

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1040 Session of  
1985

INTRODUCED BY HOLL, JULY 2, 1985

REFERRED TO BANKING AND INSURANCE, JULY 2, 1985

AN ACT

1 Amending the act of December 5, 1972 (P.L.1280, No.284),  
2 entitled "An act relating to securities; prohibiting  
3 fraudulent practices in relation thereto; requiring the  
4 registration of broker-dealers, agents, investment advisers,  
5 and securities; and making uniform the law with reference  
6 thereto," providing for cease and desist orders and summary  
7 cease and desist orders; increasing the statute of  
8 limitations for securities fraud; and further providing for  
9 the denial, suspension and revocation of registration of  
10 broker-dealers, agents and investment advisers.

11 The General Assembly of the Commonwealth of Pennsylvania  
12 hereby enacts as follows:

13 Section 1. Section 305(a)(ii), (iii), (iv) and (v) of the  
14 act of December 5, 1972 (P.L.1280, No.284), known as the  
15 Pennsylvania Securities Act of 1972, are amended to read:

16 Section 305. Denial, Suspension and Revocation of  
17 Registration.--(a) The commission may, by order, deny, suspend,  
18 or revoke any registration or may censure any registrant if it  
19 finds that such order is in the public interest and that such  
20 registrant or applicant, or in the case of any broker-dealer or  
21 investment adviser, any affiliate thereof, whether prior or

1 subsequent to becoming associated with such person:

2 \* \* \*

3 (ii) Has, within ten years of the date of the commission's  
4 action, been either (A) convicted of a felony or misdemeanor, or  
5 (B) held liable in a civil action by final judgment of a court  
6 based upon conduct showing moral turpitude, and the commission  
7 finds that any such felony, misdemeanor or civil action (I)  
8 involved the purchase or sale of any security or commodity  
9 futures contract, or any other aspect of the securities or  
10 commodity futures contract business, (II) arose out of the  
11 conduct of the business of a broker-dealer, investment adviser  
12 or issuer with respect to a security or transaction not exempt  
13 under section 202 or 203, (III) involved embezzlement,  
14 fraudulent conversion or misappropriation of property, funds or  
15 securities, or (IV) involved the violation of section 1341, 1342  
16 or 1343 of Title 18 of the United States Code; or

17 (iii) Is permanently or temporarily enjoined by any court of  
18 competent jurisdiction from engaging in or continuing any  
19 conduct or practice involving any aspect of the securities or  
20 commodities futures contract business or involving fraudulent  
21 conduct in the banking or insurance business; or

22 (iv) Is subject to any currently effective order or order  
23 entered within the past five years of the Securities and  
24 Exchange Commission, the Commodity Futures Trading Commission or  
25 the securities administrator of any other state denying  
26 registration to or revoking or suspending the registration of  
27 such person as a broker-dealer, agent [or], investment adviser,   
28 futures commission merchant, commodity pool operator or  
29 commodity trading advisor and their associated persons or is  
30 subject to any currently effective order of any national

1 securities association [or], national securities exchange (as  
2 defined in the Securities Exchange Act of 1934) or self-  
3 regulatory organization operating under the authority of the  
4 Commodity Futures Trading Commission suspending or expelling  
5 such person from membership in such association [or], exchange  
6 or self-regulatory organization, or is the subject of a  
7 currently effective United States Postal Service fraud order;  
8 but the commission may not institute a revocation or suspension  
9 proceeding under this subsection on the basis of an order under  
10 another state law more than one year after termination of the  
11 effectiveness of the order relied on and unless the order was  
12 based on facts which would currently constitute grounds for an  
13 order under this section; or

14 (v) Has wilfully violated any provision of the Securities  
15 Act of 1933, the Securities Exchange Act of 1934, the Trust  
16 Indenture Act of 1939, the Investment Advisers Act of 1940, the  
17 Investment Company Act of 1940, the Commodity Exchange Act of  
18 1974 or this act, or any predecessor law, or of any rule or  
19 regulation under any of such statutes; or

20 \* \* \*

21 Section 2. Section 504(a) of the act is amended to read:

22 Section 504. Time Limitations on Rights of Action.--(a) No  
23 action shall be maintained to enforce any liability created  
24 under section 501 (or section 503 in so far as it relates to  
25 that section) unless brought before the expiration of [three]  
26 four years after the act or transaction constituting the  
27 violation or the expiration of one year after the plaintiff  
28 receives actual notice or upon the exercise of reasonable  
29 diligence should have known of the facts constituting the  
30 violation, whichever shall first expire.

1       \* \* \*

2       Section 3. Section 606(c) of the act is amended and the  
3 section is amended by adding a subsection to read:

4       Section 606. Miscellaneous Powers of Commission.--\* \* \*

5       (c) No person shall publish in this State any advertisement  
6 concerning any security (other than tombstone advertisements  
7 permitted under the Securities Act of 1933 and the Investment  
8 Company Act of 1940 and the rules and regulations promulgated  
9 thereunder) except in accordance with such rules as the  
10 commission may promulgate from time to time. No person shall  
11 publish any advertisement concerning any security in this State  
12 after the commission finds that the advertisement contains any  
13 statement that is false or misleading or omits to make any  
14 statement necessary in order to make the statements made, in the  
15 light of the circumstances under which they are made, not  
16 misleading and so notifies the person in writing. Such  
17 notification may be given summarily without notice or hearing.  
18 [At any time after the issuance] Within thirty days after the  
19 receipt of a notification under this section, the person  
20 desiring to use the advertisement may request in writing that  
21 the order be rescinded. Upon the receipt of such a written  
22 request, the matter shall be set down for hearing to commence  
23 within thirty days after such receipt unless the person making  
24 the request consents to a later date. After such hearing, the  
25 commission shall determine whether to affirm and continue or to  
26 rescind such order.

27       (c.1) Whenever the commission finds that any person has  
28 engaged or is about to engage in any act or practice  
29 constituting a violation of any provision of this act or any  
30 rule or order thereunder, the commission may order such person

1 to cease and desist from such act or practice and shall notify  
2 the person in writing. Notification may be given summarily  
3 without notice or hearing. Within thirty days after receipt of a  
4 notification under this section, the person desiring to engage  
5 in such act or practice may file a written request that the  
6 order be rescinded. Upon receipt of the written request, the  
7 matter will be set down for a hearing to commence within thirty  
8 days after such receipt unless the person making the request  
9 consents to a later date. After such hearing, the commission  
10 shall determine whether to affirm and continue, modify or  
11 rescind such order.

12 \* \* \*

13 Section 4. This act shall take effect in 60 days.