

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 552 Session of
2003

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

REFERRED TO COMMITTEE ON COMMERCE, MARCH 3, 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," providing for the recovery of short swing profits.

7 The General Assembly of the Commonwealth of Pennsylvania
8 hereby enacts as follows:

9 Section 1. The act of December 5, 1972 (P.L.1280, No.284),
10 known as the Pennsylvania Securities Act of 1972, is amended by
11 adding a section to read:

12 Section 515. Recovery of Short Swing Profits.--(a) Any
13 profit realized by person who directly or indirectly is the
14 beneficial owner of more than ten per cent of any class of
15 equity securities, other than an exempted security, that is not
16 registered under section 12 of the Securities Exchange Act of
17 1934 (48 Stat. 881, 15 U.S.C. § 781) or who is an officer or
18 director of the issuer of such security from any purchase and
19 sale or any sale and purchase of any equity security of the

issuer in this Commonwealth, other than an exempted security,
within any period of less than six months, unless such security
was acquired in good faith in connection with a debt previously
contracted, shall inure to, and be recoverable by, the issuer,
irrespective of any intention on the part of the beneficial
owner, director or officer in entering into such transaction of
holding the security purchased or of not repurchasing the
security sold for a period exceeding six months.

(b) (1) Suit to recover the profit specified in subsection
(a) may be instituted at law or in equity by the issuer or by
the owner of any security of the issuer in the name and on
behalf of the issuer if the issuer shall fail or refuse to bring
such suit within sixty days after request or shall fail
diligently to prosecute the same thereafter; but no such suit
shall be brought more than two years after the date such profit
was realized.

(2) This subsection shall not apply to any transaction at
which time of the purchase and sale or the sale and purchase of
the security, the beneficial owner was not the same.

(c) The provisions of this section shall not apply to any
one of the following:

(1) Any transaction described in rules adopted by the United
States Securities and Exchange Commission exempting persons or
transactions from liability under section 16(b) of the
Securities Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. §
78p(b)).

(2) Any transaction described in section 16(d) or (e) of the
Securities Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. § 78(d)
or (e)) or in rules adopted under that act by the United States
Securities and Exchange Commission pursuant to that section.

1 (3) Any transaction involving equity securities of an issuer
2 that has not more than one hundred equity security holders.

3 (d) For purposes of this section, "exempted security" shall
4 have the same meaning as defined in section 3(12) of the
5 Securities Exchange Act of 1934 (48 Stat. 881, 15 U.S.C.
6 78c(12)).

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