



S.B. 32

124th General Assembly
(As Passed by the General Assembly)

Sen. White

Reps. Salerno, Evans, G. Smith, Webster, Setzer, Otterman, Collier, Hoops, Coates, Lendrum, Widowfield, Flowers, Grendell, Clancy, Goodman, Carmichael, Cates, Woodard

Effective date: October 8, 2001

ACT SUMMARY

- ? Expands the exemption of financial institutions from the definition of securities "dealer" under the Securities Law.
- ? Modifies the filing requirements of financial statements in control bids made under the Securities Law.
- ? Eliminates registration of securities by description.
- ? Eliminates excusable neglect as acceptable for failing to make required filings for limited offerings of securities.
- ? Reduces licensure and notice filing fees of securities dealers and investment advisers.
- ? Modifies the standard of culpability and the administrative actions that the Division of Securities may take for violations of the Securities Law.
- ? Adds prohibitions regarding false representations and modifies the standard of culpability regarding unlawful sales under the Securities Law.
- ? Eliminates transitional provisions providing for the implementation of licensure requirements for investment advisers and investment adviser representatives, as enacted by Sub. H.B. 695 of the 122nd General Assembly.

CONTENT AND OPERATION

Definition of "dealer"; exemption of financial institutions

(sec. 1707.01(E)(1)(e) and (O))

The Securities Law (Chapter 1707. of the Revised Code) prohibits any person from acting as a dealer, unless the person is licensed by the Division of Securities of the Department of Commerce. "Dealer" is generally defined by the Law as every person, other than a salesperson, who engages either in the business of the sale of securities for the person's own account, or in the business of the purchase or sale of securities for the account of others in the expectation of receiving a commission. Several persons are specifically *exempted* from the definition of "dealer," and this list included any federally or state-chartered bank, savings and loan association, savings bank, or credit union, *provided that all transactions are consummated by or through a dealer licensed by the Division.*

The act expands this exemption from the definition of "dealer," as follows:

--It removes the condition that all transactions be consummated by or through a licensed dealer.

--It clarifies that the exemption includes any bank, trust company, savings and loan association, savings bank, or credit union that is organized under the laws of the United States, any state, Canada, or any province of Canada, if the entity is subject to regulation by that country, state, or province.

(The act makes a conforming change in section 1707.14(B)(1).)

Control bids: filing of financial statements

(sec. 1707.041(A)(2)(g))

The Securities Law prohibits the making of a control bid for the securities of a subject company pursuant to a tender offer or request or invitation for tenders *unless* the offeror files certain information with the Division of Securities, the subject company, and any other offeror. To provide "[c]omplete information on the organization and operations of the offeror," the offeror is required to file, among other things, financial statements for the current period and for the three most recent annual accounting periods.

Under the act, these financial statements are not required *if* the Division by rule (1) determines that they are not material or (2) permits the filing of financial statements for less than the three most recent annual accounting periods.

Sale of securities registered by description

Authority to sell certain securities

(secs. 1707.05 and 1707.07 (repealed))

Prior law permitted the sale of certain securities, provided the securities had been registered by description, qualification, or coordination in accordance with the Securities Law. These securities included (1) securities issued or guaranteed by a person owning a property or business that was in continuous operation for at least three years and that showed specified average annual net earnings, (2) certain notes, bonds, or other evidences of indebtedness that were secured by a first mortgage lien on real estate or on leasehold estate, (3) securities issued by a bank or title guaranty and trust company as trustee, representing ownership of or interest in improved land, if certain conditions were met, (4) bonds, notes, or other evidences of indebtedness secured by lien on vessels operating in commercial use, if the vessels had a certain value, and (5) securities that were secured by a first lien on collateral securities deposited in trust with a bank, if the collateral met certain requirements.

The act removes this authority. Conforming changes are made in sections 1707.03(M)(3)(b) and (c), 1707.08, 1707.09, 1707.092, 1707.44(B)(1) and (C)(1), and 1707.45. The act also makes conforming changes in sections 1707.06 and 1707.08 that, due to the repeal of section 1707.07, are necessary to maintain ongoing law with respect to registration of *securities transactions* by description.

False representations

(sec. 1707.44(B)(1) and (6))

The Securities Law prohibits any person from knowingly making or causing to be made any false representation concerning a material and relevant fact, in any oral statement or in any prospectus, circular, description, application, or written statement, for any of the purposes described in the Law. One of those purposes is: complying with the Securities Law in regard to registering securities by description. The act replaces that purpose with the broader purpose of "registering securities or transactions, or exempting securities or transactions from registration" under the Securities Law (see **COMMENT** below). The act also adds another purpose: submitting a notice filing to the Division of Securities under section 1707.092 (notice filings required for the sale of certain securities) or section 1707.141 (notice filing required of investment advisers).

Unlawful sale

(sec. 1707.44(C))

The Securities Law prohibits any person from knowingly *and* intentionally selling, causing to be sold, offering for sale, or causing to be offered for sale, any securities meeting conditions listed in the Law. The act removes the requirement that any such sale be "intentionally" made.

Late filing due to excusable neglect

(sec. 1707.391)

Under continuing law, if any securities have been sold in reliance on certain *exemptions* under the Securities Law, but that reliance was improper because the required filings were not timely or properly made due to excusable neglect, the sale can nevertheless be deemed exempt upon the filing of an application with the Division of Securities and the payment of the required fee and penalty. One of the exempt transactions to which this provision applied concerned an issuer's sale of an equity security to not more than ten purchasers within one year under specified conditions.

The act removes this type of sale as one of the exempt transactions subject to this provision.

License and notice filing fees

(sec. 1707.17(B)(1), (3), and (4))

The act modifies the following license and notice filing fees:

	<i>PRIOR LAW</i>	<i>THE ACT</i>
Dealer's license fee and annual renewal fee	\$30 per salesperson, but not less than \$150 nor more than \$5,000	\$100
Investment adviser's license fee and annual renewal fee	\$200	\$50
Annual investment adviser notice filing fee	\$100	\$50

License refusals, suspensions, and revocations

(secs. 1707.19(A) and 1707.23(D))

Continuing law permits the Division of Securities to refuse an original or renewal license applied for by a dealer, salesperson, investment adviser, or investment adviser representative, and to suspend or revoke any such license, for specified reasons. Those reasons used to include both of the following:

(1) The applicant or licensee had "intentionally" violated any provision of the Securities Law, or any regulation or order made under the Law;

(2) The applicant or licensee had "knowingly *and* intentionally" made a false statement of a material fact in an application for a license, in a description or application that had been filed, or in any statement made to the Division under the Securities Law.

The act amends (1), above, by requiring that the violation be "knowingly" rather than "intentionally" made. With respect to (2), above, the act removes the requirement that the false statement be made "intentionally," and adds the possibility of the applicant or licensee making "an omission of a material fact."

Relatedly, the Securities Law specifies certain actions the Division may take if it determines a person is engaging in a violation of the Securities Law or in any other deceptive scheme or practice in connection with the sale of securities, or when the Division believes it to be in the best interests of the public and necessary for the protection of investors. Such actions include suspending and revoking the license of a licensed dealer, salesperson, investment adviser, or investment adviser representative. The act adds that the Division also may *refuse* a license applied for by any such person.

Investment advisor transitional provisions

(secs. 1707.141, 1707.161, and 1707.17(B)(3), (4), and (5))

Am. Sub. H.B. 695 of the 122nd General Assembly provided for the regulation of investment advisers and investment adviser representatives by the Division of Securities. That act included provisions for the transition and implementation of its licensure requirements.

The act removes these transitional provisions.

COMMENT

According to the Division of Securities, the repeal of section 1707.05 and the modification to section 1707.44(B)(1) are a response to the Ohio Supreme Court's decision in *State v. Hurd* (2000), 89 Ohio St.3d 616 (holding that Ohio Securities Law prohibits making false representations in *registering securities* by description but not in *registering securities transactions* by description).

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	02-07-01	p. 126
Reported, S. Finance & Financial Institutions	02-28-01	p. 175
Passed Senate (32-1)	02-28-01	p. 178
Reported, H. Financial Institutions	06-05-01	pp. 622-623
Passed House (94-1)	06-12-01	pp. 641-643

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