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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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# HOUSE BILL

## No. 2099

Session of  
1981

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INTRODUCED BY WOGAN, WESTON, PERZEL, SALVATORE, MARMION, GRUPPO,  
BOYES, MERRY, WOZNIAK, McMONAGLE, DONATUCCI, RIEGER AND  
SWAIM, NOVEMBER 24, 1981

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REFERRED TO COMMITTEE ON BUSINESS AND COMMERCE,  
NOVEMBER 24, 1981

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AN ACT

1 Providing for the financial responsibility of persons or  
2 entities offering invention development services and  
3 providing a right of action against invention developers.

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

6 Section 1. Definitions.

7 The following words and phrases when used in this act shall  
8 have, unless the context clearly indicates otherwise, the  
9 meanings given to them in this section:

10 "Contract for invention development services." Any contract  
11 by which an invention developer undertakes invention development  
12 services for a customer.

13 "Customer." Any person, firm, corporation, or other entity  
14 that enters into a contract for invention development services  
15 with an invention developer.

16 "Invention." Any discovery, process, machine, design,  
17 formulation, product, concept, idea or any combination thereof.

1 "Invention developer." Any person, firm, partnership,  
2 corporation and any agent, employee, officer, partner or  
3 independent contractor thereof, who offers for consideration to  
4 perform or performs for a customer any invention development  
5 services, as defined herein. An invention developer shall not  
6 include any department or agency of the Federal, State or local  
7 government, or any nonprofit, charitable, scientific or  
8 educational organization as described in section 170(b)(1)(a) of  
9 the Internal Revenue Code of 1954.

10 "Invention development." The evaluation, perfection,  
11 marketing, brokering or promotion of an invention by an  
12 invention developer, including but not limited to a patent  
13 search, preparation or prosecution of a patent application, and  
14 any other act by an invention developer done for consideration  
15 for the purpose of procuring, attempting to procure, or  
16 assisting in the procuring of, a licensee, buyer, or patent for  
17 an invention. Invention development does not include those acts,  
18 other than the marketing and promotion of an invention,  
19 undertaken by attorneys in the practice of their profession, by  
20 persons duly registered by the United States Patent and  
21 Trademark Office in practice before that office, or by persons  
22 rendering services to those attorneys or registered persons.

23 "Invention development services." Any acts of invention  
24 development required or promised to be performed, or actually  
25 performed, or both, by an invention developer for a customer.

## 26 Section 2. Bonds.

27 Every invention developer rendering or offering to render  
28 invention development services in this Commonwealth for  
29 consideration shall maintain a bond issued by a surety company  
30 admitted to do business in this Commonwealth. The principal sum

1 of the bond shall be 5% of the invention developer's gross  
2 income from the invention development business in this  
3 Commonwealth during the invention developer's last fiscal year,  
4 except that the principal sum of the bond shall not be less than  
5 \$25,000 in any year of operation. A copy of such bond shall be  
6 filed with the Secretary of the Commonwealth prior to the time  
7 the invention developer first commences business in this  
8 Commonwealth. The invention developer shall have 90 days after  
9 the end of each fiscal year within which to change the bond as  
10 may be necessary to conform to the requirements of this section.

11 Section 3. Cash in lieu of bond.

12 In lieu of furnishing the bond required by section 2, the  
13 invention developer may deposit with the Secretary of the  
14 Commonwealth a cash deposit in the like amount. This cash  
15 deposit may be satisfied by any of the following:

16 (1) Certificates of deposit payable to the Secretary of  
17 the Commonwealth issued by banks doing business in this  
18 Commonwealth and insured by the Federal Deposit Insurance  
19 Corporation.

20 (2) Investment certificates of share accounts assigned  
21 to the Secretary of the Commonwealth and issued by a savings  
22 and loan association doing business in this Commonwealth and  
23 insured by the Federal Savings and Loan Insurance  
24 Corporation.

25 (3) Bearer bonds issued by the United States Government  
26 or by this Commonwealth.

27 (4) Cash deposited with the Secretary of the  
28 Commonwealth.

29 Section 4. Coverage of bond.

30 The bond required by section 2 shall be in favor of the

1 Commonwealth of Pennsylvania for the benefit of any person who,  
2 after entering into a contract for invention development  
3 services with an invention developer, is injured in a manner set  
4 forth in section 5. Any person claiming against the bond, or  
5 against the cash deposited in lieu of bond, may maintain an  
6 action at law against the invention developer and the surety.  
7 The aggregate liability of the surety to all persons for all  
8 breaches of conditions of the bond provided herein shall in no  
9 event exceed the amount of the bond.

10 Section 5. Private actions.

11 (a) Permissible actions.--Any person who has been injured by  
12 any unfair or deceptive acts or practices of an invention  
13 developer, or by any false or fraudulent statement,  
14 representation, or omission of material fact by an invention  
15 developer, or by failure of an invention developer to provide  
16 services as required by the terms of a contract for invention  
17 development services, may bring a private action in the court of  
18 common pleas of the county or judicial district in which the  
19 defendant resides or has his principal place of business or is  
20 doing business or in which the transaction took place or where  
21 the customer resides, to recover actual damages or \$1,000,  
22 whichever is greater, plus costs of court and reasonable  
23 attorney fees.

24 (b) Rebuttable presumption.--For the purpose of this  
25 section, execution by the customer of a contract for invention  
26 development services in reliance on any false or fraudulent  
27 statements, representations or material omissions shall  
28 establish a rebuttable presumption of injury.

29 Section 6. Construction of act; applicability.

30 (a) Nothing in this act shall be construed to abridge, limit

1 or affect any obligations, rights or remedies that might  
2 otherwise be applicable or available under the law of this  
3 Commonwealth.

4 (b) This act shall not apply to any contracts entered into  
5 prior to the effective date of this act.

6 Section 7. Effective date.

7 This act shall take effect in 60 days.