

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 REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF
REPRESENTATIVES, AS AMENDED, NOVEMBER 15, 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 AMENDING TITLE 18 (CRIMES AND OFFENSES) OF THE PENNSYLVANIA <—
5 CONSOLIDATED STATUTES, FURTHER PROVIDING FOR COSTS, FOR THE
6 OFFENSE OF BURGLARY AND FOR CERTAIN BULLETS PROHIBITED.

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

9 ~~Section 1. Section 4107(a)(8) and (9) and (a.1) of Title 18~~ <—
10 ~~of the Pennsylvania Consolidated Statutes are amended and the~~
11 ~~subsection is amended by adding a paragraph and the section is~~
12 ~~amended by adding a subsection to read:~~

13 ~~§ 4107. Deceptive or fraudulent business practices.~~

14 ~~(a) Offense defined. A person commits an offense if, in the~~
15 ~~course of business, he:~~

16 ~~* * *~~

17 ~~(8) makes a false or misleading material statement to~~
18 ~~induce an investor to invest in a business venture. The~~

~~offense is complete when any false or misleading material statement is communicated to an investor regardless of whether any investment is made. For purposes of grading, the "amount involved" is the amount or value of the investment solicited or paid, whichever is greater. As used in this paragraph, the following words and phrases shall mean:~~

~~"Amount" as used in the definition of "material statement" includes currency values and comparative expressions of value, including, but not limited to, percentages or multiples. "Business venture" means any venture represented to an investor as one where he may receive compensation either from the sale of a product, from the investment of other investors or from any other commercial enterprise. "Compensation" means anything of value received or to be received by an investor. "Invest" means to pay, give or lend money, property, service or other thing of value for the opportunity to receive compensation. The term also includes payment for the purchase of a product. "Investment" means the money, property, service or other thing of value paid or given, or to be paid or given, for the opportunity to receive compensation. "Investor" means any natural person, partnership, corporation, limited liability company, business trust, other association, government entity, estate, trust, foundation or other entity solicited to invest in a business venture, regardless of whether any investment is made. "Material statement" means a statement about any matter which could affect an investor's decision to invest in a business venture, including, but not limited to, statements about:~~

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

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

1 ~~receive or may be eligible to receive a prize or purported~~
2 ~~prize[.]; or~~

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

7 ~~(a.1) Grading of offenses.—~~

8 ~~(1) A violation of this section, except for subsection~~
9 ~~(a)(10), constitutes:~~

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

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

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

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

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

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

27 ~~(4) An offense under subsection (a)(10) shall be a~~
28 ~~summary offense and shall be punishable by a fine not less~~
29 ~~than \$50 and not to exceed \$500.~~

30 ~~* * *~~

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

~~(1) A financial institution, as defined by section 509(3) of the Gramm Leach Bliley Act (Public Law 106-102, 15 U.S.C. § 6809(3)) or regulations adopted by agencies as designated by section 504(a) of the Gramm Leach Bliley Act, 15 U.S.C. § 6804(a), subject to Title V (relating to privacy, the disclosure of nonpublic personal information and fraudulent access to financial information) of the Gramm Leach Bliley Act (15 U.S.C. § 6801 et seq.).~~

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

~~(3) A licensee or person subject to 31 Pa. Code Ch. 146a (relating to privacy of consumer financial information) or 146b (relating to privacy of consumer health information).~~
~~Section 2. This act shall take effect in 60 days.~~

SECTION 1. SECTIONS 1109, 3502(A) AND 6121(A) OF TITLE 18 OF THE PENNSYLVANIA CONSOLIDATED STATUTES ARE AMENDED TO READ:

§ 1109. COSTS.

[IN ADDITION TO ANY OTHER SENTENCE IMPOSED, THE COURT MAY ORDER AN OFFENDER TO PAY THE COST OF ANY REWARD PAID FOR THE APPREHENSION AND CONVICTION OF THE OFFENDER.]

(A) GENERAL RULE.--IN ADDITION TO ANY OTHER SENTENCE IMPOSED, THE COURT MAY ORDER AN OFFENDER TO PAY ALL OF THE FOLLOWING:

(1) THE COST OF ANY REWARD PAID DURING THE COURSE OF THE

1 INVESTIGATION FOR THE APPREHENSION AND CONVICTION OF THE
2 OFFENDER.

3 (2) THE COST OF REPAIRING OR REPLACING ANY PROPERTY
4 BELONGING TO A LAW ENFORCEMENT AGENCY OR OFFICER DAMAGED BY
5 THE OFFENDER DURING THE COURSE OF THE INVESTIGATION OR DURING
6 THE OFFENDER'S ARREST, TRANSPORT OR PROCESSING.

7 (3) THE COST OF ANY MONEYS EXPENDED BY A LAW ENFORCEMENT
8 AGENCY IN CONNECTION WITH THE CASE WHICH WERE EXPENDED FOR
9 THE PURCHASE OF, OR IN EXCHANGE FOR, CONTRABAND OR ANY
10 ILLEGAL SERVICES.

11 (B) COLLECTION.--THE ASSESSMENT AND COLLECTION OF COSTS
12 PURSUANT TO SUBSECTION (A) SHALL BE IN ACCORDANCE WITH SECTION
13 1106 (RELATING TO RESTITUTION FOR INJURIES TO PERSON OR
14 PROPERTY). MONEYS PAID BY THE OFFENDER FOR ASSESSMENTS IMPOSED
15 IN ACCORDANCE WITH THIS SECTION SHALL REVERT TO THE LAW
16 ENFORCEMENT AGENCY OR OTHER ORGANIZATION WHICH EXPENDED THE
17 REWARD, TO THE LAW ENFORCEMENT AGENCY THAT PURCHASED THE
18 CONTRABAND OR SERVICES, OR TO THE LAW ENFORCEMENT AGENCY OR
19 OFFICER THAT SUFFERED THE DAMAGE TO PROPERTY.

20 (C) COSTS NOT EXCLUSIVE.--THE PROVISIONS OF THIS SECTION
21 SHALL NOT BE EXCLUSIVE AND SHALL BE IN ADDITION TO ANY OTHER
22 REMEDIES, INCLUDING FORFEITURE, WHICH MAY BE PROVIDED FOR IN ANY
23 OTHER LAW OR AVAILABLE UNDER COMMON LAW.

24 § 3502. BURGLARY.

25 (A) OFFENSE DEFINED.--A PERSON [IS GUILTY OF BURGLARY IF HE]
26 WHO ENTERS A BUILDING OR OCCUPIED STRUCTURE, OR SEPARATELY
27 SECURED OR OCCUPIED PORTION THEREOF, WITH INTENT TO COMMIT A
28 CRIME THEREIN, UNLESS THE PREMISES ARE AT THE TIME OPEN TO THE
29 PUBLIC OR THE ACTOR IS LICENSED OR PRIVILEGED TO ENTER[.]
30 COMMITTS THE OFFENSE OF BURGLARY IF:

1 (1) THE STRUCTURE IS ADAPTED FOR OVERNIGHT
2 ACCOMMODATIONS IN WHICH AT THE TIME OF THE OFFENSE ANY PERSON
3 WAS PRESENT;

4 (2) THE STRUCTURE IS ADAPTED FOR OVERNIGHT
5 ACCOMMODATIONS IN WHICH AT THE TIME OF THE OFFENSE NO PERSON
6 WAS PRESENT;

7 (3) THE STRUCTURE IS NOT ADAPTED FOR OVERNIGHT
8 ACCOMMODATIONS IN WHICH AT THE TIME OF THE OFFENSE ANY PERSON
9 WAS PRESENT; OR

10 (4) THE STRUCTURE IS NOT ADAPTED FOR OVERNIGHT
11 ACCOMMODATIONS IN WHICH AT THE TIME OF THE OFFENSE NO PERSON
12 WAS PRESENT.

13 * * *

14 § 6121. CERTAIN BULLETS PROHIBITED.

15 (A) OFFENSE DEFINED.--IT IS UNLAWFUL FOR ANY PERSON TO
16 POSSESS, USE OR ATTEMPT TO USE A KTW TEFLON-COATED BULLET OR
17 OTHER ARMOR-PIERCING AMMUNITION WHILE COMMITTING OR ATTEMPTING
18 TO COMMIT [A CRIME OF VIOLENCE AS DEFINED IN SECTION 6102
19 (RELATING TO DEFINITIONS)] AN OFFENSE UNDER SECTION 6105(B)
20 (RELATING TO PERSONS NOT TO POSSESS, USE, MANUFACTURE, CONTROL,
21 SELL OR TRANSFER FIREARMS).

22 * * *

23 SECTION 2. THIS ACT SHALL TAKE EFFECT AS FOLLOWS:

24 (1) THE AMENDMENT OF 18 PA.C.S. §§ 3502(A) AND 6121(A)
25 SHALL TAKE EFFECT IN 60 DAYS.

26 (2) THE REMAINDER OF THIS ACT SHALL TAKE EFFECT
27 IMMEDIATELY.