

No. 2004-132

AN ACT

HB 604

Amending the act of December 5, 1972 (P.L.1280, No.284), entitled "An act relating to securities; prohibiting fraudulent practices in relation thereto; requiring the registration of broker-dealers, agents, investment advisers, and securities; and making uniform the law with reference thereto," further providing for definitions, for registration sanctions and for criminal penalties.

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

Section 1. Section 102(e), (k.1) and (w) of the act of December 5, 1972 (P.L.1280, No.284), known as the Pennsylvania Securities Act of 1972, amended or added July 4, 2002 (P.L.721, No.108), are amended to read:

Section 102. Definitions.—When used in this act, the following definitions shall be applicable, unless the context otherwise requires:

* * *

(e) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for his own account. "Broker-dealer" does not include:

- (i) An agent;
- (ii) An issuer;
- (iii) A bank which meets the exceptions from the definition of "broker" under section 3(a)(4)(B) or (E) or the definition of "dealer" under section 3(a)(5)(B) or (C) of the Securities Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. § 78c(a)(4)(B) or (E) **[and 5(B)] or (5)(B)** or (C));
- (iv) An executor, administrator, guardian, conservator or pledgee;
- (v) A person who has no place of business in this State if he effects transactions in this State exclusively with or through (A) the issuers of the securities involved in the transactions, (B) broker-dealers or institutional investors;
- (vi) A person licensed as a real estate broker or agent under the act of February 19, 1980 (P.L.15, No.9), known as the Real Estate Licensing and Registration Act, and whose transactions in securities are isolated transactions incidental to that business; or
- (vii) Other persons not within the intent of this subsection whom the commission by regulation designates.

* * *

(k.1) "Knowing and knowingly" as used in sections **[511(a) and 512(a)] 407(a), 511, 512(a) and 513** shall have the same meaning as the term "knowingly" is defined in 18 Pa.C.S. § 302(b)(2) (relating to general requirements of culpability).

* * *

(w) "Wilful and wilfully" mean the following:

(1) As used in all sections of the act except section 511 with respect to a wilful violation of section 401(a) of the act, and notwithstanding any law or statute to the contrary, wilful means that the person acted intentionally in the sense that the person intended to do the act and was aware of what the person was doing. Proof of evil motive or intent to violate the act or knowledge that the person's conduct violated the act is not required.

(2) For purposes of section 511 with respect to a wilful violation of section 401(a) of the act, wilful means that the person acted intentionally, knowingly[, **recklessly or negligently**] *or recklessly* as those terms are defined in 18 Pa.C.S. § 302 (relating to general requirements of culpability).

Section 2. Section 305 of the act is amended by adding a subsection to read:

Section 305. Denial, Suspension, Revocation and Conditioning of Registration.

* * *

(a.2) The commission, by order, may suspend the registration of a broker-dealer, investment adviser, agent or investment adviser representative if such person is obligated, pursuant to an award of an arbitration panel, to pay compensation to purchasers of securities in this Commonwealth and has not paid the awarded compensation in full and in cash. The commission shall rescind the suspension order prospectively if the person provides credible evidence to the commission that the compensation awarded by the arbitration panel has been paid in full and in cash to purchasers of securities in this Commonwealth. Rescission of a suspension order issued under this section shall reinstate the person as a registrant in the same category held at the time the suspension order was issued but only if:

(i) the person otherwise currently meets all requirements for registration in that category set forth in this act and regulations promulgated thereunder;

(ii) there is no basis for the commission to act pursuant to subsection (a) or (a.1); and

(iii) applicable fees and compliance assessments set forth in sections 602 and 602.1 have been paid as if the person had been registered during the period of suspension.

* * *

Section 3. Section 511 of the act, amended November 24, 1998 (P.L.829, No.109) and July 4, 2002 (P.L.721, No.108), is amended to read:

Section 511. Criminal Penalties.—(a) Except as provided in [**subsection (b)**] *this section*, a person who wilfully violates any material provision of this act, except section 407(a), or any rule under this act, or any order of which he has notice, or who violates section 407(a) knowing that the statement made was false or misleading in any material respect, commits a [**misdeemeanor of the first**] *felony of the third* degree and may be fined not more than [**five thousand dollars (\$5,000)**] *two hundred fifty thousand dollars (\$250,000)*

or imprisoned *for* not more than **[five] seven** years, or both~~[.]~~, *if the amount of money paid by the purchaser for the securities involved in the violation is less than two hundred fifty thousand dollars (\$250,000), and not more than five hundred thousand dollars (\$500,000) or imprisoned for not more than seven years, or both, if the amount of money or securities involved in the violation is two hundred fifty thousand dollars (\$250,000) or more.* In addition to fine or imprisonment, or both, a person may be sentenced to make restitution.

(b) A person who wilfully violates section 401, 408 or 409 commits a felony of the **[third] second** degree and may be fined not more than **[twenty thousand dollars (\$20,000) if none of the victims of the person's violative conduct were individuals aged 60 or more and not more than one hundred thousand dollars (\$100,000) if any of the victims of the person's violative conduct were individuals aged 60 or more]** *one million dollars (\$1,000,000)* or imprisoned for not more than **[seven] ten** years, or both. In addition to fine or imprisonment, or both, the person may be sentenced to make restitution.

[c) Each of the acts specified in subsections (a) and (b) shall constitute a separate offense and a prosecution or conviction for any one of such offenses shall not bar prosecution or conviction for any other offense. No indictment or information may be returned under this act more than five years after the alleged violation.]

(c) (1) A person who wilfully violates section 401, 408 or 409 commits a felony of the first degree and may be fined not more than five million dollars (\$5,000,000) or imprisoned for not more than twenty years, or both, if one of the conditions specified in paragraph (2) or (3) is met, and not more than ten million dollars (\$10,000,000) or imprisoned for not more than twenty years, or both, if both of the conditions specified in paragraphs (2) and (3) are met. In addition to a fine or imprisonment, or both, the person may be sentenced to make restitution.

(2) Within ten years of being convicted under this subsection for wilful violation of section 401, 408 or 409, the person was the subject of:

(i) a criminal felony conviction;

(ii) an injunction issued by any court of competent jurisdiction; or

(iii) an order of the Securities and Exchange Commission, the Commodity Futures Trading Commission, the securities, banking or insurance regulator of another state, a Federal banking regulator or the securities, banking or insurance regulatory authority of another country which found that the person wilfully violated any provision of the Federal or State securities, banking, insurance or commodities laws or the securities, commodities, insurance or banking laws of that country.

(3) One or more of the victims of the unlawful conduct is sixty years of age or older.

(d) A person who knowingly alters, destroys, shreds, mutilates, conceals, covers up, falsifies or makes a false entry in any record,

document or tangible object with the intent to impede, obstruct or influence an investigation by the commission under section 510 or an examination under section 304(d) commits a felony of the second degree and may be fined not more than five hundred thousand dollars (\$500,000) or imprisoned for not more than ten years, or both.

(e) A person who knowingly alters, destroys, shreds, mutilates or conceals a record, document or other object or attempts to do so with the intent to impair its integrity or availability for use in a proceeding before the commission or in a proceeding brought by the commission or otherwise obstructs, influences or impedes such proceedings or attempts to do so commits a felony of the second degree and may be fined not more than five hundred thousand dollars (\$500,000) or imprisoned for not more than ten years, or both.

(f) A person who knowingly, with the intent to retaliate, takes any action harmful to another person, including interference with the lawful employment or livelihood of another person, for providing the commission with any truthful information relating to a violation of this act commits a felony of the second degree and may be fined not more than five hundred thousand dollars (\$500,000) or imprisoned for not more than ten years, or both.

(g) (1) Each of the acts specified in subsections (a) through (f) shall constitute a separate offense, and a prosecution or conviction for any such offense shall not bar prosecution or conviction for any other offense. No indictment or information may be returned under this act more than five years after the alleged violation.

(2) This section shall be construed to provide additional and cumulative remedies, and nothing contained in this act shall be construed to affect the ability of the Commonwealth to bring an information or indictment under common law or other criminal statutory provisions for the same conduct.

(h) The following persons have jurisdiction to investigate violations of this section and institute criminal proceedings for any violation of this section:

(1) The district attorney of a county.

(2) The Attorney General, 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." This paragraph includes authority over a series of 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.

(i) 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.

Section 4. This act shall take effect in 60 days.

APPROVED—The 23rd day of November, A.D. 2004.

EDWARD G. RENDELL