

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL**No. 705** Session of
2003

INTRODUCED BY CORMAN, WONDERLING, C. WILLIAMS, BRIGHTBILL,
BOSCOLA, HELFRICK, KITCHEN, MUSTO, RHOADES, TOMLINSON,
WOZNIAK AND STACK, MAY 2, 2003

SENATOR CORMAN, COMMUNICATIONS AND TECHNOLOGY, AS AMENDED,
FEBRUARY 10, 2004

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)(8) and (9) AND (A.1) of Title 18 <—
7 of the Pennsylvania Consolidated Statutes are amended and the
8 subsection is amended by adding a paragraph AND THE SECTION IS <—
9 AMENDED BY ADDING A SUBSECTION to read:

10 § 4107. Deceptive or fraudulent business practices.

11 (a) Offense defined.--A person commits an offense if, in the
12 course of business, he:

13 * * *

14 (8) makes a false or misleading material statement to
15 induce an investor to invest in a business venture. The
16 offense is complete when any false or misleading material
17 statement is communicated to an investor regardless of

1 whether any investment is made. For purposes of grading, the
2 "amount involved" is the amount or value of the investment
3 solicited or paid, whichever is greater. As used in this
4 paragraph, the following words and phrases shall mean:

5 "Amount" as used in the definition of "material statement"
6 includes currency values and comparative expressions of
7 value, including, but not limited to, percentages or
8 multiples. "Business venture" means any venture represented
9 to an investor as one where he may receive compensation
10 either from the sale of a product, from the investment of
11 other investors or from any other commercial enterprise.

12 "Compensation" means anything of value received or to be
13 received by an investor. "Invest" means to pay, give or lend
14 money, property, service or other thing of value for the
15 opportunity to receive compensation. The term also includes
16 payment for the purchase of a product. "Investment" means the
17 money, property, service or other thing of value paid or
18 given, or to be paid or given, for the opportunity to receive
19 compensation. "Investor" means any natural person,
20 partnership, corporation, limited liability company, business
21 trust, other association, government entity, estate, trust,
22 foundation or other entity solicited to invest in a business
23 venture, regardless of whether any investment is made.

24 "Material statement" means a statement about any matter which
25 could affect an investor's decision to invest in a business
26 venture, including, but not limited to, statements about:

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

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

1 or current compensation;

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

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

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

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

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

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

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

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

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

1 (10) makes a false or misleading statement in a privacy
2 policy, published on the Internet or otherwise distributed or
3 published, regarding the use of personal information
4 submitted by members of the public.

5 * * *

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

7 (1) A VIOLATION OF THIS SECTION, EXCEPT FOR SUBSECTION
8 (A)(10), CONSTITUTES:

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

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

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

15 (IV) WHEN THE AMOUNT INVOLVED CANNOT BE
16 SATISFACTORILY ASCERTAINED, THE OFFENSE CONSTITUTES A
17 MISDEMEANOR OF THE SECOND DEGREE.

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

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

26 (4) AN OFFENSE UNDER SUBSECTION (A)(10) SHALL BE A
27 SUMMMARY OFFENSE AND SHALL BE PUNISHABLE BY A FINE NOT LESS
28 THAN \$50 AND NOT TO EXCEED \$500.

29 * * *

30 (D) EXCEPTIONS.--SUBSECTION (A)(10) SHALL NOT APPLY TO THE

1 ACTIVITIES OF:

2 (1) A FINANCIAL INSTITUTION, AS DEFINED BY SECTION
3 509(3) OF THE GRAMM-LEACH-BLILEY ACT (PUBLIC LAW 106-102, 15
4 U.S.C. § 6809(3)) AND REGULATIONS ADOPTED BY AGENCIES AS
5 DESIGNATED BY SECTION 504(A) OF THE GRAMM-LEACH-BLILEY ACT,
6 15 U.S.C. § 6804(A), SUBJECT TO TITLE V (RELATING TO PRIVACY,
7 THE DISCLOSURE OF NONPUBLIC PERSONAL INFORMATION AND
8 FRAUDULENT ACCESS TO FINANCIAL INFORMATION) OF THE GRAMM-
9 LEACH-BLILEY ACT (15 U.S.C. § 6801 ET SEQ.).

10 (2) A COVERED ENTITY, AS DEFINED BY REGULATIONS
11 PROMULGATED AT 45 C.F.R. PARTS 160 (RELATING TO GENERAL
12 ADMINISTRATION REQUIREMENTS) AND 164 (RELATING TO SECURITY
13 AND PRIVACY) PURSUANT TO SUBTITLE F OF THE HEALTH INSURANCE
14 PORTABILITY AND ACCOUNTABILITY ACT OF 1996 (PUBLIC LAW 104-
15 191, 42 U.S.C. § 1320D ET SEQ.).

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