



Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: [H.B. 52 of the 129th G.A.](#)

Date: February 23, 2011

Status: As Introduced

Sponsor: Reps. Snitchler and Okey

Local Impact Statement Procedure Required: No

Contents: Specifies the form of financial statements and includes administrative assessments and other remedies that may be imposed for violations of the Ohio Securities Act

State Fiscal Highlights

- The bill permits the Division of Securities to levy an administrative assessment of up to \$10,000 per violation on violators of the Securities Law. Any assessments collected under this new authority would be deposited into the Securities Investor Education and Enforcement Expense Fund (Fund 5GK0).

Local Fiscal Highlights

- No direct fiscal effect on political subdivisions.

Detailed Fiscal Analysis

Fining authority

The bill provides the Department of Commerce with new authority in the enforcement of violations of the Securities Law. Specifically, the bill permits the Division of Securities to levy an administrative assessment, or fine, of up to \$10,000 per violation on violators of the Securities Law. Each violation would be treated as a separate offense and each day of a continued violation constitutes a separate offense. According to research conducted by the Division of Securities, Ohio is one of only three states that do not provide fining authority to its securities regulators. Colorado and New York are the others. The potential for a fine to be levied would be in addition to any other remedy for violations available in law. In lieu of a fine, the bill also permits the Division to issue orders to the violator compelling them to rescind a transaction related to a violation, give up any assets or profits resulting from the violation, make restitution, pay investigation costs and attorney's fees, and pay interest on any funds taken as a result of a violation.

The bill requires that any fine revenue collected be deposited into the Securities Investor Education and Enforcement Expense Fund (Fund 5GK0), which is used by the Division to pay the costs associated with educating investors and the public about securities laws and enforcement of those laws. The amount of the annual revenue derived from the proposed fining authority is difficult to predict, as it would depend on the number and severity of violations that occur each year. For data on the Division's enforcement activities in the recent past, please refer to the table below, which provides various enforcement statistics over the past four fiscal years. A notice of opportunity for hearing (NOH) lists the alleged violations and gives a respondent notice of the right to an administrative hearing. A final order contains findings by the Division and represents the final disposition of a matter pending before the Division. While an NOH will not necessarily result in a final order, all final orders give respondents the right to appeal to common pleas courts within a specific time period.

| Ohio Division of Securities Enforcement Statistics, FY 2007-FY 2010 | | | | |
|---|----------------|----------------|----------------|---------------|
| Action | FY 2007 | FY 2008 | FY 2009 | FY 2010 |
| Notices of opportunity for hearing (NOH) | 189 | 108 | 42 | 64 |
| Number of respondents – NOH | 210 | 150 | 78 | 71 |
| Final orders | 41 | 62 | 63 | 8 |
| Number of respondents – final orders | 58 | 102 | 64 | 10 |
| Injunctions | 0 | 2 | 7 | 0 |
| Criminal referrals | 6 | 2 | 5 | 5 |
| Indictments | 8 | 9 | 6 | 4 |
| Convictions | 9 | 6 | 8 | 8 |
| Restitution ordered | \$10.7 million | \$19.0 million | \$16.6 million | \$1.7 million |

Source: Department of Commerce Annual Reports

According to the Division of Securities, the most common violations are sales of unregistered securities, selling securities without a license, misrepresentations made in connection with the sale of securities, and fraudulent practices involving the offer or sale of securities to Ohio residents. Many of the orders counted in the table involved the denial, suspension, or revocation of licenses held by securities salespersons, investment adviser representatives, broker-dealer firms, and investment advisory firms.

Financial statement requirements

The bill permits the Division to prescribe whether any required financial statements are to be audited by independent certified public accountants (as opposed to "certified" by independent *or* certified public accountants under current law). The effect of this provision is unclear. Generally, when audited financial statements are accompanied by a statement of the auditor that the figures are accurate, such financial statements are referred to as "certified." Public offerings of securities may or may not require audited financial statements, depending on whether the offerings are registered with the Securities and Exchange Commission (SEC). Public offerings not registered with the SEC do not require year-end audited financial statements, but public offerings registered with the SEC do.