETWEEN TWO OR MORE ENTITIES OF THE FOLLOWING TYPES:

15 (I) HEALTH CARE FACILITIES;

16 (II) HEALTH CARE FACILITY SYSTEMS; OR

17 (III) PROVIDER ORGANIZATIONS.

18 (3) A MATERIAL CHANGE INCLUDES PROPOSED CHANGES
19 IDENTIFIED IN PARAGRAPH (1) BETWEEN A PENNSYLVANIA ENTITY AND
20 AN OUT-OF-STATE ENTITY WHERE THE OUT-OF-STATE ENTITY
21 GENERATES AT LEAST \$10,000,000 IN HEALTH CARE SERVICES
22 REVENUE FROM PATIENTS RESIDING IN THIS COMMONWEALTH AND THE
23 ENTITIES ARE OF THE TYPES IDENTIFIED IN PARAGRAPH (2). A
24 PARTY TO A MATERIAL CHANGE THAT IS LICENSED OR OPERATING IN
25 THIS COMMONWEALTH SHALL SUBMIT A NOTICE AS REQUIRED UNDER
26 THIS SECTION.

27 (4) FOR PURPOSES OF PARAGRAPH (2), A MERGER, ACQUISITION
28 OR CONTRACTING AFFILIATION BETWEEN TWO OR MORE HEALTH CARE
29 FACILITIES, HEALTH CARE FACILITY SYSTEMS OR PROVIDER
30 ORGANIZATIONS ONLY QUALIFIES AS A MATERIAL CHANGE IF THE

1 HEALTH CARE FACILITIES, HEALTH CARE FACILITY SYSTEMS OR
2 PROVIDER ORGANIZATIONS DID NOT PREVIOUSLY HAVE COMMON
3 OWNERSHIP OR A CONTRACTING AFFILIATION.

4 (D) NOTICE REQUIREMENTS.--

5 (1) THE WRITTEN NOTICE PROVIDED BY THE PARTIES, AS
6 REQUIRED BY SUBSECTION (C), SHALL INCLUDE:

7 (I) THE NAMES OF THE PARTIES AND THEIR CURRENT
8 BUSINESS ADDRESSES.

9 (II) IDENTIFICATION OF ALL LOCATIONS WHERE HEALTH
10 CARE SERVICES ARE CURRENTLY PROVIDED BY EACH PARTY.

11 (III) IDENTIFICATION OF ALL HEALTH CARE
12 PRACTITIONERS WHO CURRENTLY PROVIDE HEALTH CARE SERVICES
13 FOR EACH PARTY.

14 (IV) A BRIEF DESCRIPTION OF THE NATURE AND PURPOSE
15 OF THE PROPOSED MATERIAL CHANGE.

16 (V) THE ANTICIPATED EFFECTIVE DATE OF THE PROPOSED
17 MATERIAL CHANGE.

18 (2) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO
19 PROHIBIT THE PARTIES TO A MATERIAL CHANGE FROM VOLUNTARILY
20 PROVIDING ADDITIONAL INFORMATION TO THE OFFICE OF ATTORNEY
21 GENERAL.

22 (E) REQUESTS FOR ADDITIONAL INFORMATION.--

23 (1) THE OFFICE OF ATTORNEY GENERAL MUST MAKE A REQUEST
24 FOR ADDITIONAL INFORMATION FROM THE PARTIES UNDER THIS
25 CHAPTER WITHIN 30 DAYS OF THE DATE NOTICE IS RECEIVED UNDER
26 SUBSECTIONS (A), (C) AND (D).

27 (2) NOTHING IN THIS SUBSECTION SHALL BE CONSTRUED TO
28 PRECLUDE THE OFFICE OF ATTORNEY GENERAL FROM CONDUCTING AN
29 INVESTIGATION OR ENFORCING FEDERAL OR STATE ANTITRUST LAWS AT
30 A LATER DATE.

1 (F) HEALTH CARE PREMERGER NOTIFICATION.--A HEALTH CARE
2 PRACTITIONER OR PROVIDER ORGANIZATION CONDUCTING BUSINESS IN
3 THIS COMMONWEALTH THAT FILES A PREMERGER NOTIFICATION WITH THE
4 FEDERAL TRADE COMMISSION OR THE UNITED STATES DEPARTMENT OF
5 JUSTICE, IN COMPLIANCE WITH THE HART-SCOTT-RODINO ACT, SHALL
6 PROVIDE A COPY OF THE FILING TO THE OFFICE OF ATTORNEY GENERAL.
7 PROVIDING A COPY OF THE HART-SCOTT-RODINO ACT FILING TO THE
8 OFFICE OF ATTORNEY GENERAL SATISFIES THE NOTICE REQUIREMENT
9 UNDER SUBSECTION (D).

10 (G) MATERIALS SUBMITTED TO THE OFFICE OF ATTORNEY GENERAL.--

11 (1) INFORMATION SUBMITTED TO THE OFFICE OF ATTORNEY
12 GENERAL UNDER THIS SECTION SHALL BE MAINTAINED AND USED BY
13 THE OFFICE OF ATTORNEY GENERAL IN THE SAME MANNER AND UNDER
14 THE SAME PROTECTIONS AS PROVIDED UNDER THIS CHAPTER.

15 (2) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO LIMIT
16 THE OFFICE OF ATTORNEY GENERAL'S AUTHORITY UNDER THIS
17 CHAPTER.

18 (3) FAILURE TO COMPLY WITH THIS SECTION DOES NOT PROVIDE
19 A PRIVATE CAUSE OF ACTION.

20 (H) PENALTY FOR NONCOMPLIANCE.--A PERSON THAT FAILS TO
21 COMPLY WITH THIS SECTION IS LIABLE TO THE COMMONWEALTH FOR A
22 CIVIL PENALTY OF NOT MORE THAN \$200 PER DAY FOR EACH DAY OF
23 NONCOMPLIANCE.

24 § 908. CIVIL INVESTIGATION.

25 (A) POWER OF ATTORNEY GENERAL TO CONDUCT.--

26 (1) IF THE ATTORNEY GENERAL HAS REASON TO BELIEVE THAT A
27 PERSON, WHETHER FOREIGN OR DOMESTIC, HAS ENGAGED IN OR IS
28 ENGAGING IN A VIOLATION OF THIS CHAPTER OR OF A FEDERAL
29 ANTITRUST LAW THAT MAY BE ENFORCED BY THE ATTORNEY GENERAL,
30 THE ATTORNEY GENERAL MAY INITIATE AN INVESTIGATION.

1 (2) AS PART OF AN INVESTIGATION UNDER THIS SECTION, THE
2 ATTORNEY GENERAL MAY ADMINISTER OATHS AND AFFIRMATIONS,
3 SUBPOENA WITNESSES AND DOCUMENTARY MATERIAL, PROPOUND
4 INTERROGATORIES TO BE ANSWERED IN WRITING UNDER OATH AND
5 COLLECT EVIDENCE.

6 (3) THE ATTORNEY GENERAL MAY USE THE INFORMATION
7 OBTAINED UNDER THIS SECTION AS THE ATTORNEY GENERAL
8 DETERMINES NECESSARY IN THE CIVIL ENFORCEMENT OF THIS CHAPTER
9 OR FEDERAL ANTITRUST LAW THAT MAY BE ENFORCED BY THE ATTORNEY
10 GENERAL, INCLUDING PRESENTATION BEFORE A COURT.

11 (4) AN INTERROGATORY OR SUBPOENA SERVED UNDER THIS
12 SUBSECTION SHALL INFORM THE PARTY SERVED OF THE RIGHT TO FILE
13 A PETITION AS PROVIDED IN SUBSECTION (B).

14 (B) PETITION AUTHORIZED.--

15 (1) NOT LATER THAN FIVE BUSINESS DAYS AFTER THE SERVICE
16 OF AN INTERROGATORY OR SUBPOENA, OR AT ANY TIME BEFORE THE
17 RETURN DATE SPECIFIED IN THE INTERROGATORY OR SUBPOENA, THE
18 PARTY SERVED UNDER THIS SECTION MAY FILE IN COMMONWEALTH
19 COURT A PETITION FOR AN ORDER MODIFYING OR SETTING ASIDE THE
20 INTERROGATORY OR SUBPOENA.

21 (2) THE PARTY MUST SERVE THE ATTORNEY GENERAL WITH A
22 COPY OF THE PETITION.

23 (3) THE PETITIONER MAY RAISE AN OBJECTION OR PRIVILEGE
24 THAT WOULD BE AVAILABLE UNDER THIS CHAPTER OR UPON SERVICE OF
25 A SUBPOENA IN A CIVIL ACTION.

26 (C) LOCATION FOR PRODUCTION OF DOCUMENTARY MATERIAL.--

27 (1) IF DOCUMENTARY MATERIAL THAT THE ATTORNEY GENERAL
28 SEEKS TO OBTAIN BY SUBPOENA IS NOT LOCATED WITHIN THIS
29 COMMONWEALTH AND IS NOT REDUCIBLE TO ELECTRONIC REPRODUCTION
30 AND TRANSMISSION, THE PARTY SUBPOENAED MAY MAKE THE

1 DOCUMENTARY MATERIAL AVAILABLE TO THE ATTORNEY GENERAL TO
2 EXAMINE THE DOCUMENTARY MATERIAL AT THE PLACE WHERE THE
3 DOCUMENTARY MATERIAL IS LOCATED.

4 (2) THE ATTORNEY GENERAL MAY DESIGNATE REPRESENTATIVES,
5 INCLUDING OFFICIALS OF THE STATE IN WHICH THE DOCUMENTARY
6 MATERIAL IS LOCATED, TO INSPECT THE DOCUMENTARY MATERIAL ON
7 THE ATTORNEY GENERAL'S BEHALF.

8 (3) THE ATTORNEY GENERAL MAY RESPOND TO SIMILAR REQUESTS
9 FROM OFFICIALS OF OTHER STATES AND MAY INSPECT DOCUMENTARY
10 MATERIAL ON THEIR BEHALF.

11 (D) INVESTIGATION ENFORCEMENT ORDER.--

12 (1) THE ATTORNEY GENERAL MAY APPLY TO COMMONWEALTH COURT
13 FOR AN ORDER COMPELLING COMPLIANCE OF A PARTY WHO FAILS TO
14 OBEY A SUBPOENA OR ANSWER AN INTERROGATORY ISSUED UNDER THIS
15 SECTION WITHOUT LAWFUL EXCUSE AND UPON REASONABLE NOTICE TO
16 ALL PERSONS AFFECTED BY THE SUBPOENA OR INTERROGATORY.

17 (2) THE ATTORNEY GENERAL MAY REQUEST THAT AN INDIVIDUAL
18 WHO REFUSES TO COMPLY WITH A SUBPOENA OR ANSWER AN
19 INTERROGATORY ON THE GROUNDS THAT THE TESTIMONY OR
20 DOCUMENTARY MATERIAL MAY INCRIMINATE THE INDIVIDUAL BE
21 ORDERED BY THE COURT TO PROVIDE THE TESTIMONY OR DOCUMENTARY
22 MATERIAL.

23 (3) EXCEPT FOR A PROSECUTION FOR PERJURY, AN INDIVIDUAL
24 WHO COMPLIES WITH A COURT ORDER TO PROVIDE TESTIMONY OR
25 MATTER AFTER ASSERTING A PRIVILEGE AGAINST SELF-INCRIMINATION
26 TO WHICH THE INDIVIDUAL IS ENTITLED BY LAW SHALL NOT HAVE THE
27 TESTIMONY OR DOCUMENTARY MATERIAL PROVIDED, OR EVIDENCE
28 DERIVED THEREFROM, OR RECEIVED AGAINST THE INDIVIDUAL USED IN
29 A CRIMINAL INVESTIGATION OR PROCEEDING.

30 (E) DUTY TO COMPLY.--A PERSON, WHETHER FOREIGN OR DOMESTIC,

1 UPON WHOM AN INTERROGATORY OR SUBPOENA IS SERVED PURSUANT TO
2 THIS SECTION SHALL COMPLY WITH THE TERMS OF THE INTERROGATORY OR
3 SUBPOENA UNLESS OTHERWISE PROVIDED BY THIS SECTION OR BY COURT
4 ORDER.

5 (F) LIABILITY.--

6 (1) A PERSON WHO:

7 (I) FAILS TO APPEAR WITH THE INTENT TO AVOID, EVADE
8 OR PREVENT COMPLIANCE, IN WHOLE OR IN PART, WITH AN
9 INVESTIGATION UNDER THIS CHAPTER OR WHO REMOVES FROM A
10 PLACE, CONCEALS, WITHHOLDS, MUTILATES, ALTERS, DESTROYS
11 OR BY OTHER MEANS FALSIFIES A MATTER OR DOCUMENTARY
12 MATERIAL IN THE POSSESSION, CUSTODY OR CONTROL OF A
13 PERSON, SUBJECT TO THE REQUEST OR SUBPOENA; OR

14 (II) KNOWINGLY CONCEALS RELEVANT INFORMATION WITH
15 THE INTENT TO AVOID, EVADE OR PREVENT COMPLIANCE SHALL BE
16 LIABLE FOR A CIVIL PENALTY AS PROVIDED IN THIS
17 SUBSECTION.

18 (2) THE ATTORNEY GENERAL MAY, UPON PETITION TO
19 COMMONWEALTH COURT, RECOVER A CIVIL PENALTY NOT TO EXCEED
20 \$25,000. IF A CIVIL PENALTY IS ASSESSED IN OR AS THE RESULT
21 OF LITIGATION, THE ATTORNEY GENERAL IS ENTITLED TO REASONABLE
22 ATTORNEY FEES AND COSTS.

23 (G) ACCESS TO INFORMATION OF OTHER AGENCIES AND
24 CONFIDENTIALITY.--

25 (1) IF CRIMINAL OR CIVIL INTELLIGENCE, RECORDS OF
26 INVESTIGATIONS, INVESTIGATIVE INFORMATION OR OTHER
27 INFORMATION HELD BY A FEDERAL OR STATE AGENCY IS AVAILABLE TO
28 THE ATTORNEY GENERAL ON A CONFIDENTIAL OR RESTRICTED BASIS,
29 THE ATTORNEY GENERAL MAY OBTAIN AND USE THE INFORMATION
30 UNLESS OTHERWISE PROHIBITED BY LAW.

1 (2) A RECORD OF AN INVESTIGATION OR INTELLIGENCE OR
2 INVESTIGATIVE INFORMATION THAT IS EXEMPT FROM DISCLOSURE
3 UNDER THE ACT OF FEBRUARY 14, 2008 (P.L.6, NO.3), KNOWN AS
4 THE RIGHT-TO-KNOW LAW, SHALL REMAIN CONFIDENTIAL AND BE
5 EXEMPT FROM DISCLOSURE UNDER THAT ACT.

6 (H) RECORDS OF INVESTIGATION.--A WRITTEN RESPONSE, TESTIMONY
7 OR DOCUMENT OBTAINED BY THE ATTORNEY GENERAL UNDER THIS SECTION,
8 OR INFORMATION DERIVED DIRECTLY OR INDIRECTLY FROM A WRITTEN
9 RESPONSE, TESTIMONY OR DOCUMENT OBTAINED BY THE ATTORNEY
10 GENERAL, SHALL BE DEEMED A RECORD OF AN INVESTIGATION AND SHALL
11 BE EXEMPT FROM DISCLOSURE UNDER THE RIGHT-TO-KNOW LAW.

12 § 909. CRIMINAL PENALTIES.

13 A PERSON, INCLUDING AN AGENT OR OFFICER OF THE PERSON, WHO
14 KNOWINGLY COMMITS AN UNLAWFUL ACT UNDER SECTION 904(A) OR (B)
15 (RELATING TO PROHIBITED ACTS) IS GUILTY OF A FELONY OF THE THIRD
16 DEGREE AND, UPON CONVICTION, SHALL BE SENTENCED TO A TERM OF
17 IMPRISONMENT OF NOT MORE THAN FOUR YEARS OR SENTENCED TO PAY A
18 FINE OF NOT MORE THAN \$1,000,000, OR BOTH. IF THE PERSON WHO
19 KNOWINGLY COMMITTED AN UNLAWFUL ACT UNDER SECTION 904(A) OR (B)
20 IS A CORPORATION, THE CORPORATION SHALL BE SENTENCED TO PAY A
21 FINE OF NOT MORE THAN \$1,000,000. AN INDICTMENT OR INFORMATION
22 BASED ON A VIOLATION OF THIS CHAPTER MUST BE FILED WITHIN FIVE
23 YEARS AFTER THE VIOLATION. NO CRIMINAL PROCEEDING BARRED BY A
24 PRIOR LIMITATION SHALL BE REVIVED BY THIS CHAPTER.

25 § 910. STANDING.

26 AN INDIVIDUAL OR ENTITY WHO HAS SUFFERED DAMAGES AS A RESULT
27 OF PROHIBITED ACTS ENUMERATED IN SECTION 904 (RELATING TO
28 PROHIBITED ACTS) SHALL HAVE STANDING TO COMMENCE AN ACTION IN A
29 COURT OF COMPETENT JURISDICTION.

30 § 911. ANTITRUST ENFORCEMENT BY PRIVATE PARTIES.

1 (A) ELECTION.--THE PLAINTIFF IN AN ACTION COMMENCED UNDER
2 THIS CHAPTER MAY ELECT TO SUE FOR AND RECOVER EITHER TREBLE
3 DAMAGES SUSTAINED OR THE FULL AMOUNT OF THE PLAINTIFF'S
4 OVERCHARGE OR UNDERPAYMENT WITHOUT REGARD TO ANY PORTION OF THE
5 OVERCHARGE OR UNDERPAYMENT THAT WAS RECOVERED UPON RESALE. AN
6 ACTION UNDER THIS SECTION MAY BE BROUGHT BY A PERSON INJURED IN
7 THE PERSON'S BUSINESS OR PROPERTY UNDER THIS CHAPTER, REGARDLESS
8 OF WHETHER THE PERSON DEALT DIRECTLY OR INDIRECTLY WITH THE
9 DEFENDANT. A REMEDY UNDER THIS SECTION IS IN ADDITION TO ANY
10 OTHER REMEDY UNDER LAW AND MAY NOT DIMINISH OR OFFSET ANY OTHER
11 REMEDY. PROOF OF LIABILITY AS A RESULT OF ANTICOMPETITIVE
12 CONDUCT IN VIOLATION OF THIS CHAPTER SHALL NOT REQUIRE PROOF OF
13 INDIVIDUAL RELIANCE.

14 (B) CLASS ACTION.--AN ACTION BROUGHT UNDER THIS SECTION MAY
15 BE MAINTAINED AS A CLASS ACTION PURSUANT TO THE PENNSYLVANIA
16 RULES OF CIVIL PROCEDURE.

17 § 912. COOPERATION WITH FEDERAL GOVERNMENT AND OTHER STATES.

18 THE ATTORNEY GENERAL MAY COOPERATE WITH AND COORDINATE
19 ENFORCEMENT OF THIS CHAPTER AND FEDERAL ANTITRUST LAW THAT MAY
20 BE ENFORCED BY THE ATTORNEY GENERAL WITH THE FEDERAL GOVERNMENT
21 AND THE SEVERAL STATES, INCLUDING USING AND SHARING INFORMATION
22 AND EVIDENCE OBTAINED UNDER THIS CHAPTER.

23 § 913. EXCEPTIONS.

24 THIS CHAPTER SHALL NOT MAKE ILLEGAL AN ACTIVITY OR CONDUCT
25 EXEMPT UNDER ANY STATUTE OF THE UNITED STATES OR THE
26 COMMONWEALTH.

27 § 914. APPLICABILITY.

28 THIS CHAPTER SHALL NOT APPLY TO A COOPERATIVE ASSOCIATION OR
29 AN EMPLOYEE-OWNED ENTERPRISE, CORPORATE OR OTHERWISE, OF
30 FARMERS, GARDENERS OR DAIRY PRODUCERS, INCLUDING LIVESTOCK

1 FARMERS AND FRUIT GROWERS, NOR TO A CONTRACT, AGREEMENT OR
2 ARRANGEMENT MADE BY THE ASSOCIATION OR ENTERPRISE, NOR TO A BONA
3 FIDE LABOR UNION.

4 § 915. ACTION NOT BARRED AS AFFECTING OR INVOLVING INTERSTATE
5 OR FOREIGN COMMERCE.

6 AN ACTION UNDER THIS CHAPTER MAY NOT BE BARRED ON THE GROUNDS
7 THAT THE ACTIVITY OR CONDUCT COMPLAINED OF AFFECTS OR INVOLVES
8 INTERSTATE OR FOREIGN COMMERCE.

9 § 916. REMEDIES CUMULATIVE.

10 THE REMEDIES AFFORDED BY THIS CHAPTER ARE CUMULATIVE.

11 SECTION 2. THE ADDITION OF 12 PA.C.S. CH. 9 SHALL APPLY TO
12 ANY ACTION OR PROCEEDING BROUGHT BY THE ATTORNEY GENERAL AND
13 PENDING ON THE DATE OF ENACTMENT OF THIS ACT.

14 SECTION 3. THIS ACT SHALL TAKE EFFECT IN 60 DAYS.