

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 506 Session of
2003

INTRODUCED BY REICHLEY, HARHART, GEIST, S. MILLER, YOUNGBLOOD,
BELARDI, THOMAS, READSHAW, CAPPELLI, HERMAN, BROWNE, FORCIER,
FLICK, R. MILLER, STABACK, REED, SOLOBAY, LEWIS, SAYLOR,
MELIO, LEH, SATHER, HARHAI, ZUG, HENNESSEY, BELFANTI,
SAINATO, SEMMEL, BASTIAN, E. Z. TAYLOR, HARPER, CRAHALLA,
ROSS, HORSEY, WASHINGTON AND JAMES, FEBRUARY 26, 2003

AS RE-REPORTED FROM COMMITTEE ON APPROPRIATIONS, HOUSE OF
REPRESENTATIVES, AS AMENDED, MAY 5, 2003

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
16 than the represented quantity of any commodity or service;

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

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

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

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

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

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

1 value of the investment solicited or paid, whichever is
2 greater. As used in this paragraph, the following words and
3 phrases shall mean: "Amount" as used in the definition of
4 "material statement" includes currency values and comparative
5 expressions of value, including, but not limited to,
6 percentages or multiples. "Business venture" means any
7 venture represented to an investor as one where he may
8 receive compensation either from the sale of a product, from
9 the investment of other investors or from any other
10 commercial enterprise. "Compensation" means anything of value
11 received or to be received by an investor. "Invest" means to
12 pay, give or lend money, property, service or other thing of
13 value for the opportunity to receive compensation. The term
14 also includes payment for the purchase of a product.

15 "Investment" means the money, property, service or other
16 thing of value paid or given, or to be paid or given, for the
17 opportunity to receive compensation. "Investor" means any
18 natural person, partnership, corporation, limited liability
19 company, business trust, other association, government
20 entity, estate, trust, foundation or other entity solicited
21 to invest in a business venture, regardless of whether any
22 investment is made. "Material statement" means a statement
23 about any matter which could affect an investor's decision to
24 invest in a business venture, including, but not limited to,
25 statements about:

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

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

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

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

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

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

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

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

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

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

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

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

(1) A violation of this section constitutes:

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

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

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

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

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

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

(a.2) Jurisdiction.--

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

(2) In addition to the authority conferred upon the Attorney General by the act of October 15, 1980 (P.L.950, No.164), known as the Commonwealth Attorneys Act, the Attorney General shall have the authority to investigate and to institute criminal proceedings for any violation of this section or any series of such violations involving more than one county of this Commonwealth or involving any county of this Commonwealth and another state. No person charged with a

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

7 ‡(b) Defenses.--It is a defense to prosecution under this <—
8 section if the defendant proves by a preponderance of the
9 evidence that his conduct was not INTENTIONALLY, knowingly or <—
10 recklessly deceptive.‡ <—

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