

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL
No. 1137 Session of
1983

INTRODUCED BY LINTON, RAPPAPORT, FATTAH, CARN, FREEMAN, WAMBACH,
HARPER, RICHARDSON, DEAL, WIGGINS, TRUMAN, OLIVER, COHEN,
EVANS, IRVIS, COLAFELLA, PRESTON, HOEFFEL, SWEET, DeWEESE,
PISTELLA, DAWIDA, R. C. WRIGHT, WILLIAMS, KOSINSKI, KUKOVICH,
MAYERNIK, MURPHY, AFFLERBACH, BLAUM, WACHOB, RIEGER, COWELL,
KASUNIC, ARTY, MANDERINO, DALEY, LEVIN, MAIALE, RUDY,
GRUITZA, WOZNIAK, HAGARTY, CORDISCO, McHALE, POTT, PERZEL,
LASHINGER, CLARK, WESTON, MARKOSEK, CALTAGIRONE AND
ALDERETTE, MAY 31, 1983

AS AMENDED ON THIRD CONSIDERATION, IN SENATE, DECEMBER 13,
1983

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
2 Consolidated Statutes, adding an offense and providing a
3 penalty.

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

6 Section 1. Title 18 of the Pennsylvania Consolidated
7 Statutes is amended by adding a section to read:

8 § 4107.2. Deception relating to certification of minority

9 business enterprise OR WOMEN'S BUSINESS ENTERPRISE. <—

10 (a) Offense defined.--A person commits a misdemeanor of the <—

11 second FELONY OF THE THIRD degree if, in the course of business, <—

12 he:

13 (1) Fraudulently obtains, retains, attempts to obtain or <—

14 retain or aids another in fraudulently obtaining, retaining

~~or attempting to obtain or retain~~ OR RETAINS certification as
a minority business enterprise OR A WOMEN'S BUSINESS
ENTERPRISE.

(2) Willfully makes a false statement, whether by
affidavit, report or other representation, to an official or
employee of a public body for the purpose of influencing the
certification or denial of certification of any business
entity as a minority business enterprise OR A WOMEN'S
BUSINESS ENTERPRISE.

~~(3) Willfully obstructs, impedes or attempts to obstruct~~
~~or impede~~ OR IMPEDES any agency official or employee who is
investigating the qualifications of a business entity which
has requested certification as a minority business enterprise
OR A WOMEN'S BUSINESS ENTERPRISE.

~~(4) Fraudulently obtains, attempts to obtain or aids~~
~~another person in fraudulently obtaining or attempting to~~
~~obtain~~ public moneys reserved for or allocated or available
to minority business enterprises OR WOMEN'S BUSINESS
ENTERPRISES.

(b) Definitions.--As used in this section the following
words and phrases shall have the meanings given to them in this
subsection:

"Certification." A determination made by a public body that
a business entity is a minority business enterprise for whatever
purpose.

"Control." The exclusive or ultimate and sole control of the
business including, but not limited to, capital investment and
all other financial, property, acquisition, contract
negotiation, legal matters, officer-director-employee selection
and comprehensive hiring, operating responsibility, cost-control

1 matters, income and dividend matters, financial transactions and
2 rights of other shareholders or joint partners. CONTROL SHALL BE <—
3 REAL, SUBSTANTIAL AND CONTINUING NOT PRO FORMA. CONTROL SHALL
4 INCLUDE THE POWER TO DIRECT OR CAUSE THE DIRECTION OF THE
5 MANAGEMENT AND POLICIES OF THE BUSINESS AND TO MAKE THE DAY-TO-
6 DAY AS WELL AS MAJOR DECISIONS IN MATTERS OF POLICY, MANAGEMENT
7 AND OPERATIONS. CONTROL SHALL BE EXEMPLIFIED BY POSSESSING THE
8 REQUISITE KNOWLEDGE AND EXPERTISE TO RUN THE PARTICULAR BUSINESS
9 AND CONTROL SHALL NOT INCLUDE SIMPLE MAJORITY OR ABSENTEE
10 OWNERSHIP. FURTHER, CONTROL BY A SOCIALLY AND ECONOMICALLY
11 DISADVANTAGED INDIVIDUAL OR WOMAN SHALL NOT BE DEEMED TO EXIST
12 IN ANY CASE WHERE ANY NONMINORITY OWNER OR EMPLOYEE OF THE
13 BUSINESS IS DISPROPORTIONATELY RESPONSIBLE FOR THE OPERATION OF
14 THE FIRM.

15 "Minority business enterprise." A small business concern
16 which is:

17 (1) A sole proprietorship, owned and controlled by a
18 socially and economically disadvantaged individual.

19 (2) A partnership or joint venture controlled by
20 socially and economically disadvantaged individuals in which
21 51% of the beneficial ownership interest is held by socially
22 and economically disadvantaged individuals.

23 (3) A corporation or other entity controlled by socially
24 and economically disadvantaged individuals in which at least
25 51% of the voting interest and 51% of the beneficial
26 ownership interest are held by socially and economically
27 disadvantaged individuals.

28 "Public body." A department, bureau, agency, commission or
29 other instrumentality of the Commonwealth, political
30 subdivision, municipal authority or any wholly or partially

1 owned government corporation which enters into contracts.

2 "Socially and economically disadvantaged individuals."

3 Persons who are citizens of the United States and who are Black
4 Americans, Hispanic Americans, Native Americans, Asian-Pacific
5 Americans, women and other minorities or persons found to be
6 disadvantaged by the Small Business Administration pursuant to
7 the Small Business Act (15 U.S.C. § 631 et seq.).

8 "WOMEN'S BUSINESS ENTERPRISE." A SMALL BUSINESS CONCERN <—
9 WHICH IS AT LEAST 51% OWNED AND CONTROLLED BY WOMEN, OR, IN THE
10 CASE OF ANY PUBLICLY OWNED BUSINESS, AT LEAST 51% OF THE STOCK
11 OF WHICH IS OWNED BY ONE OR MORE WOMEN AND WHOSE MANAGEMENT AND
12 DAILY BUSINESS OPERATIONS ARE CONTROLLED BY ONE OR MORE OF THE
13 WOMEN WHO OWN IT.

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