

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 623 Session of  
2003

INTRODUCED BY MAHER, BLAUM, GANNON, BOYES, HASAY, BROWNE, HANNA,  
HARPER, HUTCHINSON, JAMES, LEWIS, MANDERINO, NICKOL, PALLONE,  
STETLER, TURZAI AND WALKO, MARCH 3, 2003

REFERRED TO COMMITTEE ON JUDICIARY, MARCH 3, 2003

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania  
2 Consolidated Statutes, further providing for deceptive or  
3 fraudulent business practices.

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

6 Section 1. Section 4107(a) of Title 18 of the Pennsylvania  
7 Consolidated Statutes is amended to read:

8 § 4107. Deceptive or fraudulent business practices.

9 (a) Offense defined.--A person commits an offense if, in the  
10 course of business, he:

11 (1) uses or possesses for use a false weight or measure,  
12 or any other device for falsely determining or recording any  
13 quality or quantity;

14 (2) sells, offers or exposes for sale, or delivers less  
15 than the represented quantity of any commodity or service;

16 (3) takes or attempts to take more than the represented  
17 quantity of any commodity or service when as buyer he  
18 furnishes the weight or measure;

1           (4) sells, offers or exposes for sale adulterated or  
2 mislabeled commodities. As used in this paragraph, the term  
3 "adulterated" means varying from the standard of composition  
4 or quality prescribed by or pursuant to any statute providing  
5 criminal penalties for such variance or set by established  
6 commercial usage. As used in this paragraph, the term  
7 "mislabeled" means varying from the standard of trust or  
8 disclosure in labeling prescribed by or pursuant to any  
9 statute providing criminal penalties for such variance or set  
10 by established commercial usage;

11           (5) makes a false or misleading statement in any  
12 advertisement addressed to the public or to a substantial  
13 segment thereof for the purpose of promoting the purchase or  
14 sale of property or services;

15           (6) makes a false or misleading written statement for  
16 the purpose of obtaining property or credit;

17           (7) makes a false or misleading written statement for  
18 the purpose of promoting the sale of securities, or omits  
19 information required by law to be disclosed in written  
20 documents relating to securities;

21           (8) makes a false or misleading material statement to  
22 induce an investor to invest in a business venture. The  
23 offense is complete when any false or misleading material  
24 statement is communicated to an investor regardless of  
25 whether any investment is made. For purposes of grading, the  
26 "amount involved" is the amount or value of the investment  
27 solicited or paid, whichever is greater. As used in this  
28 paragraph, the following words and phrases shall mean:

29 "Amount" as used in the definition of "material statement"  
30 includes currency values and comparative expressions of

1 value, including, but not limited to, percentages or  
2 multiples. "Business venture" means any venture represented  
3 to an investor as one where he may receive compensation  
4 either from the sale of a product, from the investment of  
5 other investors or from any other commercial enterprise.  
6 "Compensation" means anything of value received or to be  
7 received by an investor. "Invest" means to pay, give or lend  
8 money, property, service or other thing of value for the  
9 opportunity to receive compensation. The term also includes  
10 payment for the purchase of a product. "Investment" means the  
11 money, property, service or other thing of value paid or  
12 given, or to be paid or given, for the opportunity to receive  
13 compensation. "Investor" means any natural person,  
14 partnership, corporation, limited liability company, business  
15 trust, other association, government entity, estate, trust,  
16 foundation or other entity solicited to invest in a business  
17 venture, regardless of whether any investment is made.  
18 "Material statement" means a statement about any matter which  
19 could affect an investor's decision to invest in a business  
20 venture, including, but not limited to, statements about:

21 (i) the existence, value, availability or  
22 marketability of a product;

23 (ii) the number of former or current investors, the  
24 amount of their investments or the amount of their former  
25 or current compensation;

26 (iii) the available pool or number of prospective  
27 investors, including those who have not yet been  
28 solicited and those who already have been solicited but  
29 have not yet made an investment;

30 (iv) representations of future compensation to be

1 received by investors or prospective investors; or

2 (v) the source of former, current or future  
3 compensation paid or to be paid to investors or  
4 prospective investors.

5 "Product" means a good, a service or other tangible or  
6 intangible property of any kind; [or]

7 (9) obtains or attempts to obtain property of another by  
8 false or misleading representations made through  
9 communications conducted in whole or in part by telephone  
10 involving the following:

11 (i) express or implied claims that the person  
12 contacted has won or is about to win a prize;

13 (ii) express or implied claims that the person  
14 contacted may be able to recover any losses suffered in  
15 connection with a prize promotion; or

16 (iii) express or implied claims regarding the value  
17 of goods or services offered in connection with a prize  
18 or a prize promotion.

19 As used in this paragraph, the term "prize" means anything of  
20 value offered or purportedly offered. The term "prize  
21 promotion" means an oral or written express or implied  
22 representation that a person has won, has been selected to  
23 receive or may be eligible to receive a prize or purported  
24 prize[.]; or

25 (10) does either of the following when he is in a client  
26 relationship with a certified public accountant, public  
27 accountant or public accounting firm:

28 (i) provides false or misleading information to the  
29 certified public accountant, public accountant or public  
30 accounting firm in connection with performance of an

1       attestation function for the client which resulted in an  
2       attestation by the certified public accountant, public  
3       accountant or public accounting firm of a materially  
4       misleading financial statement, audit, review or other  
5       document; or

6           (ii) omits to provide information to the certified  
7       public accountant, public accountant or public accounting  
8       firm that he knows is material to the performance of an  
9       attestation function and results in an attestation by the  
10       certified public accountant, public accountant or public  
11       accounting firm of a materially misleading financial  
12       statement, audit, review or other document.

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14       Section 2. This act shall take effect in 60 days.