

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

## HOUSE BILL

No. 604 Session of  
2003

INTRODUCED BY BROWNE, PALLONE, BOYES, GANNON, BLAUM, HASAY,  
HANNA, HARPER, HUTCHINSON, JAMES, LEWIS, MANDERINO, NICKOL,  
STETLER, TURZAI AND WALKO, MARCH 3, 2003

AS REPORTED FROM COMMITTEE ON COMMERCE, HOUSE OF  
REPRESENTATIVES, AS AMENDED, MARCH 5, 2003

## 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," ~~further defining "wilful and wilfully"; and further~~ <—  
7 ~~providing for criminal penalties.~~ THERETO," FURTHER PROVIDING <—  
8 FOR DEFINITIONS, FOR REGISTRATION SANCTIONS AND FOR CRIMINAL  
9 PENALTIES.

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

12 ~~Section 1. The definition of "wilful and wilfully" in~~ <—  
13 ~~section 102 of the act of December 5, 1972 (P.L.1280, No.284),~~  
14 ~~known as the Pennsylvania Securities Act of 1972, added July 4,~~  
15 ~~2002 (P.L.721, No.108), is amended to read:~~

16 SECTION 1. SECTION 102(E), (K.1) AND (W) OF THE ACT OF <—  
17 DECEMBER 5, 1972 (P.L.1280, NO.284), KNOWN AS THE PENNSYLVANIA  
18 SECURITIES ACT OF 1972, AMENDED OR ADDED JULY 4, 2002 (P.L.721,  
19 NO.108), ARE AMENDED TO READ:

20 Section 102. Definitions.--When used in this act, the

1 following definitions shall be applicable, unless the context  
2 otherwise requires:

3 \* \* \*

4 (E) "BROKER-DEALER" MEANS ANY PERSON ENGAGED IN THE BUSINESS <—  
5 OF EFFECTING TRANSACTIONS IN SECURITIES FOR THE ACCOUNT OF  
6 OTHERS OR FOR HIS OWN ACCOUNT. "BROKER-DEALER" DOES NOT INCLUDE:

7 (I) AN AGENT;

8 (II) AN ISSUER;

9 (III) A BANK WHICH MEETS THE EXCEPTIONS FROM THE DEFINITION  
10 OF "BROKER" UNDER SECTION 3(A)(4)(B) OR (E) OR THE DEFINITION OF  
11 "DEALER" UNDER SECTION 3(A)(5)(B) OR (C) OF THE SECURITIES  
12 EXCHANGE ACT OF 1934 (48 STAT. 881, 15 U.S.C. § 78C(A)(4)(B) OR  
13 (E) [AND 5(B)] OR (5)(B) OR (C));

14 (IV) AN EXECUTOR, ADMINISTRATOR, GUARDIAN, CONSERVATOR OR  
15 PLEDGEE;

16 (V) A PERSON WHO HAS NO PLACE OF BUSINESS IN THIS STATE IF  
17 HE EFFECTS TRANSACTIONS IN THIS STATE EXCLUSIVELY WITH OR  
18 THROUGH (A) THE ISSUERS OF THE SECURITIES INVOLVED IN THE  
19 TRANSACTIONS, (B) BROKER-DEALERS OR INSTITUTIONAL INVESTORS;

20 (VI) A PERSON LICENSED AS A REAL ESTATE BROKER OR AGENT  
21 UNDER THE ACT OF FEBRUARY 19, 1980 (P.L.15, NO.9), KNOWN AS THE  
22 REAL ESTATE LICENSING AND REGISTRATION ACT, AND WHOSE  
23 TRANSACTIONS IN SECURITIES ARE ISOLATED TRANSACTIONS INCIDENTAL  
24 TO THAT BUSINESS; OR

25 (VII) OTHER PERSONS NOT WITHIN THE INTENT OF THIS SUBSECTION  
26 WHOM THE COMMISSION BY REGULATION DESIGNATES.

27 \* \* \*

28 (K.1) "KNOWING AND KNOWINGLY" AS USED IN SECTIONS [511(A)  
29 AND 512(A)] 407(A), 511, 512(A) AND 513 SHALL HAVE THE SAME  
30 MEANING AS THE TERM "KNOWINGLY" IS DEFINED IN 18 PA.C.S. §

1 302(B)(2) (RELATING TO GENERAL REQUIREMENTS OF CULPABILITY).

2 \* \* \*

3 (w) "Wilful and wilfully" mean the following:

4 (1) As used in all sections of the act except section 511  
5 with respect to a wilful violation of section 401(a) of the act,  
6 and notwithstanding any law or statute to the contrary, wilful  
7 means that the person acted intentionally in the sense that the  
8 person intended to do the act and was aware of what the person  
9 was doing. Proof of evil motive or intent to violate the act or  
10 knowledge that the person's conduct violated the act is not  
11 required.

12 (2) For purposes of section 511 with respect to a wilful  
13 violation of section 401(a) of the act, wilful means that the  
14 person acted intentionally, knowingly[, recklessly or  
15 negligently] or recklessly as those terms are defined in 18  
16 Pa.C.S. § 302 (relating to general requirements of culpability).

17 SECTION 2. SECTION 305 OF THE ACT IS AMENDED BY ADDING A <—  
18 SUBSECTION TO READ:

19 SECTION 305. DENIAL, SUSPENSION, REVOCATION AND CONDITIONING  
20 OF REGISTRATION.

21 \* \* \*

22 (A.2) THE COMMISSION, BY ORDER, MAY SUSPEND THE REGISTRATION  
23 OF A BROKER-DEALER, INVESTMENT ADVISER, AGENT OR INVESTMENT  
24 ADVISER REPRESENTATIVE IF SUCH PERSON IS OBLIGATED, PURSUANT TO  
25 AN AWARD OF AN ARBITRATION PANEL, TO PAY COMPENSATION TO  
26 PURCHASERS OF SECURITIES IN THIS COMMONWEALTH AND HAS NOT PAID  
27 THE AWARDED COMPENSATION IN FULL AND IN CASH. THE COMMISSION  
28 SHALL RESCIND THE SUSPENSION ORDER PROSPECTIVELY IF THE PERSON  
29 PROVIDES CREDIBLE EVIDENCE TO THE COMMISSION THAT THE  
30 COMPENSATION AWARDED BY THE ARBITRATION PANEL HAS BEEN PAID IN

1 FULL AND IN CASH TO PURCHASERS OF SECURITIES IN THIS  
2 COMMONWEALTH. RESCISSION OF A SUSPENSION ORDER ISSUED UNDER THIS  
3 SECTION SHALL REINSTATE THE PERSON AS A REGISTRANT IN THE SAME  
4 CATEGORY HELD AT THE TIME THE SUSPENSION ORDER WAS ISSUED BUT  
5 ONLY IF:

6 (I) THE PERSON OTHERWISE CURRENTLY MEETS ALL  
7 REQUIREMENTS FOR REGISTRATION IN THAT CATEGORY SET FORTH IN  
8 THE ACT AND REGULATIONS PROMULGATED THEREUNDER;

9 (II) THERE IS NO BASIS FOR THE COMMISSION TO ACT  
10 PURSUANT TO SUBSECTION (A) OR (A.1); AND

11 (III) APPLICABLE FEES AND COMPLIANCE ASSESSMENTS SET  
12 FORTH IN SECTIONS 602 AND 602.1 HAVE BEEN PAID AS IF THE  
13 PERSON HAD BEEN REGISTERED DURING THE PERIOD OF SUSPENSION.

14 \* \* \*

15 Section 2 3. Section 511 of the act, amended November 24, <—  
16 1998 (P.L.829, No.109) and July 4, 2002 (P.L.721, No.108), is  
17 amended to read:

18 Section 511. Criminal Penalties.--(a) Except as provided in  
19 [subsection (b)] this section, a person who wilfully violates  
20 any material provision of this act, except section 407(a), or  
21 any rule under this act, or any order of which he has notice, or  
22 who violates section 407(a) knowing that the statement made was  
23 false or misleading in any material respect, commits a  
24 [misdemeanor of the first] felony of the third degree and may be  
25 fined not more than [five thousand dollars (\$5,000)] two hundred  
26 fifty thousand dollars (\$250,000) or imprisoned for not more  
27 than [five] seven years, or both[.] if the amount of money or  
28 securities involved in the violation is less than two hundred  
29 fifty thousand dollars (\$250,000) and not more than five hundred  
30 thousand dollars (\$500,000) or imprisoned for not more than

1 seven years, or both, if the amount of money or securities  
2 involved in the violation is two hundred fifty thousand dollars  
3 (\$250,000) or more. In addition to fine or imprisonment, or  
4 both, a person may be sentenced to make restitution.

5 (b) A person who wilfully violates section 401, 408 or 409  
6 commits a felony of the [third] second degree and may be fined  
7 not more than [twenty thousand dollars (\$20,000) if none of the  
8 victims of the person's violative conduct were individuals aged  
9 60 or more and not more than one hundred thousand dollars  
10 (\$100,000) if any of the victims of the person's violative  
11 conduct were individuals aged 60 or more] one million dollars  
12 (\$1,000,000) or imprisoned for not more than [seven] ten years,  
13 or both. In addition to fine or imprisonment, or both, the  
14 person may be sentenced to make restitution.

15 [(c) Each of the acts specified in subsections (a) and (b)  
16 shall constitute a separate offense and a prosecution or  
17 conviction for any one of such offenses shall not bar  
18 prosecution or conviction for any other offense. No indictment  
19 or information may be returned under this act more than five  
20 years after the alleged violation.]

21 (c) (1) A person who wilfully violates section 401, 408 or  
22 409 commits a felony of the first degree and may be fined not  
23 more than five million dollars (\$5,000,000) or imprisoned for  
24 not more than twenty years, or both, if one of the conditions  
25 specified in paragraph (2) IS MET and not more than ten million <—  
26 dollars (\$10,000,000) or imprisoned for not more than twenty  
27 years, or both, if both of the conditions specified in paragraph  
28 (2) are met.

29 (2) In addition to a fine or imprisonment, or both, the  
30 person may be sentenced to make restitution if:

1 (i) Within ten years of being convicted under this  
2 subsection for wilful violation of section 401, 408 or 409, the  
3 person was the subject of:

4 (A) a criminal felony conviction;

5 (B) an injunction issued by any court of competent  
6 jurisdiction; or

7 (C) an order of the Securities and Exchange Commission, the  
8 Commodity Futures Trading Commission, the securities, banking or  
9 insurance regulator of another state, a Federal banking  
10 regulator or the securities, banking or insurance regulatory  
11 authority of another country which found that the person  
12 wilfully violated any provision of the Federal or State  
13 securities, banking, insurance or commodities laws or the  
14 securities, commodities, insurance or banking laws of that  
15 country; or

16 (ii) The person's violative conduct involved one or more  
17 individuals 60 years of age or older.

18 (d) A person who knowingly alters, destroys, shreds,  
19 mutilates, conceals, covers up, falsifies or makes a false entry  
20 in any record, document or tangible object with the intent to  
21 impede, obstruct or influence an investigation by the commission  
22 under section 510 or an examination under section 304(d) commits  
23 a felony of the second degree and may be fined not more than  
24 five hundred thousand dollars (\$500,000) or imprisoned for not  
25 more than ten years, or both.

26 (e) A person who knowingly corruptly alters, destroys,  
27 shreds, mutilates or conceals a record, document or other object  
28 or attempts to do so with the intent to impair its integrity or  
29 availability for use in a proceeding before the commission or in  
30 a proceeding brought by the commission; or otherwise obstructs,

influences or impedes such proceedings or attempts to do so  
commits a felony of the second degree and may be fined not more  
than five hundred thousand dollars (\$500,000) or imprisoned for  
not more than ten years, or both.

(f) A person who knowingly, with the intent to retaliate,  
takes any action harmful to another person, including  
interference with the lawful employment or livelihood of another  
person, for providing the commission with any truthful  
information relating to a violation of this act commits a felony  
of the second degree and may be fined not more than five hundred  
thousand dollars (\$500,000) or imprisoned for not more than ten  
years, or both.

(g) (1) Each of the acts specified in subsections (a)  
through (f) shall constitute a separate offense and a  
prosecution or conviction for any such offense shall not bar  
prosecution or conviction for any other offense. No indictment  
or information may be returned under this act more than five  
years after the alleged violation.

(2) This section shall be construed to provide additional  
and cumulative remedies and nothing contained in this act shall  
be construed to affect the ability of the Commonwealth to bring  
an information or indictment under common law or other criminal  
statutory provisions for the same conduct.

(h) The following persons have jurisdiction to investigate  
violations of this section and institute criminal proceedings  
for any violation of this section:

(1) The district attorney of a county.

(2) The Attorney General, notwithstanding 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

<—

<—

1 Attorneys Act." THIS PARAGRAPH INCLUDES AUTHORITY OVER A SERIES <—  
2 OF VIOLATIONS INVOLVING MORE THAN ONE COUNTY OF THIS  
3 COMMONWEALTH OR INVOLVING ANY COUNTY OF THIS COMMONWEALTH AND  
4 ANOTHER STATE. NO PERSON CHARGED WITH A VIOLATION OF THIS  
5 SECTION BY THE ATTORNEY GENERAL SHALL HAVE STANDING TO CHALLENGE  
6 THE AUTHORITY OF THE ATTORNEY GENERAL TO INVESTIGATE OR  
7 PROSECUTE THE CASE; AND, IF ANY SUCH CHALLENGE IS MADE, THE  
8 CHALLENGE SHALL BE DISMISSED AND NO RELIEF SHALL BE AVAILABLE IN  
9 THE COURTS OF THIS COMMONWEALTH TO THE PERSON MAKING THE  
10 CHALLENGE.

11 (i) No person charged with a violation of this section by  
12 the Attorney General shall have standing to challenge the  
13 authority of the Attorney General to investigate or prosecute  
14 the case, and, if any such challenge is made, the challenge  
15 shall be dismissed and no relief shall be available in the  
16 courts of this Commonwealth to the person making the challenge.

17 Section 2 4. This act shall take effect in 60 days. <—