



TO: The Honorable Members of the PA House Judiciary Committee
FROM: Megan Martin, Vice President & General Counsel
DATE: April 16, 2024
RE: Concerns with H.B. 2012 – Pennsylvania Open Markets Act

On behalf of the PA Chamber, I urge you to oppose H.B. 2012, P.N. 2571, the Pennsylvania Open Markets Act, which the committee is scheduled to consider this week.

As you know, we represent approximately 10,000 businesses of all sizes and sectors across the Commonwealth. We are their voice, and we would like to give you our initial thoughts on the bill, and respectfully ask you to pull the bill from tomorrow's Committee agenda in order to give our members and other stakeholders across the Commonwealth the opportunity to weigh in on the bill.

Healthy market competition benefits consumers through lower prices, higher quality products and services, more choices and greater innovation. 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.

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, would make Pennsylvania a national outlier on antitrust.

Here are just a few of the concerns we have identified so far with HB 2012:

- The language throughout the bill of what would constitute a violation is overly broad and ambiguous.
- The bill could ban certain business practices that lower prices for consumers, which would result in chilling innovation of our businesses and creating higher prices for Pennsylvania's consumers.
- The bill creates private causes of action, which could clog our state courts with frivolous lawsuits based on ambiguous standards.
- The bill creates jurisdiction in our courts of common pleas rather than limiting it to the Commonwealth Court, which would create a county-by-county patchwork of inconsistent decisions rather than statewide jurisprudence on antitrust.

- Many other state antitrust statutes provide that they will be construed similarly to the federal antitrust statutes, but HB 2012 does not contain such a provision.
- The bill's final provision will result in our PA courts re-writing the antitrust common law in Pennsylvania that is based upon long-held federal precedent.

Novel and vague antitrust legislation, like HB 2012, could seriously damage the business climate in the Commonwealth. If Pennsylvania adopts a bill that exposes companies to undefined but costly antitrust litigation, we could scare away businesses that might want to invest in our startups and new businesses.

Moreover, the Attorney General's Office should not be micromanaging the economy. House Bill 2012 grants enormous discretion to the OAG, discretion that could be abused.

Given these concerns that we have thus far identified with House Bill 2012, we urge you to oppose the bill. Please contact Megan Martin at mmartin@pachamber.org or 717-343-4171 with questions or to discuss.