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Bill Analysis
Legislative Service Commission

S.B. 32

124th General Assembly
(As Reported H. Financial Institutions)

Sen. White

**Reps. Salerno, Evans, G. Smith, Webster, Setzer, Otterman, Collier, Hoops,
Coates**

BILL 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," including 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 bill 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 bill 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 bill, 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.

Securities registered by description

(sec. 1707.05 (repealed))

Current law permits the sale of certain securities, provided the securities have been registered by description in accordance with the Securities Law. These securities include (1) securities issued by a person owning a property or business that has been in continuous operation for at least three years and that has shown specified average annual net earnings, (2) certain notes, bonds, or other evidences of indebtedness that are 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 are met, (4) bonds, notes, or other evidences of indebtedness secured by lien on vessels operating in commercial use, if the vessels have a certain value, and (5) securities that are secured by a first lien on collateral securities deposited in trust with a bank, if the collateral meets certain requirements.

The bill removes these provisions. Retained by the bill is authority for registration of *securities transactions* by description and for registration of securities by qualification or coordination. (Conforming changes are made in sections 1707.03(M)(3)(b) and (c), 1707.06(A), 1707.07 (repealed), 1707.08, 1707.09, 1707.092, 1707.44(B)(1) and (C), and 1707.45.)

Late filing due to excusable neglect; removal of exemption for limited offerings

(sec. 1707.391)

Currently, 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 applies is division (O) of section 1707.03 which concerns an issuer's sale of an equity security to not more than ten purchasers within one year.

The bill removes division (O) of section 1707.03 as one of the exempt transactions subject to this provision.

License and notice filing fees

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

The bill modifies the following license and notice filing fees:

	<i>CURRENT LAW</i>	<i>THE BILL</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
Investment adviser notice filing fee	\$100	\$50

License refusals, suspensions, and revocations

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

Existing 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 include both of the following:

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

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

The bill amends (1), above, by requiring that the violation be "knowingly" rather than "intentionally" made. With respect to (2), above, the bill removes the requirement that the false statement be made "intentionally," and includes the making of "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 bill provides that the Division may also *refuse* a license applied for by any such person.

Prohibitions

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 bill eliminates this purpose in response to its removal from the law of authority to register securities by description. It expands that purpose to include "registering securities or transactions, or exempting securities or transactions from registration" under the Securities Law (see **COMMENT** below). The bill 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 also prohibits any person from knowingly *and* intentionally selling, causing to be sold, offering for sale, or causing to be offered for sale, any of the securities listed in the Law. That list includes any security that

[i]s not exempt under section 1707.02 of the Revised Code, nor the subject matter of one of the transactions exempted in sections 1707.03, 1707.04, and 1707.34 of the Revised Code, *has not been registered by description, coordination, or qualification*, and is not the subject matter of a transaction that has been registered by description (sec. 1707.44(C)(1)). (Emphasis added.)

The bill amends this prohibition, as follows:

--It removes the requirement that any such sale be "intentionally" made.

--It conforms the prohibition to its earlier change by removing the reference to registration by description. Consequently, as modified by the bill, the phrase italicized above reads: "has not been registered by coordination or qualification."

Transitional provisions repealed

(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. The Act included provisions for the transition and implementation of its licensure requirements.

The bill 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

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