



Ohio Legislative Service Commission

Bill Analysis

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H.B. 600

129th General Assembly
(As Introduced)

Reps. C. Hagan, Amstutz, Stebelton, Stinziano, and Wachtmann

BILL SUMMARY

- Permits the Division of Securities to do one or more of the following for a violation of the Securities Law:
 - (1) Order the payment of an administrative assessment of not more than \$10,000;
 - (2) Order the payment of investigatory and related costs incurred by the Division;
 - (3) Enter into and issue a consent order that compels the person violating the law to take certain actions.
 - Requires all administrative assessments to be deposited into the Division of Securities Investor Education and Enforcement Expense Fund within the state treasury.
 - Requires all investigatory and related costs to be deposited into the existing Division of Securities Fund within the state treasury.
 - Modifies the accounting and other standards for required financial statements under the Securities Law.
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CONTENT AND OPERATION

Administrative remedies for violations of the Securities Law

Generally, the bill expands the administrative remedies available to the Ohio Department of Commerce, Division of Securities for violations of the Securities Law

committed on or after the bill's effective date.¹ Those new remedies are the imposition of administrative assessments and investigatory and related costs and entering into and issuing a consent order.

Administrative assessment

After notice and opportunity for a hearing conducted in accordance with the Administrative Procedures Act (Chapter 119. of the Revised Code), the bill permits the Division to order the payment of an administrative assessment of not more than \$10,000 for any violation of the Securities Law or any rule adopted or order issued under the law. For the purpose of imposing an administrative assessment, each violation constitutes a separate offense, and in the case of a continuing violation, each calendar day constitutes a separate offense. The bill specifies that the \$10,000 limitation imposed on administrative assessments does not apply to any settlement agreement entered into by the Division with the person who is the subject of a violation.²

Enforcement of administrative assessment

The bill permits the Division to refer to the Attorney General for the collection of any administrative assessment.³

Division of Securities Investor Education and Enforcement Expense Fund

The bill requires all administrative assessments to be deposited into the existing Division of Securities Investor Education and Enforcement Expense Fund within the state treasury. Money in this Fund is used to pay for the Division's expenses relating to education or enforcement for the protection of securities investors and the public.⁴

Exercise of other remedies

The bill specifies that the ordering of an administrative assessment does not preclude the Division's exercise of any other remedy under the Securities Law.⁵

¹ Section 3.

² R.C. 1707.191(A) and (D).

³ R.C. 1707.191(C).

⁴ R.C. 1707.37(B).

⁵ R.C. 1707.191(A).

Additional administrative remedies—consent order and payment of costs

In addition to—or in lieu of—ordering an administrative assessment, the bill permits the Division to do either, or both, of the following with respect to any person who has engaged in an act, practice, or course of business constituting a violation of the Securities Law:

(1) Order the person to pay any investigatory and related costs incurred by the Division, including attorney's and witness fees;

(2) Enter into and issue a consent order that compels the person to do one or more of the following:

- Rescind the transaction related to the violation;
- Disgorge any assets acquired or profits made as a result of the violation;
- Make restitution, which may include interest not to exceed the criminal usury rate (25% per annum).⁶

Enforcement of consent order

The bill permits the Division to take any appropriate action necessary to compel compliance with a consent order.⁷

Division of Securities Fund

The bill requires all investigatory and related costs recovered to be deposited into the existing Division of Securities Fund within the state treasury. Money in this Fund is used to pay for all expenses of the Division, except those Division expenses paid from the Division of Securities Investor Education and Enforcement Expense Fund.⁸

Auditing of financial statements

The bill modifies a provision of current law permitting the Division to prescribe whether required financial statements must be certified by independent or certified public accountants. The bill specifies that the financial statements be "audited" rather

⁶ R.C. 1707.191(B); 2905.21 (not in the bill).

⁷ R.C. 1707.191(C).

⁸ R.C. 1707.37(B).

than "certified," and specifies that the auditing be done by "independent certified public accountants" rather than "independent" *or* "certified public accountants."

The bill also modifies the existing requirement that all financial statements be prepared in accordance with generally accepted accounting practices. Instead, the bill requires that all financial statements be prepared in accordance with generally accepted accounting *principles*. The bill additionally requires that the statements comply with all other requirements specified by rule adopted or order issued under the Securities Law.⁹

Hardship exemption

The bill requires the Division to adopt rules in accordance with the Administrative Procedures Act that set forth the criteria that must be met in order to qualify for a hardship exemption from the requirement that financial statements be audited.¹⁰

HISTORY

ACTION	DATE
Introduced	10-24-12

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⁹ R.C. 1707.20(C).

¹⁰ R.C. 1707.20(F).

