

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

AS AMENDED ON THIRD CONSIDERATION, MARCH 22, 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
18 whether any investment is made. For purposes of grading, the

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

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

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

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

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

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

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

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

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

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

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

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

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

(10) KNOWINGLY makes a false or misleading statement in

<—

1 a privacy policy, published on the Internet or otherwise
2 distributed or published, regarding the use of personal
3 information submitted by members of the public.

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

5 (1) A violation of this section, except for subsection
6 (a)(10), constitutes:

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

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

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

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

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

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

24 (4) An offense under subsection (a)(10) shall be a
25 summary offense and shall be punishable by a fine not less
26 than \$50 and not to exceed \$500.

27 * * *

28 (d) Exceptions.--Subsection (a)(10) shall not apply to the
29 activities of:

30 (1) A financial institution, as defined by section

1 509(3) of the Gramm-Leach-Bliley Act (Public Law 106-102, 15
2 U.S.C. § 6809(3)) and OR regulations adopted by agencies as <—
3 designated by section 504(a) of the Gramm-Leach-Bliley Act,
4 15 U.S.C. § 6804(a), subject to Title V (relating to privacy,
5 the disclosure of nonpublic personal information and
6 fraudulent access to financial information) of the Gramm-
7 Leach-Bliley Act (15 U.S.C. § 6801 et seq.).

8 (2) A covered entity, as defined by regulations
9 promulgated at 45 C.F.R. Parts 160 (relating to general
10 administration requirements) and 164 (relating to security
11 and privacy) pursuant to Subtitle F of the Health Insurance
12 Portability and Accountability Act of 1996 (Public Law 104-
13 191, 42 U.S.C. § 1320d et seq.).

14 (3) A LICENSEE OR PERSON SUBJECT TO 31 PA. CODE CH. 146A <—
15 (RELATING TO PRIVACY OF CONSUMER FINANCIAL INFORMATION) OR
16 146B (RELATING TO PRIVACY OF CONSUMER HEALTH INFORMATION).

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