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THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2037 Session of 2007

INTRODUCED BY CREIGHTON, BELFANTI, BOYD, BRENNAN, CALTAGIRONE, CAPPELLI, COHEN, CUTLER, GEORGE, HARHAI, HARPER, HENNESSEY, HICKERNELL, HORNAMAN, JAMES, KOTIK, MANDERINO, McGEEHAN, MELIO, R. MILLER, MOUL, MYERS, RAPP, ROHRER, RUBLEY, SOLOBAY, SONNEY, SWANGER, WALKO AND YOUNGBLOOD, NOVEMBER 15, 2007

REFERRED TO COMMITTEE ON COMMERCE, NOVEMBER 15, 2007

AN ACT

Amending Titles 18 (Crimes and Offenses) and 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, further providing for deceptive or fraudulent business practices; and providing for damages for misrepresentation of home loan principal, outstanding balance or interest.

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

Section 1. Section 4107(a) and (a.1) of Title 18 of the Pennsylvania Consolidated Statutes are amended to read:

§ 4107. Deceptive or fraudulent business practices.

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

(1) uses or possesses for use a false weight or measure, or any other device for falsely determining or recording any quality or quantity;

(2) sells, offers or exposes for sale, or delivers less than the represented quantity of any commodity or service;

(3) takes or attempts to take more than the represented quantity of any commodity or service when as buyer he furnishes the weight or measure;

(4) sells, offers or exposes for sale adulterated or mislabeled commodities. As used in this paragraph, the term "adulterated" means varying from the standard of composition or quality prescribed by or pursuant to any statute providing criminal penalties for such variance or set by established commercial usage. As used in this paragraph, the term "mislabeled" means varying from the standard of trust or disclosure in labeling prescribed by or pursuant to any statute providing criminal penalties for such variance or set by established commercial usage;

(5) makes a false or misleading statement in any advertisement addressed to the public or to a substantial segment thereof for the purpose of promoting the purchase or sale of property or services;

(6) makes or induces others to rely on a false or misleading written statement for the purpose of obtaining property or credit;

(7) makes or induces others to rely on a false or misleading written statement for the purpose of promoting the sale of securities, or omits information required by law to be disclosed in written documents relating to securities;

(8) makes or induces others to rely on a false or misleading material statement to 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;

(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;

(10) knowingly makes a false or misleading statement in

a privacy policy, published on the Internet or otherwise distributed or published, regarding the use of personal information submitted by members of the public; [or]

(11) does either of the following when the person is in a client relationship with a certified public accountant, public accountant or public accounting firm:

(i) provides false or misleading information to the certified public accountant, public accountant or public accounting firm in connection with performance of an attestation function for the client which results in an attestation by the certified public accountant, public accountant or public accounting firm of a materially misleading financial statement, audit, review or other document; or

(ii) fails to provide information to the certified public accountant, public accountant or public accounting firm which the person knows is material to the performance of an attestation function and which results in an attestation by the certified public accountant, public accountant or public accounting firm of a materially misleading financial statement, audit, review or other document[.]<u>; or</u>

<u>(12) makes a false or misleading statement to a borrower regarding the amount of principal, outstanding balance or interest owed on a home loan.</u>

(a.1) Grading of offenses.--

(1) A violation of this section, except for [subsection] <u>subsections</u> (a)(10) <u>and (12)</u>, constitutes:

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

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

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

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

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

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

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

<u>(5) An offense under subsection (a)(12) shall be a felony of the third degree if the amount involved exceeds $2,000 and shall be punishable by a term of imprisonment, the minimum of which shall be not less than five years.</u>

* * *

Section 2. Title 42 is amended by adding a section to read:

<u>§ 8304.1. Damages for misrepresentation of home loan principal, outstanding balance or interest.</u>

<u>(a) General rule.--In a civil action to recover damages and costs following a conviction for a deceptive or fraudulent business practice pursuant to 18 Pa.C.S. § 4107(a)(12) (relating to deceptive or fraudulent business practices) and failure to</u>

make full restitution, the borrower shall, upon obtaining judgment, be entitled to recover damages in an amount equal to triple the amount of the claim.

(b) Restriction.--If partial restitution has been made, damages recovered under this section may not exceed triple the amount of the unpaid restitution.

Section 3. This act shall take effect in 60 days.