

THE GENERAL ASSEMBLY OF PENNSYLVANIA

# HOUSE BILL

No. 429 Session of  
2001

INTRODUCED BY HARHART, BROWNE, DALLY, HUTCHINSON, M. BAKER,  
BEBKO-JONES, BELARDI, BELFANTI, CAPPABIANCA, CAPPELLI,  
CIVERA, CLARK, L. I. COHEN, DeLUCA, DeWEESE, FAIRCHILD,  
FLICK, FRANKEL, FREEMAN, GEIST, GEORGE, HARHAI, HENNESSEY,  
HORSEY, KAISER, MAJOR, R. MILLER, S. MILLER, PETRARCA,  
PISTELLA, READSHAW, ROEBUCK, ROSS, RUBLEY, SATHER, SCHRODER,  
SHANER, STABACK, STEELMAN, STERN, T. STEVENSON, E. Z. TAYLOR,  
J. TAYLOR, THOMAS, TIGUE AND YOUNGBLOOD, FEBRUARY 5, 2001

REFERRED TO COMMITTEE ON JUDICIARY, FEBRUARY 5, 2001

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 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[, ] the  
10 person intentionally, knowingly or recklessly engages in any of  
11 the following acts in the course of business[, he]:

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

15 (2) sells, offers or exposes for sale, or delivers less

1 than the represented quantity of any commodity or service;

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

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

15 (5) makes a false or misleading statement in any  
16 advertisement addressed to the public or to a substantial  
17 segment thereof for the purpose of promoting the purchase or  
18 sale of property or services;

19 (6) makes or induces others to rely on a false or  
20 misleading written statement for the purpose of obtaining  
21 property or credit;

22 (7) makes or induces others to rely on a false or  
23 misleading written statement for the purpose of promoting the  
24 sale of securities, or omits information required by law to  
25 be disclosed in written documents relating to securities;

26 (8) makes or induces others to rely on a false or  
27 misleading material statement to induce an investor to invest  
28 in a business venture. The offense is complete when any false  
29 or misleading material statement is communicated to an  
30 investor regardless of whether any investment is made. For

1 purposes of grading, the "amount involved" is the amount or  
2 value of the investment solicited or paid, whichever is  
3 greater. As used in this paragraph, the following words and  
4 phrases shall mean: "Amount" as used in the definition of  
5 "material statement" includes currency values and comparative  
6 expressions of value, including, but not limited to,  
7 percentages or multiples. "Business venture" means any  
8 venture represented to an investor as one where he may  
9 receive compensation either from the sale of a product, from  
10 the investment of other investors or from any other  
11 commercial enterprise. "Compensation" means anything of value  
12 received or to be received by an investor. "Invest" means to  
13 pay, give or lend money, property, service or other thing of  
14 value for the opportunity to receive compensation. The term  
15 also includes payment for the purchase of a product.  
16 "Investment" means the money, property, service or other  
17 thing of value paid or given, or to be paid or given, for the  
18 opportunity to receive compensation. "Investor" means any  
19 natural person, partnership, corporation, limited liability  
20 company, business trust, other association, government  
21 entity, estate, trust, foundation or other entity solicited  
22 to invest in a business venture, regardless of whether any  
23 investment is made. "Material statement" means a statement  
24 about any matter which could affect an investor's decision to  
25 invest in a business venture, including, but not limited to,  
26 statements about:

27 (i) the existence, value, availability or  
28 marketability of a product;

29 (ii) the number of former or current investors, the  
30 amount of their investments or the amount of their former

1 or current compensation;

2 (iii) the available pool or number of prospective  
3 investors, including those who have not yet been  
4 solicited and those who already have been solicited but  
5 have not yet made an investment;

6 (iv) representations of future compensation to be  
7 received by investors or prospective investors; or

8 (v) the source of former, current or future  
9 compensation paid or to be paid to investors or  
10 prospective investors.

11 "Product" means a good, a service or other tangible or  
12 intangible property of any kind; or

13 (9) obtains or attempts to obtain property of another by  
14 false or misleading representations made through  
15 communications conducted in whole or in part by telephone  
16 involving the following:

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

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

22 (iii) express or implied claims regarding the value  
23 of goods or services offered in connection with a prize  
24 or a prize promotion.

25 As used in this paragraph, the term "prize" means anything of  
26 value offered or purportedly offered. The term "prize  
27 promotion" means an oral or written express or implied  
28 representation that a person has won, has been selected to  
29 receive or may be eligible to receive a prize or purported  
30 prize.

1 (a.1) Grading of offenses.--

2 (1) A violation of this section constitutes:

3 (i) a felony of the third degree if the amount  
4 involved exceeds \$2,000;

5 (ii) a misdemeanor of the first degree if the amount  
6 involved is \$200 or more but \$2,000 or less;

7 (iii) a misdemeanor of the second degree if the  
8 amount involved is less than \$200; or

9 (iv) when the amount involved cannot be  
10 satisfactorily ascertained, the offense constitutes a  
11 misdemeanor of the second degree.

12 (2) Amounts involved in deceptive or fraudulent business  
13 practices pursuant to one scheme or course of conduct,  
14 whether from the same person or several persons, may be  
15 aggregated in determining the grade of the offense.

16 (3) Where a person commits an offense under subsection  
17 (a) and the victim of the offense is 60 years of age or  
18 older, the grading of the offense shall be one grade higher  
19 than specified in paragraph (1).

20 (a.2) Jurisdiction.--

21 (1) The district attorneys of the several counties shall  
22 have the authority to investigate and to institute criminal  
23 proceedings for any violation of this section.

24 (2) In addition to the authority conferred upon the  
25 Attorney General by the act of October 15, 1980 (P.L.950,  
26 No.164), known as the Commonwealth Attorneys Act, the  
27 Attorney General shall have the authority to investigate and  
28 to institute criminal proceedings for any violation of this  
29 section or any series of such violations involving more than  
30 one county of this Commonwealth or involving any county of

1       this Commonwealth and another state. No person charged with a  
2       violation of this section by the Attorney General shall have  
3       standing to challenge the authority of the Attorney General  
4       to investigate or prosecute the case, and, if any such  
5       challenge is made, the challenge shall be dismissed and no  
6       relief shall be available in the courts of this Commonwealth  
7       to the person making the challenge.

8       [(b) Defenses.--It is a defense to prosecution under this  
9       section if the defendant proves by a preponderance of the  
10      evidence that his conduct was not knowingly or recklessly  
11      deceptive.]

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