



July 1, 2024

Members of the Pennsylvania General Assembly:

On behalf of Pennsylvania’s employer community, we urge you to **OPPOSE H.B. 2012, P.N. 2971**. We represent thousands of employers of all sizes and sectors across the Commonwealth. We are their voice; we speak together expressing many concerns regarding this bill.

HB 2012 harms consumers and businesses both small and large, adds uncertainty, and increases risk of frivolous suits in our Courts of Common Pleas. This overly broad antitrust legislation could both financially harm Pennsylvania’s consumers and further stagnate the already-stagnant business climate here in the Commonwealth.

- HB 2012 subjects Pennsylvania’s employers to severe criminal penalties and costly civil liability in our courts of common pleas based upon broad, undefined standards.
- HB 2012 creates a litigation environment that would disincentivize businesses from investing in our startups and new enterprises, stymying the business innovation that is so urgently needed here in the Commonwealth.
- HB 2012 creates private causes of action that will expose companies to expensive antitrust litigation, allowing not only direct purchasers to sue, but also indirect purchasers. These costs would ultimately be passed on to Pennsylvania’s consumers.
- HB 2012 provides the OAG with sweeping powers to investigate and sue on behalf of private citizens; therefore, private rights of action are superfluous, mostly benefit the attorneys, and are not needed to ensure competitive fairness.
- HB 2012 makes the awarding of treble damages mandatory. This is troubling in several respects. Damages should be determined on a case-by-case basis, allowing a court to evaluate the severity of a case. Further, businesses would be chilled from engaging in pro-competitive behavior due to fear of these severe financial penalties. Finally, the unknown costs of these excessive penalties make it impossible for businesses to predict and plan for potential financial exposure, which ultimately impacts their bottom-line and their decision to come to or remain in Pennsylvania to do business.

HB 2012 deviates from federal law and makes Pennsylvania an extreme outlier. The nation’s bipartisan consensus is that antitrust laws protect our consumers, not certain competitors, and no state has broken from the antitrust principles enshrined in federal law. This bill, unfortunately, with its “abuse of market power” standard would make Pennsylvania a national outlier on antitrust.

HB 2012 gives excessive and unnecessary powers to the Attorney General’s Office. The economic success of our Commonwealth is built on the fact that the market, not the government, maximizes economic efficiency for the benefit of Pennsylvania’s consumers. House Bill 2012 grants excessive and unnecessary discretion to the OAG, which already has authority in antitrust matters.

- HB 2012 requires healthcare notifications, singling out one industry – healthcare -- and treating it far differently from all others, imposing many requirements that are duplicative with existing federal law.
- HB 2012’s healthcare notification provisions are premature. The Uniform Law Commission (ULC) is currently drafting model legislation dealing with how state Attorneys General might gain access to pre-merger notifications and acquisitions and acquisitions or other filings at the federal level if they choose to do so. This ULC process, however, is not complete. Pennsylvania should wait until the ULC puts forth its recommendations before pursuing any changes.
- HB 2012 gives access to criminal intelligence and investigative information from other agencies, an extraordinary measure, as this information typically remains within the law enforcement world.
- HB 2012 expressly includes monopsony (buyer’s market power), which is already addressed in federal law.
- HB 2012 fails to carve out exceptions for already-regulated industries like insurance and banking.
- HB 2012 includes foreign commerce, which could contravene federal law and may be pre-empted.

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