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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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# HOUSE BILL

## No. 623

Session of  
2003

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INTRODUCED BY MAHER, BLAUM, GANNON, BOYES, JAMES, LEWIS,  
MANDERINO, PALLONE, STETLER, WALKO, WASHINGTON, PRESTON AND  
THOMAS, MARCH 3, 2003

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AMENDMENTS TO SENATE AMENDMENTS, HOUSE OF REPRESENTATIVES,  
NOVEMBER 20, 2004

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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] the person:~~

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~~

1 ~~furnishes the weight or measure;~~

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

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

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

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

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

30 ~~"Amount" as used in the definition of "material statement"~~

~~includes currency values and comparative expressions of value, including, but not limited to, percentages or multiples. "Business venture" means any venture represented to an investor as one where he may receive compensation either from the sale of a product, from the investment of other investors or from any other commercial enterprise. "Compensation" means anything of value received or to be received by an investor. "Invest" means to pay, give or lend money, property, service or other thing of value for the opportunity to receive compensation. The term also includes payment for the purchase of a product. "Investment" means the money, property, service or other thing of value paid or given, or to be paid or given, for the opportunity to receive compensation. "Investor" means any natural person, partnership, corporation, limited liability company, business trust, other association, government entity, estate, trust, foundation or other entity solicited to invest in a business venture, regardless of whether any investment is made. "Material statement" means a statement about any matter which could affect an investor's decision to invest in a business venture, including, but not limited to, statements about:~~

- ~~(i) the existence, value, availability or marketability of a product;~~
- ~~(ii) the number of former or current investors, the amount of their investments or the amount of their former or current compensation;~~
- ~~(iii) the available pool or number of prospective investors, including those who have not yet been solicited and those who already have been solicited but have not yet made an investment;~~

~~(iv) representations of future compensation to be received by investors or prospective investors; or~~  
~~(v) the source of former, current or future compensation paid or to be paid to investors or prospective investors.~~

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

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

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

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

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

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

~~(10) does either of the following when the person is in a client relationship with a certified public accountant, public accountant or public accounting firm:~~

~~(i) provides false or misleading information to the certified public accountant, public accountant or public~~

~~accounting firm in connection with performance of an  
attestation function for the client which results in an  
attestation by the certified public accountant, public  
accountant or public accounting firm of a materially  
misleading financial statement, audit, review or other  
document; or~~

~~(ii) fails to provide information to the certified  
public accountant, public accountant or public accounting  
firm which the person knows is material to the  
performance of an attestation function and which results  
in an attestation by the certified public accountant,  
public accountant or public accounting firm of a  
materially misleading financial statement, audit, review  
or other document.~~

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SECTION 1. SECTION 4107 OF TITLE 18 OF THE PENNSYLVANIA  
CONSOLIDATED STATUTES, AMENDED APRIL 5, 2004 (P.L.211, NO.26),  
IS AMENDED TO READ:

§ 4107. DECEPTIVE OR FRAUDULENT BUSINESS PRACTICES.

(A) OFFENSE DEFINED.--A PERSON COMMITS AN OFFENSE IF [THE  
PERSON INTENTIONALLY, KNOWINGLY OR RECKLESSLY ENGAGES IN ANY OF  
THE FOLLOWING ACTS], IN THE COURSE OF BUSINESS, THE PERSON:

(1) USES OR POSSESSES FOR USE A FALSE WEIGHT OR MEASURE,  
OR ANY OTHER DEVICE FOR FALSELY DETERMINING OR RECORDING ANY  
QUALITY OR QUANTITY;

(2) SELLS, OFFERS OR EXPOSES FOR SALE, OR DELIVERS LESS  
THAN THE REPRESENTED QUANTITY OF ANY COMMODITY OR SERVICE;

(3) TAKES OR ATTEMPTS TO TAKE MORE THAN THE REPRESENTED  
QUANTITY OF ANY COMMODITY OR SERVICE WHEN AS BUYER HE  
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 OR INDUCES OTHERS TO RELY ON A FALSE OR  
16 MISLEADING WRITTEN STATEMENT FOR THE PURPOSE OF OBTAINING  
17 PROPERTY OR CREDIT;

18           (7) MAKES OR INDUCES OTHERS TO RELY ON A FALSE OR  
19 MISLEADING WRITTEN STATEMENT FOR THE PURPOSE OF PROMOTING THE  
20 SALE OF SECURITIES, OR OMITTS INFORMATION REQUIRED BY LAW TO  
21 BE DISCLOSED IN WRITTEN DOCUMENTS RELATING TO SECURITIES;

22           (8) MAKES OR INDUCES OTHERS TO RELY ON A FALSE OR  
23 MISLEADING MATERIAL STATEMENT TO INDUCE AN INVESTOR TO INVEST  
24 IN A BUSINESS VENTURE. THE OFFENSE IS COMPLETE WHEN ANY FALSE  
25 OR MISLEADING MATERIAL STATEMENT IS COMMUNICATED TO AN  
26 INVESTOR REGARDLESS OF WHETHER ANY INVESTMENT IS MADE. FOR  
27 PURPOSES OF GRADING, THE "AMOUNT INVOLVED" IS THE AMOUNT OR  
28 VALUE OF THE INVESTMENT SOLICITED OR PAID, WHICHEVER IS  
29 GREATER. AS USED IN THIS PARAGRAPH, THE FOLLOWING WORDS AND  
30 PHRASES SHALL MEAN: "AMOUNT" AS USED IN THE DEFINITION OF

1 "MATERIAL STATEMENT" INCLUDES CURRENCY VALUES AND COMPARATIVE  
2 EXPRESSIONS OF VALUE, INCLUDING, BUT NOT LIMITED TO,  
3 PERCENTAGES OR MULTIPLES. "BUSINESS VENTURE" MEANS ANY  
4 VENTURE REPRESENTED TO AN INVESTOR AS ONE WHERE HE MAY  
5 RECEIVE COMPENSATION EITHER FROM THE SALE OF A PRODUCT, FROM  
6 THE INVESTMENT OF OTHER INVESTORS OR FROM ANY OTHER  
7 COMMERCIAL ENTERPRISE. "COMPENSATION" MEANS ANYTHING OF VALUE  
8 RECEIVED OR TO BE RECEIVED BY AN INVESTOR. "INVEST" MEANS TO  
9 PAY, GIVE OR LEND MONEY, PROPERTY, SERVICE OR OTHER THING OF  
10 VALUE FOR THE OPPORTUNITY TO RECEIVE COMPENSATION. THE TERM  
11 ALSO INCLUDES PAYMENT FOR THE PURCHASE OF A PRODUCT.

12 "INVESTMENT" MEANS THE MONEY, PROPERTY, SERVICE OR OTHER  
13 THING OF VALUE PAID OR GIVEN, OR TO BE PAID OR GIVEN, FOR THE  
14 OPPORTUNITY TO RECEIVE COMPENSATION. "INVESTOR" MEANS ANY  
15 NATURAL PERSON, PARTNERSHIP, CORPORATION, LIMITED LIABILITY  
16 COMPANY, BUSINESS TRUST, OTHER ASSOCIATION, GOVERNMENT  
17 ENTITY, ESTATE, TRUST, FOUNDATION OR OTHER ENTITY SOLICITED  
18 TO INVEST IN A BUSINESS VENTURE, REGARDLESS OF WHETHER ANY  
19 INVESTMENT IS MADE. "MATERIAL STATEMENT" MEANS A STATEMENT  
20 ABOUT ANY MATTER WHICH COULD AFFECT AN INVESTOR'S DECISION TO  
21 INVEST IN A BUSINESS VENTURE, INCLUDING, BUT NOT LIMITED TO,  
22 STATEMENTS ABOUT:

23 (I) THE EXISTENCE, VALUE, AVAILABILITY OR  
24 MARKETABILITY OF A PRODUCT;

25 (II) THE NUMBER OF FORMER OR CURRENT INVESTORS, THE  
26 AMOUNT OF THEIR INVESTMENTS OR THE AMOUNT OF THEIR FORMER  
27 OR CURRENT COMPENSATION;

28 (III) THE AVAILABLE POOL OR NUMBER OF PROSPECTIVE  
29 INVESTORS, INCLUDING THOSE WHO HAVE NOT YET BEEN  
30 SOLICITED AND THOSE WHO ALREADY HAVE BEEN SOLICITED BUT

HAVE NOT YET MADE AN INVESTMENT;

(IV) REPRESENTATIONS OF FUTURE COMPENSATION TO BE  
RECEIVED BY INVESTORS OR PROSPECTIVE INVESTORS; OR

(V) THE SOURCE OF FORMER, CURRENT OR FUTURE  
COMPENSATION PAID OR TO BE PAID TO INVESTORS OR  
PROSPECTIVE INVESTORS.

"PRODUCT" MEANS A GOOD, A SERVICE OR OTHER TANGIBLE OR  
INTANGIBLE PROPERTY OF ANY KIND; OR

(9) OBTAINS OR ATTEMPTS TO OBTAIN PROPERTY OF ANOTHER BY  
FALSE OR MISLEADING REPRESENTATIONS MADE THROUGH  
COMMUNICATIONS CONDUCTED IN WHOLE OR IN PART BY TELEPHONE  
INVOLVING THE FOLLOWING:

(I) EXPRESS OR IMPLIED CLAIMS THAT THE PERSON  
CONTACTED HAS WON OR IS ABOUT TO WIN A PRIZE;

(II) EXPRESS OR IMPLIED CLAIMS THAT THE PERSON  
CONTACTED MAY BE ABLE TO RECOVER ANY LOSSES SUFFERED IN  
CONNECTION WITH A PRIZE PROMOTION; OR

(III) EXPRESS OR IMPLIED CLAIMS REGARDING THE VALUE  
OF GOODS OR SERVICES OFFERED IN CONNECTION WITH A PRIZE  
OR A PRIZE PROMOTION.

AS USED IN THIS PARAGRAPH, THE TERM "PRIZE" MEANS ANYTHING OF  
VALUE OFFERED OR PURPORTEDLY OFFERED. THE TERM "PRIZE  
PROMOTION" MEANS AN ORAL OR WRITTEN EXPRESS OR IMPLIED  
REPRESENTATION THAT A PERSON HAS WON, HAS BEEN SELECTED TO  
RECEIVE OR MAY BE ELIGIBLE TO RECEIVE A PRIZE OR PURPORTED  
PRIZE[.]; OR

(10) DOES EITHER OF THE FOLLOWING WHEN THE PERSON IS IN  
A CLIENT RELATIONSHIP WITH A CERTIFIED PUBLIC ACCOUNTANT,  
PUBLIC ACCOUNTANT OR PUBLIC ACCOUNTING FIRM:

(I) PROVIDES FALSE OR MISLEADING INFORMATION TO THE



1 CERTIFIED PUBLIC ACCOUNTANT, PUBLIC ACCOUNTANT OR PUBLIC  
2 ACCOUNTING FIRM IN CONNECTION WITH PERFORMANCE OF AN  
3 ATTESTATION FUNCTION FOR THE CLIENT WHICH RESULTS IN AN  
4 ATTESTATION BY THE CERTIFIED PUBLIC ACCOUNTANT, PUBLIC  
5 ACCOUNTANT OR PUBLIC ACCOUNTING FIRM OF A MATERIALLY  
6 MISLEADING FINANCIAL STATEMENT, AUDIT, REVIEW OR OTHER  
7 DOCUMENT; OR

8 (II) FAILS TO PROVIDE INFORMATION TO THE CERTIFIED  
9 PUBLIC ACCOUNTANT, PUBLIC ACCOUNTANT OR PUBLIC ACCOUNTING  
10 FIRM WHICH THE PERSON KNOWS IS MATERIAL TO THE  
11 PERFORMANCE OF AN ATTESTATION FUNCTION AND WHICH RESULTS  
12 IN AN ATTESTATION BY THE CERTIFIED PUBLIC ACCOUNTANT,  
13 PUBLIC ACCOUNTANT OR PUBLIC ACCOUNTING FIRM OF A  
14 MATERIALLY MISLEADING FINANCIAL STATEMENT, AUDIT, REVIEW  
15 OR OTHER DOCUMENT.

16 (A.1) GRADING OF OFFENSES.--

17 (1) A VIOLATION OF THIS SECTION CONSTITUTES:

18 (I) A FELONY OF THE THIRD DEGREE IF THE AMOUNT  
19 INVOLVED EXCEEDS \$2,000;

20 (II) A MISDEMEANOR OF THE FIRST DEGREE IF THE AMOUNT  
21 INVOLVED IS \$200 OR MORE BUT \$2,000 OR LESS;

22 (III) A MISDEMEANOR OF THE SECOND DEGREE IF THE  
23 AMOUNT INVOLVED IS LESS THAN \$200; OR

24 (IV) WHEN THE AMOUNT INVOLVED CANNOT BE  
25 SATISFACTORILY ASCERTAINED, THE OFFENSE CONSTITUTES A  
26 MISDEMEANOR OF THE SECOND DEGREE.

27 (2) AMOUNTS INVOLVED IN DECEPTIVE OR FRAUDULENT BUSINESS  
28 PRACTICES PURSUANT TO ONE SCHEME OR COURSE OF CONDUCT,  
29 WHETHER FROM THE SAME PERSON OR SEVERAL PERSONS, MAY BE  
30 AGGREGATED IN DETERMINING THE GRADE OF THE OFFENSE.

1           (3) WHERE A PERSON COMMITS AN OFFENSE UNDER SUBSECTION  
2           (A) AND THE VICTIM OF THE OFFENSE IS 60 YEARS OF AGE OR  
3           OLDER, THE GRADING OF THE OFFENSE SHALL BE ONE GRADE HIGHER  
4           THAN SPECIFIED IN PARAGRAPH (1).

5           (A.2) JURISDICTION.--

6           (1) THE DISTRICT ATTORNEYS OF THE SEVERAL COUNTIES SHALL  
7           HAVE THE AUTHORITY TO INVESTIGATE AND TO INSTITUTE CRIMINAL  
8           PROCEEDINGS FOR ANY VIOLATION OF THIS SECTION.

9           (2) IN ADDITION TO THE AUTHORITY CONFERRED UPON THE  
10          ATTORNEY GENERAL BY THE ACT OF OCTOBER 15, 1980 (P.L.950,  
11          NO.164), KNOWN AS THE COMMONWEALTH ATTORNEYS ACT, THE  
12          ATTORNEY GENERAL SHALL HAVE THE AUTHORITY TO INVESTIGATE AND  
13          TO INSTITUTE CRIMINAL PROCEEDINGS FOR ANY VIOLATION OF THIS  
14          SECTION OR ANY SERIES OF SUCH VIOLATIONS INVOLVING MORE THAN  
15          ONE COUNTY OF THIS COMMONWEALTH OR INVOLVING ANY COUNTY OF  
16          THIS COMMONWEALTH AND ANOTHER STATE. NO PERSON CHARGED WITH A  
17          VIOLATION OF THIS SECTION BY THE ATTORNEY GENERAL SHALL HAVE  
18          STANDING TO CHALLENGE THE AUTHORITY OF THE ATTORNEY GENERAL  
19          TO INVESTIGATE OR PROSECUTE THE CASE, AND, IF ANY SUCH  
20          CHALLENGE IS MADE, THE CHALLENGE SHALL BE DISMISSED AND NO  
21          RELIEF SHALL BE AVAILABLE IN THE COURTS OF THIS COMMONWEALTH  
22          TO THE PERSON MAKING THE CHALLENGE.

23          (B) DEFENSES.--IT IS A DEFENSE TO PROSECUTION UNDER THIS  
24          SECTION IF THE DEFENDANT PROVES BY A PREPONDERANCE OF THE  
25          EVIDENCE THAT HIS CONDUCT WAS NOT [INTENTIONALLY,] KNOWINGLY OR  
26          RECKLESSLY DECEPTIVE.

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