

No. 276

AN ACT

HB 2297

To prohibit certain transactions relating to the infiltration of legitimate business by persons engaged in or connected with racketeering activities, providing remedies and imposing penalties.

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

Section 1. Short Title.—This act shall be known and may be cited as “The Pennsylvania Corrupt Organizations Act of 1970.”

Section 2. Findings of Fact.—The General Assembly finds that:

(1) Organized crime is a highly sophisticated, diversified and widespread phenomenon which annually drains billions of dollars from the national economy by various patterns of unlawful conduct including the illegal use of force, fraud and corruption;

(2) Organized crime exists on a large scale within the Commonwealth of Pennsylvania, engaging in the same patterns of unlawful conduct which characterize its activities nationally;

(3) The vast amounts of money and power accumulated by organized crime are increasingly used to infiltrate and corrupt legitimate businesses operating within the Commonwealth, together with all of the techniques of violence, intimidation and other forms of unlawful conduct through which such money and power are derived;

(4) In furtherance of such infiltration and corruption, organized crime utilizes and applies to its unlawful purposes laws of the Commonwealth of Pennsylvania conferring and relating to the privilege of engaging in various types of business and designed to insure that such businesses are conducted in furtherance of the public interest and the general economic welfare of the Commonwealth;

(5) Such infiltration and corruption provide an outlet for illegally obtained capital, harm innocent investors, entrepreneurs, merchants and consumers, interfere with free competition, and thereby constitute a substantial danger to the economic and general welfare of the Commonwealth of Pennsylvania; and

(6) In order to successfully resist and eliminate this situation, it is necessary to provide new remedies and procedures.

Section 3. Definitions.—As used in this act:

(1) “Racketeering activity” means (A) any act which is indictable under any of the following provisions of the act of June 24, 1939 (P.L.872), known as “The Penal Code”: section 303 (relating to bribery), section 304 (relating to corrupt solicitation), section 318 (relating to extortion), section 322 (relating to perjury), section 324 (relating to hindering witnesses), section 328 (relating to falsification of matters within jurisdiction of State

agencies), sections 512, 513, and 515 through 517 (relating to prostitution), sections 601 through 609 (relating to gambling), sections 614 and 615 (relating to bribery in athletic contests), section 667 (relating to bribery of employes), sections 669 and 670 (relating to coercion and intimidation of employes), section 683 (relating to influencing officers of corporations, municipalities and public institutions), section 701 (relating to murder), sections 704 and 705 (relating to robbery), section 723 (relating to kidnapping), sections 801 through 806 (relating to blackmail), sections 817 through 819 (relating to receiving and transporting stolen property), sections 822 through 831 (relating to embezzlement), and sections 905 through 908 (relating to arson); (B) any offense indictable under section 20 (d) of the act of September 26, 1961 (P.L.1664), known as "The Drug, Device and Cosmetic Act" (relating to the sale and dispensing of narcotic drugs); (C) any conspiracy to commit any of the offenses set forth in subclauses (A) and (B) of this clause; or (D) the collection of any money or other property in full or partial satisfaction of a debt which arose as the result of the lending of money or other property at a rate of interest exceeding twenty-five per cent per annum or the equivalent rate for a longer or shorter period, where not otherwise authorized by law. Any act which otherwise would be considered racketeering activity by reason of the application of this clause, shall not be excluded from its application solely because the operative acts took place outside the jurisdiction of this Commonwealth, if such acts would have been in violation of the law of the jurisdiction in which they occurred.

(2) "Person" means any individual or entity capable of holding a legal or beneficial interest in property;

(3) "Enterprise" means any individual, partnership, corporation, association or other legal entity, and any union or group of individuals associated in fact although not a legal entity, engaged in commerce;

(4) "Pattern of racketeering activity" refers to a course of conduct requiring two or more acts of racketeering activity, one of which occurred after the effective date of this act;

(5) "Racketeering investigator" means an attorney, investigator or investigative body so designated in writing by the Attorney General and charged with the duty of enforcing or carrying into effect the provisions of this act;

(6) "Racketeering investigation" means any inquiry conducted by any racketeering investigator for the purpose of ascertaining whether any person has been involved in any violation of this act or of any order, judgment, or decree of any court duly entered in any case or proceeding arising under this act;

(7) "Documentary material" means any book, paper, record, recording, tape, report, memorandum, written communication, or other document relating to the business affairs of any person or enterprise.

Section 4. Prohibited Activities.—(a) It shall be unlawful for any

person who has received any income derived, directly or indirectly, from a pattern of racketeering activity in which such person participated as a principal, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in the acquisition of any interest in, or the establishment or operation of, any enterprise: Provided, however, That a purchase of securities on the open market for purposes of investment, and without the intention of controlling or participating in the control of the issuer, or of assisting another to do so, shall not be unlawful under this subsection if the securities of the issue held by the purchaser, the members of his immediate family, and his or their accomplices in any pattern of racketeering activity after such purchase, do not amount in the aggregate to one per cent of the outstanding securities of any one class, and do not confer, either in law or in fact, the power to elect one or more directors of the issuer: Provided, further, That if, in any proceeding involving an alleged investment in violation of this subsection, it is established that over half of the defendant's aggregate income for a period of two or more years immediately preceding such investment was derived from a pattern of racketeering activity, a rebuttable presumption shall arise that such investment included income derived from such pattern of racketeering activity.

(b) It shall be unlawful for any person through a pattern of racketeering activity to acquire or maintain, directly or indirectly, any interest in or control of any enterprise.

(c) It shall be unlawful for any person employed by or associated with any enterprise to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity.

(d) It shall be unlawful for any person to conspire to violate any of the provisions of subsections (a), (b) or (c) of this section.

Section 5. Criminal Penalties.—Whoever violates any provision of section 4 of this act is guilty of a felony, and upon conviction thereof, shall be sentenced to pay a fine not exceeding ten thousand dollars (\$10,000), or to undergo imprisonment not exceeding twenty years, or both. A violation of this section shall be deemed to continue so long as the person who committed the violation continues to receive any benefit from the violation.

Section 6. Civil Remedies.—(a) The several courts of common pleas, and the Commonwealth Court, shall have jurisdiction to prevent and restrain violations of section 4 of this act by issuing appropriate orders, including but not limited to: (i) ordering any person to divest himself of any interest, direct or indirect, in the enterprise; imposing reasonable restrictions on the future activities or investments of any person, including but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in; and (ii) making due provision for the rights of innocent persons, ordering the dissolution of the

enterprise, ordering the denial, suspension or revocation of charters of domestic corporations, certificates of authority authorizing foreign corporations to do business within the Commonwealth of Pennsylvania, licenses, permits, or prior approval granted to any enterprise by any department or agency of the Commonwealth of Pennsylvania; or prohibiting the enterprise from engaging in any business.

(b) In any proceeding under this section, the court shall proceed as soon as practicable to the hearing and determination thereof. Pending final determination, the court may enter preliminary or special injunctions, or take such other actions, including the acceptance of satisfactory performance bonds, as it may deem proper.

(c) A final judgment or decree rendered in favor of the Commonwealth of Pennsylvania in any criminal proceeding under this act shall estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding under this section.

(d) Proceedings under this section, at pretrial, trial and appellate levels, shall be governed by the Pennsylvania Rules of Civil Procedure and all other rules and procedures relating to civil actions, except to the extent inconsistent with the provisions of this act.

Section 7. Enforcement.—(a) The Attorney General shall have the power and duty to enforce the provisions of this act, including the authority to issue civil investigative demands pursuant to section 8; institute proceedings under section 6; and to take such actions as may be necessary to ascertain and investigate alleged violations of this act.

(b) The Attorney General and the district attorneys of the several counties shall have concurrent authority to institute criminal proceedings under the provisions of this act.

(c) Nothing contained in this section shall be construed to limit the regulatory or investigative authority of any department or agency of the Commonwealth whose functions might relate to persons, enterprises or matters falling within the scope of this act.

Section 8. Civil Investigative Demand.—(a) Whenever the Attorney General has reason to believe that any person or enterprise may be in possession, custody, or control of any documentary material relevant to a racketeering investigation, he may issue in writing, and cause to be served upon such person or enterprise, a civil investigative demand requiring the production of such material for examination.

(b) Each such demand shall:

(1) State the nature of the conduct constituting the alleged racketeering violation which is under investigation, the provision of law applicable thereto and the connection between the documentary material demanded and the conduct under investigation;

(2) Describe the class or classes of documentary material to be produced thereunder with such definiteness and certainty as to permit such material to be fairly identified;

(3) State that the demand is returnable forthwith or prescribe a return date which will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying or reproduction;

(4) Identify a racketeering investigator to whom such material shall be made available; and

(5) Contain the following statement printed conspicuously at the top of the demand: "You have the right to seek the assistance of an attorney and he may represent you in all phases of the racketeering investigation of which the civil investigative demand is a part."

(c) No such demand shall:

(1) Contain any requirement which would be held to be unreasonable if contained in a subpoena duces tecum issued by any court in connection with a grand jury investigation of such alleged racketeering violation; or

(2) Require the production of any documentary evidence which would be privileged from disclosure if demanded by a subpoena duces tecum issued by any court in connection with a grand jury investigation of such alleged racketeering violation.

(d) Service of any such demand or any petition filed under this section shall be made in the manner prescribed by the Pennsylvania Rules of Civil Procedure for service of writs and complaints.

(e) A verified return by the individual serving any such demand or petition setting forth the manner of such service shall be prima facie proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand.

(f) (1) Any party upon whom any demand issued under this section has been duly served shall make such material available for inspection and copying or reproduction to the racketeering investigator designated therein at the principal place of business of such party, or at such other place as such investigator and such party thereafter may agree or as the court may direct pursuant to this section, on the return date specified in such demand. Such party may upon agreement of the investigator substitute copies of all or any part of such material for the originals thereof.

(2) The racketeering investigator to whom any documentary material is so delivered shall take physical possession thereof, and shall be responsible for the use made thereof and for its return pursuant to this section. The investigator may cause the preparation of such copies of such documentary material as may be required for official use. While in the possession of the investigator, no material so produced shall be available for examination, without the consent of the party who produced such material, by any individual other than the Attorney General or any racketeering investigator. Under such reasonable terms and conditions as the Attorney General shall prescribe, documentary material while in the possession of the investigator shall be available for examination by the

party who produced such material or any duly authorized representatives of such party.

(3) Upon completion of (i) the racketeering investigation for which any documentary material was produced under this section, and (ii) any case or proceeding arising from such investigation, the investigator shall return to the party who produced such material all such material other than copies thereof made pursuant to this subsection which have not passed into the control of any court or grand jury through introduction into the record of such case or proceeding.

(4) When any documentary material has been produced by any party under this section for use in any racketeering investigation, and no case or proceeding arising therefrom has been instituted within a reasonable time after completion of the examination and analysis of all evidence assembled in the course of such investigation, such party shall be entitled, upon written demand made upon the Attorney General, to the return of all documentary material, other than copies thereof made pursuant to this subsection, so produced by such party.

(g) Whenever any person or enterprise fails to comply with any civil investigative demand duly served upon him under this section or whenever satisfactory copying or reproduction of any such material cannot be done and such party refuses to surrender such material, the Attorney General may file, in the court of common pleas for any county in which such party resides or transacts business, and serve upon such party a petition for an order of such court for the enforcement of this section, except that if such person transacts business in more than one county such petition shall be filed in the county in which such party maintains his or its principal place of business.

(h) Within twenty days after the service of any such demand upon any person or enterprise, or at any time before the return date specified in the demand, whichever period is shorter, such party may file, in the court of common pleas of the county within which such party resides or transacts business, and serve upon the Attorney General a petition for an order of such court modifying or setting aside such demand. The time allowed for compliance with the demand in whole or in part as deemed proper and ordered by the court shall not run during the pendency of such petition in the court. Such petition shall specify each ground upon which the petitioner relies in seeking such relief, and may be based upon any failure of such demand to comply with the provisions of this section or upon any constitutional or other legal right or privilege of such party.

(i) At any time during which the Attorney General is in custody or control of any documentary material delivered by any party in compliance with any such demand, such party may file, in the court of common pleas of the county within which such documentary material was delivered, and serve upon the Attorney General a petition for an order of such court requiring the performance of any duty imposed by this section.

(j) Whenever any petition is filed in any court of common pleas under this section, such court shall have jurisdiction to hear and determine the matter so presented, and, after a hearing at which all parties are represented, to enter such order or orders as may be required to carry into effect the provisions of this section.

Section 9. Immunity.—Whenever any individual refuses, on the basis of his privilege against self-incrimination, to comply with a civil investigative demand issued pursuant to section 8 of this act or to testify or produce other information in any proceeding under section 6 of this act, the Attorney General may invoke the provisions of the act of November 22, 1968 (Act No. 333), entitled “An act authorizing courts of record to grant witnesses immunity from prosecution for or on account of any matter or thing concerning which they were ordered to testify in a proceeding before certain grand juries, investigating committees or commissions and courts of record; making the refusal to testify after such immunity criminal contempt and providing penalties,” by presenting a petition pursuant to section 2 of that act: Provided, however, That the phrase “cause of action” in section 3 of that act shall not refer to civil proceedings brought pursuant to the provisions of section 6 of this act.

Section 10. Severability.—If the provisions of any part of this act or the application thereof to any person or circumstances be held invalid, the provisions of the other parts and their application to other persons or circumstances shall not be affected thereby.

Section 11. General Repealer.—All acts and parts of acts of the Assembly are hereby repealed to the extent inconsistent with the provisions of this act.

Section 12. Effective Date.—This act shall take effect immediately.

APPROVED—The 8th day of December, A. D. 1970.

RAYMOND P. SHAFER

The foregoing is a true and correct copy of Act of the General Assembly No. 276.



Secretary of the Commonwealth.