

No. 2004-202

AN ACT

SB 705

Amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, further providing for deceptive or fraudulent business practices.

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

Section 1. Section 4107 of Title 18 of the Pennsylvania Consolidated Statutes is amended to read:

§ 4107. Deceptive or fraudulent business practices.

(a) Offense defined.—A person commits an offense if **[the person intentionally, knowingly or recklessly engages in any of the following acts]**, 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; [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 a privacy policy, published on the Internet or otherwise distributed or published, regarding the use of personal information submitted by members of the public.

(a.1) Grading of offenses.—

(1) A violation of this section, **except for subsection (a)(10)**, 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 summary offense and shall be punishable by a fine not less than \$50 and not to exceed \$500.

(a.2) Jurisdiction.—

(1) The district attorneys of the several counties shall have the authority to investigate and to institute criminal proceedings for any violation of this section.

(2) In addition to the authority conferred upon the Attorney General by the act of October 15, 1980 (P.L.950, No.164), known as the Commonwealth Attorneys Act, the Attorney General shall have the authority to investigate and to institute criminal proceedings for any violation of this section or any series of such violations involving more than one county of this Commonwealth or involving any county of this Commonwealth and another state. No person charged with a violation of this section by the Attorney General shall have standing to challenge the authority of the Attorney General to investigate or prosecute the case, and, if any such challenge is made, the challenge shall be dismissed and no relief shall be available in the courts of this Commonwealth to the person making the challenge.

(b) Defenses.—It is a defense to prosecution under this section if the defendant proves by a preponderance of the evidence that his conduct was not **[intentionally,]** knowingly or recklessly deceptive.

(c) 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)) and subject to Title V of the Gramm-Leach-Bliley Act (15 U.S.C. § 6801 et seq.).

(2) A covered entity as defined by regulations promulgated at 45 CFR Pts. 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.

APPROVED—The 30th day of November, A.D. 2004.

EDWARD G. RENDELL