

As Introduced

**125th General Assembly
Regular Session
2003-2004**

H. B. No. 7

Representative Taylor

A BILL

To amend sections 1701.831, 1707.01, 1707.08, 1
1707.09, 1707.11, 1707.23, 1707.40, 1707.41, 2
1707.42, 1707.43, 1707.44, and 2913.02 and to 3
enact sections 1707.131 and 1707.231 of the 4
Revised Code to modify the Corporation Law 5
regarding special meetings of shareholders in 6
connection with tender offer, control share 7
acquisition bids; to modify the Securities Law 8
with respect to securities to which it applies, 9
requirements for registration of securities, the 10
designation of the Secretary of State to receive 11
service of process, the application of remedies 12
under the Securities Law, the Attorney General's 13
enforcement authority on behalf of persons injured 14
by a violation, the statutes of limitations 15
governing an action for specified violations, and 16
the prohibitions against certain misleading 17
actions; and to increase the criminal penalty for 18
certain theft offenses and create a new criminal 19
aggravated theft offense. 20

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 1701.831, 1707.01, 1707.08, 1707.09, 21

1707.11, 1707.23, 1707.40, 1707.41, 1707.42, 1707.43, 1707.44, and 22
2913.02 be amended and sections 1707.131 and 1707.231 of the 23
Revised Code be enacted to read as follows: 24

Sec. 1701.831. (A) Unless the articles or the regulations of 25
the issuing public corporation provide that this section does not 26
apply to control share acquisitions of shares of such corporation, 27
any control share acquisition of an issuing public corporation 28
shall be made only with the prior authorization of the 29
shareholders of such corporation in accordance with this section. 30

(B) Any person who proposes to make a control share 31
acquisition shall deliver an acquiring person statement to the 32
issuing public corporation at the issuing public corporation's 33
principal executive offices. Such acquiring person statement shall 34
set forth all of the following: 35

(1) The identity of the acquiring person; 36

(2) A statement that the acquiring person statement is given 37
pursuant to this section; 38

(3) The number of shares of the issuing public corporation 39
owned, directly or indirectly, by the acquiring person; 40

(4) The range of voting power, described in division 41
(Z)(1)(a), (b), or (c) of section 1701.01 of the Revised Code, 42
under which the proposed control share acquisition would, if 43
consummated, fall; 44

(5) A description in reasonable detail of the terms of the 45
proposed control share acquisition; 46

(6) Representations of the acquiring person, together with a 47
statement in reasonable detail of the facts upon which they are 48
based, that the proposed control share acquisition, if 49
consummated, will not be contrary to law, and that the acquiring 50
person has the financial capacity to make the proposed control 51

share acquisition. 52

(C)(1) Within ten days after receipt of an acquiring person 53
statement that complies with division (B) of this section, the 54
directors of the issuing public corporation shall call a special 55
meeting of shareholders of the issuing public corporation for the 56
purpose of voting on the proposed control share acquisition. 57
~~Unless~~ Subject to division (C)(2) of this section, unless the 58
acquiring person agrees in writing to another date, such special 59
meeting of shareholders shall be held within fifty days after 60
receipt by the issuing public corporation of the acquiring person 61
statement. If the acquiring person so requests in writing at the 62
time of delivery of the acquiring person statement, such special 63
meetings shall be held no sooner than thirty days after receipt by 64
the issuing public corporation of the acquiring person statement. 65
~~Such~~ Subject to division (C)(2) of this section, such special 66
meeting of shareholders shall be held no later than any other 67
special meeting of shareholders that is called, after receipt by 68
the issuing public corporation of the acquiring person statement, 69
in compliance with this section or section 1701.76, 1701.78, 70
1701.79, or 1701.83, ~~or 1701.831~~ of the Revised Code. 71

(2) If, in connection with a tender offer, an acquiring person increases or decreases the percentage of the class of securities being sought, the consideration offered, or the security dealer's soliciting fee, and the acquiring person is required to hold open the tender offer for at least ten business days from the date that the notice of such change is first published, sent, or given to shareholders pursuant to securities and exchange commission rule 14e-1(b), 17 C.F.R. 240.14e-1(b) promulgated pursuant to section 14(e) of the "Securities Exchange Act of 1934," 82 Stat. 455, 15 U.S.C. 78n(e), then the directors of the issuing public corporation may reschedule the special meeting of shareholders required by division (C)(1) of this section to a date that is not later than the date established by the acquiring person as the closing date of the changed tender offer.

(D) Notice of the special meeting of shareholders shall be given as promptly as reasonably practicable by the issuing public corporation to all shareholders of record as of the record date set for such meeting, whether or not entitled to vote ~~thereat~~ at the meeting. ~~Such~~ The notice shall include or be accompanied by both of the following:

(1) A copy of the acquiring person statement delivered to the issuing public corporation pursuant to this section;

(2) A statement by the issuing public corporation, authorized by its directors, of its position or recommendation, or that it is taking no position or making no recommendation, with respect to the proposed control share acquisition.

(E) The acquiring person may make the proposed control share acquisition if both of the following occur:

(1) The shareholders of the issuing public corporation who hold shares as of the record date of such corporation entitling

them to vote in the election of directors authorize the 103
acquisition at the special meeting held for that purpose at which 104
a quorum is present by an affirmative vote of a majority of the 105
voting power of such corporation in the election of directors 106
represented at the meeting in person or by proxy, and a majority 107
of the portion of the voting power excluding the voting power of 108
interested shares represented at the meeting in person or by 109
proxy. A quorum shall be deemed to be present at the special 110
meeting if at least a majority of the voting power of the issuing 111
public corporation in the election of directors is represented at 112
the meeting in person or by proxy. 113

(2) The acquisition is consummated, in accordance with the 114
terms so authorized, no later than three hundred sixty days 115
following shareholder authorization of the control share 116
acquisition. 117

(F) Except as expressly provided in this section, nothing in 118
this section shall be construed to affect or impair any right, 119
remedy, obligation, duty, power, or authority of any acquiring 120
person, any issuing public corporation, the directors of any 121
acquiring person or issuing public corporation, or any other 122
person under the laws of this or any other state or of the United 123
States. 124

(G) If any application of any provision of this section is 125
for any reason held to be illegal or invalid, the illegality or 126
invalidity shall not affect any legal and valid provision or 127
application of this section, and the parts and applications of 128
this section are severable. 129

Sec. 1707.01. As used in this chapter: 130

(A) Whenever the context requires it, "division" or "division 131
of securities" may be read as "director of commerce" or as 132
"commissioner of securities." 133

(B) "Security" means any certificate or instrument, or any oral, written, or electronic agreement, understanding, or opportunity, that represents title to or interest in, or is secured by any lien or charge upon, the capital, assets, profits, property, or credit of any person or of any public or governmental body, subdivision, or agency. It includes shares of stock, certificates for shares of stock, membership interests in limited liability companies, voting-trust certificates, warrants and options to purchase securities, subscription rights, interim receipts, interim certificates, promissory notes, all forms of commercial paper, evidences of indebtedness, bonds, debentures, land trust certificates, fee certificates, leasehold certificates, syndicate certificates, endowment certificates, certificates or written instruments in or under profit-sharing or participation agreements or in or under oil, gas, or mining leases, or certificates or written instruments of any interest in or under the same, receipts evidencing preorganization or reorganization subscriptions, preorganization certificates, reorganization certificates, certificates evidencing an interest in any trust or pretended trust, any investment contract, any life settlement interest, any instrument evidencing a promise or an agreement to pay money, warehouse receipts for intoxicating liquor, and the currency of any government other than those of the United States and Canada, but sections 1707.01 to 1707.45 of the Revised Code do not apply to the sale of real estate.

(C)(1) "Sale" has the full meaning of "sale" as applied by or accepted in courts of law or equity, and includes every disposition, or attempt to dispose, of a security or of an interest in a security. "Sale" also includes a contract to sell, an exchange, an attempt to sell, an option of sale, a solicitation of a sale, a solicitation of an offer to buy, a subscription, or an offer to sell, directly or indirectly, by agent, circular,

mpHlet, advertisement, or otherwise.	166
(2) "Sell" means any act by which a sale is made.	167
(3) The use of advertisements, circulars, or pamphlets in connection with the sale of securities in this state exclusively to the purchasers specified in division (D) of section 1707.03 of the Revised Code is not a sale when the advertisements, circulars, and pamphlets describing and offering those securities bear a readily legible legend in substance as follows: "This offer is made on behalf of dealers licensed under sections 1707.01 to 1707.45 of the Revised Code, and is confined in this state exclusively to institutional investors and licensed dealers."	168 169 170 171 172 173 174 175 176
(4) The offering of securities by any person in conjunction with a licensed dealer by use of advertisement, circular, or pamphlet is not a sale if that person does not otherwise attempt to sell securities in this state.	177 178 179 180
(5) Any security given with, or as a bonus on account of, any purchase of securities is conclusively presumed to constitute a part of the subject of that purchase and has been "sold."	181 182 183
(6) "Sale" by an owner, pledgee, or mortgagee, or by a person acting in a representative capacity, includes sale on behalf of such party by an agent, including a licensed dealer or salesperson.	184 185 186 187
(D) "Person," except as otherwise provided in this chapter, means a natural person, firm, partnership, limited partnership, partnership association, syndicate, joint-stock company, unincorporated association, trust or trustee except where the trust was created or the trustee designated by law or judicial authority or by a will, and a corporation or limited liability company organized under the laws of any state, any foreign government, or any political subdivision of a state or foreign government.	188 189 190 191 192 193 194 195 196

(E)(1) "Dealer," except as otherwise provided in this 197
chapter, means every person, other than a salesperson, who engages 198
or professes to engage, in this state, for either all or part of 199
the person's time, directly or indirectly, either in the business 200
of the sale of securities for the person's own account, or in the 201
business of the purchase or sale of securities for the account of 202
others in the reasonable expectation of receiving a commission, 203
fee, or other remuneration as a result of engaging in the purchase 204
and sale of securities. "Dealer" does not mean any of the 205
following: 206

(a) Any issuer, including any officer, director, employee, or 207
trustee of, or member or manager of, or partner in, or any general 208
partner of, any issuer, that sells, offers for sale, or does any 209
act in furtherance of the sale of a security that represents an 210
economic interest in that issuer, provided no commission, fee, or 211
other similar remuneration is paid to or received by the issuer 212
for the sale; 213

(b) Any licensed attorney, public accountant, or firm of such 214
attorneys or accountants, whose activities are incidental to the 215
practice of the attorney's, accountant's, or firm's profession; 216

(c) Any person that, for the account of others, engages in 217
the purchase or sale of securities that are issued and outstanding 218
before such purchase and sale, if a majority or more of the equity 219
interest of an issuer is sold in that transaction, and if, in the 220
case of a corporation, the securities sold in that transaction 221
represent a majority or more of the voting power of the 222
corporation in the election of directors; 223

(d) Any person that brings an issuer together with a 224
potential investor and whose compensation is not directly or 225
indirectly based on the sale of any securities by the issuer to 226
the investor; 227

(e) Any bank;	228
(f) Any person that the division of securities by rule exempts from the definition of "dealer" under division (E)(1) of this section.	229 230 231
(2) "Licensed dealer" means a dealer licensed under this chapter.	232 233
(F)(1) "Salesman" or "salesperson" means every natural person, other than a dealer, who is employed, authorized, or appointed by a dealer to sell securities within this state.	234 235 236
(2) The general partners of a partnership, and the executive officers of a corporation or unincorporated association, licensed as a dealer are not salespersons within the meaning of this definition, nor are such clerical or other employees of an issuer or dealer as are employed for work to which the sale of securities is secondary and incidental; but the division of securities may require a license from any such partner, executive officer, or employee if it determines that protection of the public necessitates the licensing.	237 238 239 240 241 242 243 244 245
(3) "Licensed salesperson" means a salesperson licensed under this chapter.	246 247
(G) "Issuer" means every person who has issued, proposes to issue, or issues any security.	248 249
(H) "Director" means each director or trustee of a corporation, each trustee of a trust, each general partner of a partnership, except a partnership association, each manager of a partnership association, and any person vested with managerial or directory power over an issuer not having a board of directors or trustees.	250 251 252 253 254 255
(I) "Incorporator" means any incorporator of a corporation and any organizer of, or any person participating, other than in a	256 257

representative or professional capacity, in the organization of an 258
unincorporated issuer. 259

(J) "Fraud," "fraudulent," "fraudulent acts," "fraudulent 260
practices," or "fraudulent transactions" means anything recognized 261
on or after July 22, 1929, as such in courts of law or equity; any 262
device, scheme, or artifice to defraud or to obtain money or 263
property by means of any false pretense, representation, or 264
promise; any fictitious or pretended purchase or sale of 265
securities; and any act, practice, transaction, or course of 266
business relating to the purchase or sale of securities that is 267
fraudulent or that has operated or would operate as a fraud upon 268
the seller or purchaser. 269

(K) Except as otherwise specifically provided, whenever any 270
classification or computation is based upon "par value," as 271
applied to securities without par value, the average of the 272
aggregate consideration received or to be received by the issuer 273
for each class of those securities shall be used as the basis for 274
that classification or computation. 275

(L)(1) "Intangible property" means patents, copyrights, 276
secret processes, formulas, services, good will, promotion and 277
organization fees and expenses, trademarks, trade brands, trade 278
names, licenses, franchises, any other assets treated as 279
intangible according to generally accepted accounting principles, 280
and securities, accounts receivable, or contract rights having no 281
readily determinable value. 282

(2) "Tangible property" means all property other than 283
intangible property and includes securities, accounts receivable, 284
and contract rights, when the securities, accounts receivable, or 285
contract rights have a readily determinable value. 286

(M) "Public utilities" means those utilities defined in 287
sections 4905.02, 4905.03, 4907.02, and 4907.03 of the Revised 288

Code; in the case of a foreign corporation, it means those 289
utilities defined as public utilities by the laws of its domicile; 290
and in the case of any other foreign issuer, it means those 291
utilities defined as public utilities by the laws of the situs of 292
its principal place of business. The term always includes 293
railroads whether or not they are so defined as public utilities. 294

(N) "State" means any state of the United States, any 295
territory or possession of the United States, the District of 296
Columbia, and any province of Canada. 297

(O) "Bank" means any bank, trust company, savings and loan 298
association, savings bank, or credit union that is incorporated or 299
organized under the laws of the United States, any state of the 300
United States, Canada, or any province of Canada and that is 301
subject to regulation or supervision by that country, state, or 302
province. 303

(P) "Include," when used in a definition, does not exclude 304
other things or persons otherwise within the meaning of the term 305
defined. 306

(Q)(1) "Registration by description" means that the 307
requirements of section 1707.08 of the Revised Code have been 308
complied with. 309

(2) "Registration by qualification" means that the 310
requirements of sections 1707.09 and 1707.11 of the Revised Code 311
have been complied with. 312

(3) "Registration by coordination" means that there has been 313
compliance with section 1707.091 of the Revised Code. Reference in 314
this chapter to registration by qualification also shall be deemed 315
to include registration by coordination unless the context 316
otherwise indicates. 317

(R) "Intoxicating liquor" includes all liquids and compounds 318
that contain more than three and two-tenths per cent of alcohol by 319

weight and are fit for use for beverage purposes. 320

(S) "Institutional investor" means any corporation, bank, 321
insurance company, pension fund or pension fund trust, employees' 322
profit-sharing fund or employees' profit-sharing trust, any 323
association engaged, as a substantial part of its business or 324
operations, in purchasing or holding securities, or any trust in 325
respect of which a bank is trustee or cotrustee. "Institutional 326
investor" does not include any business entity formed for the 327
primary purpose of evading sections 1707.01 to 1707.45 of the 328
Revised Code. 329

(T) "Securities Act of 1933," 48 Stat. 74, 15 U.S.C. 77a, 330
"Securities Exchange Act of 1934," 48 Stat. 881, 15 U.S.C. 78a, 331
"Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C. 1, 332
"Investment Advisers Act of 1940," 54 Stat. 847, 15 U.S.C. 80b, 333
and "Investment Company Act of 1940," 54 Stat. 789, 15 U.S.C. 80a 334
mean the federal statutes of those names as amended before or 335
after March 18, 1999. 336

(U) "Securities and exchange commission" means the securities 337
and exchange commission established by the Securities Exchange Act 338
of 1934. 339

(V)(1) "Control bid" means the purchase of or offer to 340
purchase any equity security of a subject company from a resident 341
of this state if either of the following applies: 342

(a) After the purchase of that security, the offeror would be 343
directly or indirectly the beneficial owner of more than ten per 344
cent of any class of the issued and outstanding equity securities 345
of the issuer. 346

(b) The offeror is the subject company, there is a pending 347
control bid by a person other than the issuer, and the number of 348
the issued and outstanding shares of the subject company would be 349
reduced by more than ten per cent. 350

(2) For purposes of division (V)(1) of this section, "control bid" does not include any of the following: 351
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(a) A bid made by a dealer for the dealer's own account in the ordinary course of business of buying and selling securities; 353
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(b) An offer to acquire any equity security solely in exchange for any other security, or the acquisition of any equity security pursuant to an offer, for the sole account of the offeror, in good faith and not for the purpose of avoiding the provisions of this chapter, and not involving any public offering of the other security within the meaning of Section 4 of Title I of the "Securities Act of 1933," 48 Stat. 77, 15 U.S.C.A. 77d(2), as amended; 355
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(c) Any other offer to acquire any equity security, or the acquisition of any equity security pursuant to an offer, for the sole account of the offeror, from not more than fifty persons, in good faith and not for the purpose of avoiding the provisions of this chapter. 363
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(W) "Offeror" means a person who makes, or in any way participates or aids in making, a control bid and includes persons acting jointly or in concert, or who intend to exercise jointly or in concert any voting rights attached to the securities for which the control bid is made and also includes any subject company making a control bid for its own securities. 368
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(X)(1) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of regular business, issues or promulgates analyses or reports concerning securities. 374
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(2) "Investment adviser" does not mean any of the following: 381

(a) Any attorney, accountant, engineer, or teacher, whose performance of investment advisory services described in division (X)(1) of this section is solely incidental to the practice of the attorney's, accountant's, engineer's, or teacher's profession;	382 383 384 385
(b) A publisher of any bona fide newspaper, news magazine, or business or financial publication of general and regular circulation;	386 387 388
(c) A person who acts solely as an investment adviser representative;	389 390
(d) A bank holding company, as defined in the "Bank Holding Company Act of 1956," 70 Stat. 133, 12 U.S.C. 1841, that is not an investment company;	391 392 393
(e) A bank, or any receiver, conservator, or other liquidating agent of a bank;	394 395
(f) Any licensed dealer or licensed salesperson whose performance of investment advisory services described in division (X)(1) of this section is solely incidental to the conduct of the dealer's or salesperson's business as a licensed dealer or licensed salesperson and who receives no special compensation for the services;	396 397 398 399 400 401
(g) Any person, the advice, analyses, or reports of which do not relate to securities other than securities that are direct obligations of, or obligations guaranteed as to principal or interest by, the United States, or securities issued or guaranteed by corporations in which the United States has a direct or indirect interest, and that have been designated by the secretary of the treasury as exempt securities as defined in the "Securities Exchange Act of 1934," 48 Stat. 881, 15 U.S.C. 78c;	402 403 404 405 406 407 408 409
(h) Any person that is excluded from the definition of investment adviser pursuant to section 202(a)(11)(A) to (E) of the	410 411

"Investment Advisers Act of 1940," 15 U.S.C. 80b-2(a)(11), or that 412
has received an order from the securities and exchange commission 413
under section 202(a)(11)(F) of the "Investment Advisers Act of 414
1940," 15 U.S.C. 80b-2(a)(11)(F), declaring that the person is not 415
within the intent of section 202(a)(11) of the Investment Advisers 416
Act of 1940. 417

(i) Any other person that the division designates by rule, if 418
the division finds that the designation is necessary or 419
appropriate in the public interest or for the protection of 420
investors or clients and consistent with the purposes fairly 421
intended by the policy and provisions of this chapter. 422

(Y)(1) "Subject company" means an issuer that satisfies both 423
of the following: 424

(a) Its principal place of business or its principal 425
executive office is located in this state, or it owns or controls 426
assets located within this state that have a fair market value of 427
at least one million dollars. 428

(b) More than ten per cent of its beneficial or record equity 429
security holders are resident in this state, more than ten per 430
cent of its equity securities are owned beneficially or of record 431
by residents in this state, or more than one thousand of its 432
beneficial or record equity security holders are resident in this 433
state. 434

(2) The division of securities may adopt rules to establish 435
more specific application of the provisions set forth in division 436
(Y)(1) of this section. Notwithstanding the provisions set forth 437
in division (Y)(1) of this section and any rules adopted under 438
this division, the division, by rule or in an adjudicatory 439
proceeding, may make a determination that an issuer does not 440
constitute a "subject company" under division (Y)(1) of this 441
section if appropriate review of control bids involving the issuer 442

is to be made by any regulatory authority of another jurisdiction. 443

(Z) "Beneficial owner" includes any person who directly or 444
indirectly through any contract, arrangement, understanding, or 445
relationship has or shares, or otherwise has or shares, the power 446
to vote or direct the voting of a security or the power to dispose 447
of, or direct the disposition of, the security. "Beneficial 448
ownership" includes the right, exercisable within sixty days, to 449
acquire any security through the exercise of any option, warrant, 450
or right, the conversion of any convertible security, or 451
otherwise. Any security subject to any such option, warrant, 452
right, or conversion privilege held by any person shall be deemed 453
to be outstanding for the purpose of computing the percentage of 454
outstanding securities of the class owned by that person, but 455
shall not be deemed to be outstanding for the purpose of computing 456
the percentage of the class owned by any other person. A person 457
shall be deemed the beneficial owner of any security beneficially 458
owned by any relative or spouse or relative of the spouse residing 459
in the home of that person, any trust or estate in which that 460
person owns ten per cent or more of the total beneficial interest 461
or serves as trustee or executor, any corporation or entity in 462
which that person owns ten per cent or more of the equity, and any 463
affiliate or associate of that person. 464

(AA) "Offeree" means the beneficial or record owner of any 465
security that an offeror acquires or offers to acquire in 466
connection with a control bid. 467

(BB) "Equity security" means any share or similar security, 468
or any security convertible into any such security, or carrying 469
any warrant or right to subscribe to or purchase any such 470
security, or any such warrant or right, or any other security 471
that, for the protection of security holders, is treated as an 472
equity security pursuant to rules of the division of securities. 473

(CC)(1) "Investment adviser representative" means a 474

revised person of an investment adviser, provided that the supervised person has more than five clients who are natural persons other than excepted persons defined in division (EE) of this section, and that more than ten per cent of the supervised person's clients are natural persons other than excepted persons defined in division (EE) of this section. "Investment adviser representative" does not mean any of the following:

(a) A supervised person that does not on a regular basis solicit, meet with, or otherwise communicate with clients of the investment adviser;

(b) A supervised person that provides only investment advisory services described in division (X)(1) of this section by means of written materials or oral statements that do not purport to meet the objectives or needs of specific individuals or accounts;

(c) Any other person that the division designates by rule, if the division finds that the designation is necessary or appropriate in the public interest or for the protection of investors or clients and is consistent with the provisions fairly intended by the policy and provisions of this chapter.

(2) For the purpose of the calculation of clients in division (CC)(1) of this section, a natural person and the following persons are deemed a single client: Any minor child of the natural person; any relative, spouse, or relative of the spouse of the natural person who has the same principal residence as the natural person; all accounts of which the natural person or the persons referred to in division (CC)(2) of this section are the only primary beneficiaries; and all trusts of which the natural person or persons referred to in division (CC)(2) of this section are the only primary beneficiaries. Persons who are not residents of the United States need not be included in the calculation of clients under division (CC)(1) of this section.

(3) If subsequent to March 18, 1999, amendments are enacted 507
or adopted defining "investment adviser representative" for 508
purposes of the Investment Advisers Act of 1940 or additional 509
rules or regulations are promulgated by the securities and 510
exchange commission regarding the definition of "investment 511
adviser representative" for purposes of the Investment Advisers 512
Act of 1940, the division of securities shall, by rule, adopt the 513
substance of the amendments, rules, or regulations, unless the 514
division finds that the amendments, rules, or regulations are not 515
necessary for the protection of investors or in the public 516
interest. 517

(DD) "Supervised person" means a natural person who is any of 518
the following: 519

(1) A partner, officer, or director of an investment adviser, 520
or other person occupying a similar status or performing similar 521
functions with respect to an investment adviser; 522

(2) An employee of an investment adviser; 523

(3) A person who provides investment advisory services 524
described in division (X)(1) of this section on behalf of the 525
investment adviser and is subject to the supervision and control 526
of the investment adviser. 527

(EE) "Excepted person" means a natural person to whom any of 528
the following applies: 529

(1) Immediately after entering into the investment advisory 530
contract with the investment adviser, the person has at least 531
seven hundred fifty thousand dollars under the management of the 532
investment adviser. 533

(2) The investment adviser reasonably believes either of the 534
following at the time the investment advisory contract is entered 535
into with the person: 536

(a) The person has a net worth, together with assets held jointly with a spouse, of more than one million five hundred thousand dollars.

(b) The person is a qualified purchaser as defined in division (FF) of this section.

(3) Immediately prior to entering into an investment advisory contract with the investment adviser, the person is either of the following:

(a) An executive officer, director, trustee, general partner, or person serving in a similar capacity, of the investment adviser;

(b) An employee of the investment adviser, other than an employee performing solely clerical, secretarial, or administrative functions or duties for the investment adviser, which employee, in connection with the employee's regular functions or duties, participates in the investment activities of the investment adviser, provided that, for at least twelve months, the employee has been performing such nonclerical, nonsecretarial, or nonadministrative functions or duties for or on behalf of the investment adviser or performing substantially similar functions or duties for or on behalf of another company.

If subsequent to March 18, 1999, amendments are enacted or adopted defining "excepted person" for purposes of the Investment Advisers Act of 1940 or additional rules or regulations are promulgated by the securities and exchange commission regarding the definition of "excepted person" for purposes of the Investment Advisers Act of 1940, the division of securities shall, by rule, adopt the substance of the amendments, rules, or regulations, unless the division finds that the amendments, rules, or regulations are not necessary for the protection of investors or in the public interest.

(FF)(1) "Qualified purchaser" means either of the following:	568
(a) A natural person who owns not less than five million dollars in investments as defined by rule by the division of securities;	569 570 571
(b) A natural person, acting for the person's own account or accounts of other qualified purchasers, who in the aggregate owns and invests on a discretionary basis, not less than twenty-five million dollars in investments as defined by rule by the division of securities.	572 573 574 575 576
(2) If subsequent to March 18, 1999, amendments are enacted or adopted defining "qualified purchaser" for purposes of the Investment Advisers Act of 1940 or additional rules or regulations are promulgated by the securities and exchange commission regarding the definition of "qualified purchaser" for purposes of the Investment Advisers Act of 1940, the division of securities shall, by rule, adopt the amendments, rules, or regulations, unless the division finds that the amendments, rules, or regulations are not necessary for the protection of investors or in the public interest.	577 578 579 580 581 582 583 584 585 586
(GG)(1) "Purchase" has the full meaning of "purchase" as applied by or accepted in courts of law or equity and includes every acquisition of, or attempt to acquire, a security or an interest in a security. "Purchase" also includes a contract to purchase, an exchange, an attempt to purchase, an option to purchase, a solicitation of a purchase, a solicitation of an offer to sell, a subscription, or an offer to purchase, directly or indirectly, by agent, circular, pamphlet, advertisement, or otherwise.	587 588 589 590 591 592 593 594 595
(2) "Purchase" means any act by which a purchase is made.	596
(3) Any security given with, or as a bonus on account of, any purchase of securities is conclusively presumed to constitute a	597 598

part of the subject of that purchase. 599

(HH) "Life settlement interest" means the entire interest or 600
any fractional interest in an insurance policy or certificate of 601
insurance, or in an insurance benefit under such a policy or 602
certificate, that is the subject of a life settlement contract. 603

For purposes of this division, "life settlement contract" 604
means an agreement for the purchase, sale, assignment, transfer, 605
devise, or bequest of any portion of the death benefit or 606
ownership of any life insurance policy or contract, in return for 607
consideration or any other thing of value that is less than the 608
expected death benefit of the life insurance policy or contract. 609
"Life settlement contract" includes a viatical settlement contract 610
as defined in section 3916.01 of the Revised Code, but does not 611
include any of the following: 612

(1) A loan by an insurer under the terms of a life insurance 613
policy, including, but not limited to, a loan secured by the cash 614
value of the policy; 615

(2) An agreement with a bank that takes an assignment of a 616
life insurance policy as collateral for a loan; 617

(3) The provision of accelerated benefits as defined in 618
section 3915.21 of the Revised Code; 619

(4) Any agreement between an insurer and a reinsurer; 620

(5) An agreement by an individual to purchase an existing 621
life insurance policy or contract from the original owner of the 622
policy or contract, if the individual does not enter into more 623
than one life settlement contract per calendar year; 624

(6) The initial purchase of an insurance policy or 625
certificate of insurance from its owner by a viatical settlement 626
provider, as defined in section 3916.01 of the Revised Code, that 627
is licensed under Chapter 3916. of the Revised Code. 628

Sec. 1707.08. (A) The transactions enumerated in section 629
1707.06 of the Revised Code may be consummated on compliance with 630
this section and section 1707.11 of the Revised Code. 631

(B) A description, verified either by the oath of the ~~person~~ 632
individual filing it or of any ~~person~~ individual having knowledge 633
of the facts, shall be filed with the division of securities by 634
the issuer, or by a majority of the incorporators of the issuer 635
prior to election of officers if it is an incorporated issuer, or 636
by a licensed dealer, which description shall be on forms 637
prescribed by the division and shall set forth: 638

~~(A)~~(1) The name of the issuer; 639

~~(B)~~(2) A brief description of the securities; 640

~~(C)~~(3) The amount of the securities to be offered after the 641
filing of the description for sale in this state and, if all the 642
securities are not to be offered by the person filing the 643
description, then the respective amounts to be offered by others, 644
so far as those amounts are known, and the names and addresses of 645
the other offerors; 646

~~(D)~~(4) A brief statement of the facts which show that the 647
securities are the subject matter of a transaction enumerated in 648
section 1707.06 of the Revised Code; 649

~~(E)~~(5) The price at which the securities are to be offered 650
for sale. 651

~~Registration by description is completed when the 652
description, together with a filing fee of fifty dollars, in the 653
form of cash, check, or United States postal money order, is 654
delivered, or mailed by certified mail with postage prepaid, to 655
the division. 656~~

(C) The individual who executes the application for 657
registration by description on behalf of the applicant shall state 658

the individual's relationship to the applicant and certify all of 659
the following: 660

(1) The individual has executed the application on behalf of 661
the applicant. 662

(2) The individual is fully authorized to execute and file 663
the application on behalf of the applicant. 664

(3) The individual is familiar with the applicant's 665
application. 666

(4) To the best of the individual's knowledge, information, 667
and belief, the statements made in the application are true, and 668
the documents submitted with the application are true copies of 669
the original documents. 670

(D) A registration by description is effective seven business 671
days after the division receives the description on applicable 672
forms, together with a filing fee of fifty dollars, if no 673
proceeding is pending under section 1707.13 or 1707.131 of the 674
Revised Code. However, the division may permit an earlier 675
effective date by rule or by issuing a certificate of 676
acknowledgment for the registration by description. 677

(E) In order to correct errors or omissions, a registration 678
by description may be amended by the person ~~who~~ that originally 679
filed it, by the filing, in the same manner as in the case of an 680
original registration by description, of an amended registration 681
by description or of an amendment of the original registration by 682
description. 683

(F) When transactions in any securities enumerated in section 684
1707.06 of the Revised Code have been registered and the fees 685
prescribed by this section have been paid, the transactions may be 686
consummated so long as the registration remains in full force. 687

Sec. 1707.09. (A)(1) All securities, except those enumerated 688

in section 1707.02 of the Revised Code and those that are the 689
subject matter of a transaction permitted by section 1707.03, 690
1707.04, or 1707.06 of the Revised Code, shall be qualified in the 691
manner provided by this section before being sold in this state. 692

(2) Applications for ~~that~~ qualification, on forms prescribed 693
by the division of securities, shall be made in writing either by 694
the issuer of the securities or by any licensed dealer desiring to 695
sell them within this state and shall be signed by the applicant, 696
sworn to by any ~~person~~ individual having knowledge of the facts 697
stated in the application, and filed in the office of the 698
division. 699

(3) The individual who executes the application for 700
qualification of securities on behalf of the applicant shall state 701
the individual's relationship to the applicant and certify that: 702
the individual has executed the application on behalf of the 703
applicant; the individual is fully authorized to execute and file 704
the application on behalf of the applicant; the individual is 705
familiar with the applicant's application; and to the best of the 706
individual's knowledge, information, and belief, the statements 707
made in the application are true, and the documents submitted with 708
the application are true copies of the original documents. 709

(B) The division shall require the applicant for 710
qualification of securities to submit to it the following 711
information: 712

~~(A)~~(1) The names and addresses of the directors or trustees 713
and of the officers of the issuer, if the issuer is a corporation 714
or an unincorporated association; of all the members of the 715
issuer, if the issuer is a limited liability company in which 716
management is reserved to its members; of all the managers of the 717
issuer, if the issuer is a limited liability company in which 718
management is not reserved to its members; of all partners, if the 719
issuer is a general or limited partnership or a partnership 720

association; and the name and address of the issuer, if the issuer 721
is an individual; 722

~~(B)~~(2) The address of the issuer's principal place of 723
business and principal office in this state, if any; 724

~~(C)~~(3) The purposes and general character of the business 725
actually being transacted, or to be transacted, by the issuer, and 726
the purpose of issuing the securities named in the application; 727

~~(D)~~(4) A statement of the capitalization of the issuer; a 728
balance sheet made up as of the most recent practicable date, 729
showing the amount and general character of its assets and 730
liabilities; a description of the security for the qualification 731
of which application is being made; and copies of all circulars, 732
prospectuses, advertisements, or other descriptions of the 733
securities, that are then prepared by or for the issuer, or by or 734
for the applicant if the applicant is not the issuer, or by or for 735
both, to be used for distribution or publication in this state; 736

~~(E)~~(5) A statement of the amount of the issuer's income, 737
expenses, and fixed charges during the last fiscal year or, if the 738
issuer has been in actual business less than one year, for the 739
time that the issuer has been in actual business; 740

~~(F)~~(6) A statement showing the price at which the security is 741
to be offered for sale; 742

~~(G)~~(7) A statement showing the considerations received or to 743
be received by the issuer of the securities purchased or to be 744
purchased from the issuer and an itemized statement of all 745
expenses of financing to be paid from those considerations so as 746
to show the aggregate net amount actually received or to be 747
received by the issuer; 748

~~(H)~~(8) All other information, including an opinion of counsel 749
as to the validity of the securities that are the subject matter 750
of the application, that the division considers necessary to 751

enable it to ascertain whether the securities are entitled to 752
qualification; 753

~~(I)~~(9) If the issuer is a corporation, there shall be filed 754
with the application a certified copy of its articles of 755
incorporation with all amendments to the articles, if the articles 756
or amendments are not already on file in the office of the 757
secretary of state; if the issuer is a limited liability company, 758
there shall be filed with the application a certified copy of its 759
articles of organization with all amendments to the articles, if 760
the articles or amendments are not already on file in the office 761
of the secretary of state; if the issuer is a trust or trustee, 762
there shall be filed with the application a copy of all 763
instruments by which the trust was created; and if the issuer is a 764
partnership or an unincorporated association, or any other form of 765
organization, there shall be filed with the application a copy of 766
its articles of partnership or association and of all other papers 767
pertaining to its organization, if the articles or other papers 768
are not already on file in the office of the secretary of state; 769

~~(J)~~(10) If the application is made with respect to securities 770
to be sold or distributed by or on behalf of the issuer, or by or 771
on behalf of an underwriter, as defined in division (N) of section 772
1707.03 of the Revised Code, a statement showing that the issuer 773
has received, or will receive at or prior to the delivery of those 774
securities, not less than eighty-five per cent of the aggregate 775
price at which all those securities are sold by or on behalf of 776
the issuer, without deduction for any additional commission, 777
directly or indirectly, and without liability to pay any 778
additional sum as commission; 779

~~(K)~~(11) If the division so permits with respect to a 780
security, an applicant may file with the division, in lieu of the 781
division's prescribed forms, a copy of the registration statement 782
relating to the security, with all amendments to that statement, 783

previously filed with the securities and exchange commission of 784
the United States under the "Securities Act of 1933," as amended, 785
together with all additional data, information, and documents that 786
the division requires. 787

(C) If the division finds that it is not necessary in the 788
public interest and for the protection of investors to require all 789
the information specified in divisions ~~(A) to (J)~~(B)(1) to (10) of 790
this section, it may permit the filing of applications for 791
qualification that contain the information that it considers 792
necessary and appropriate in the public interest and for the 793
protection of investors⁷, but this provision applies only in the 794
case of applications for qualification of securities previously 795
issued and outstanding that may not be made the subject matter of 796
transactions exempt under division (M) of section 1707.03 of the 797
Revised Code by reason of the fact that those securities within 798
one year were purchased outside this state or within one year were 799
transported into this state. 800

(D) All the statements, exhibits, and documents required by 801
the division under this section, except properly certified public 802
documents, shall be verified by the oath of the applicant for 803
qualification, of the issuer, or of any ~~person~~ individual having 804
knowledge of the facts, and in the manner and form that may be 805
required by the division. Failure or refusal to comply with the 806
requests of the division shall be sufficient reason for a refusal 807
by the division to register securities. 808

(E) If it appears to the division that substantially the only 809
consideration to be paid for any of the securities to be qualified 810
is to be intangible property of doubtful value, the division may 811
require that the securities be delivered in escrow to a bank in 812
this state under the terms that the division may reasonably 813
prescribe or require to prevent a deceitful misrepresentation or 814
sale of the securities⁷; that the securities be subordinated in 815

favor of those sold for sound value until they have a value 816
bearing a reasonable relation to the value of those sold for sound 817
value; or that a legend of warning specifying the considerations 818
paid or to be paid for the securities be stamped or printed on all 819
advertisements, circulars, pamphlets, or subscription blanks used 820
in connection with the sale of any securities of the same issuer; 821
or it may impose a combination of any two or more of these 822
requirements. 823

(F) At the time of filing the information prescribed in this 824
section, the applicant shall pay to the division a filing fee of 825
one hundred dollars. 826

(G)(1) The division, at any time, as a prerequisite to 827
qualification, may make an examination of the issuer of securities 828
sought to be qualified. The applicant for qualification of any 829
securities may be required by the division to advance sufficient 830
funds to pay all or any part of the actual expenses of that 831
examination, an itemized statement of which shall be furnished the 832
applicant. 833

(2) If the division finds that the business of the issuer is 834
not fraudulently conducted, that the proposed offer or disposal of 835
securities is not on grossly unfair terms, that the plan of 836
issuance and sale of the securities referred to in the proposed 837
offer or disposal would not defraud or deceive, or tend to defraud 838
or deceive, purchasers, and that division ~~(J)~~(B)(10) of this 839
section applies and has been complied with, the division shall 840
notify the applicant of its findings; and, upon payment of a 841
registration fee of one-tenth of one per cent of the aggregate 842
price at which the securities are to be sold to the public in this 843
state, which fee, however, shall in no case be less than one 844
hundred or more than one thousand dollars, the division shall 845
register the qualification of the securities. 846

(H) An application for qualification of securities may be 847

amended by the person filing it at any time prior to the 848
division's action on it either in registering the securities for 849
qualification or in refusing to do so. Subsequent to any such 850
action by the division, the person who filed the application may 851
file with the consent of the division one or more amendments to it 852
that shall become effective upon the making by the division of the 853
findings enumerated in ~~the next preceding paragraph~~ division (G) 854
of this section; i the giving of notice of those findings to the 855
applicant by the division; i and the payment by the applicant of 856
the additional fee that would have been payable had the 857
application, as it previously became effective, contained the 858
amendment. 859

(I) When any securities have been qualified and the fees for 860
the qualification have been paid as provided in this section, any 861
licensed dealer subsequently may sell the securities under the 862
qualification, so long as the qualification remains in full force, 863
and any dealer of that nature ~~who~~ that desires may file with the 864
division a written notice of intention to sell the securities or 865
any designated portion of them. For that filing, no fee need be 866
paid. 867

Sec. 1707.11. (A) Each person that is not organized under the 868
laws of this state, that is not licensed under section 1703.03 of 869
the Revised Code, or that does not have its principal place of 870
business in this state, shall submit to the division of securities 871
an irrevocable consent to service of process, as described in 872
division (B) of this section, in connection with any of the 873
following: 874

(1) Filings to claim any of the exemptions enumerated in 875
division (Q), (W), (X), or (Y) of section 1707.03 of the Revised 876
Code; 877

(2) Applications for registration by description, 878

ion, or coordination; 879

(3) Notice filings pursuant to section 1707.092 of the 880
Revised Code. 881

(B) The irrevocable written consent shall be executed and 882
acknowledged by an individual duly authorized to give the consent 883
and shall do all of the following: 884

(1) Designate the secretary of state as agent for service of 885
process or pleadings; 886

(2) State that actions growing out of the sale of such 887
securities, the giving of investment advice, or fraud committed by 888
a person on whose behalf the consent is submitted may be commenced 889
against the person, in the proper court of any county in this 890
state in which a cause of action may arise or in which the 891
plaintiff in the action may reside, by serving on the secretary of 892
state any proper process or pleading authorized by the laws of 893
this state; 894

(3) Stipulate that service of process or pleading on the 895
secretary of state shall be taken in all courts to be as valid and 896
binding as if service had been made upon the person on whose 897
behalf the consent is submitted. 898

(C) Notwithstanding any application, form, or other material 899
filed with or submitted to the division that purports to appoint 900
as agent for service of process a person other than the secretary 901
of state, the application, form, or other material shall be 902
considered to appoint the secretary of state as agent for service 903
of process. 904

(D) Service of any process or pleadings may be made on the 905
secretary of state by duplicate copies, of which one shall be 906
filed in the office of the secretary of state, and the other 907
immediately forwarded by the secretary of state by certified mail 908
to the principal place of business of the person on whose behalf 909

the consent is submitted or to the last known address as shown on 910
the filing made with the division. However, failure to mail such 911
copy does not invalidate the service. 912

~~(D)~~(E) Notwithstanding any provision of this chapter, or of 913
any rule adopted by the division of securities under this chapter, 914
that requires the submission of a consent to service of process, 915
the division may provide by rule for the electronic filing or 916
submission of a consent to service of process. 917

Sec. 1707.131. (A) For purposes of this section, "five per 918
cent shareholder" means a beneficial owner of five per cent or 919
more of the issuer's outstanding securities. 920

(B) The division of securities shall refuse any registration 921
by description, by qualification, or by coordination if the issuer 922
is in the development stage and either has no specific business 923
plan or purpose or has indicated that its business is to engage in 924
a merger or acquisition with an unidentified company or companies, 925
or other entities or persons. 926

(C) The division may refuse any registration by description, 927
by qualification, or by coordination if either of the following 928
applies: 929

(1) The issuer does not disclose in the final offering 930
circular, prospectus, or form U-7 of the North American securities 931
administrators association that any future transaction with an 932
officer, director, five per cent shareholder, manager, trustee, or 933
general partner will be on terms no less favorable to the issuer 934
than could be obtained from an independent third party. 935

(2) The issuer does not disclose both of the following in the 936
final offering circular, prospectus, or form U-7 of the North 937
American securities administrators association: 938

(a) Any outstanding loan from the issuer to an officer, 939

director, five per cent shareholder, manager, trustee, or general partner is required to be repaid within six months of the offering, except for a loan or extension of credit made by a bank. 940
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(b) Any future loan from the issuer to an officer, director, five per cent shareholder, manager, trustee, or general partner will be for a bona fide business purpose and approved by a majority of the disinterested directors, managers, trustees, or general partners, or will be a type of transaction involving a director or executive officer of the issuer that is permitted by section 13(k) of the "Securities Exchange Act of 1934," 116 Stat. 787, 15 U.S.C.A. 78m, as amended. 943
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Sec. 1707.23. Whenever it appears to the division of securities, from its files, upon complaint, or otherwise, that any person has engaged in, is engaged in, or is about to engage in any practice declared to be illegal or prohibited by this chapter or rules adopted under this chapter by the division, or defined as fraudulent in this chapter or rules adopted under this chapter by the division, or any other deceptive scheme or practice in connection with the sale of securities, or acting as an investment adviser or investment adviser representative, or when the division believes it to be in the best interests of the public and necessary for the protection of investors, the division may do any of the following: 951
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(A) Require any person to file with it, on such forms as it prescribes, an original or additional statement or report in writing, under oath or otherwise, as to any facts or circumstances concerning the issuance, sale, or offer for sale of securities within this state by the person, as to the person's acts or practices as an investment adviser or investment adviser representative within this state, and as to other information as it deems material or relevant thereto; 963
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(B) Examine any investment adviser, investment adviser 971
representative, or any seller, dealer, salesperson, or issuer of 972
any securities, and any of their agents, employees, partners, 973
officers, directors, members, or shareholders, wherever located, 974
under oath; and examine records, books, documents, accounts, and 975
papers as the division deems material or relevant to the inquiry; 976

(C) Require the attendance of witnesses, and the production 977
of books, records, and papers, as are required either by the 978
division or by any party to a hearing before the division, and for 979
that purpose issue a subpoena for any witness, or a subpoena duces 980
tecum to compel the production of any books, records, or papers. 981
The subpoena shall be served by personal service or by certified 982
mail, return receipt requested. If the subpoena is returned 983
because of inability to deliver, or if no return is received 984
within thirty days of the date of mailing, the subpoena may be 985
served by ordinary mail. If no return of ordinary mail is received 986
within thirty days after the date of mailing, service shall be 987
deemed to have been made. If the subpoena is returned because of 988
inability to deliver, the division may designate a person or 989
persons to effect either personal or residence service upon the 990
witness. The person designated to effect personal or residence 991
service under this division may be the sheriff of the county in 992
which the witness resides or may be found or any other duly 993
designated person. The fees and mileage of the person serving the 994
subpoena shall be the same as those allowed by the courts of 995
common pleas in criminal cases, and shall be paid from the funds 996
of the division. Fees and mileage for the witness shall be the 997
same as those allowed for witnesses by the courts of common pleas 998
in criminal cases, and shall be paid from the funds of the 999
division upon request of the witness following the hearing. 1000

(D) Proceed under section 1707.19 of the Revised Code to 1001
refuse a license applied for by a dealer, salesperson, investment 1002

adviser, or investment adviser representative or to suspend the 1003
license of any licensed dealer, licensed salesperson, licensed 1004
investment adviser, or licensed investment adviser representative 1005
and ultimately, if the division determines, revoke such license 1006
under that section; 1007

(E) Initiate criminal proceedings under section 1707.042 or 1008
1707.44 of the Revised Code or rules adopted under those sections 1009
by the division by laying before the prosecuting attorney of the 1010
proper county any evidence of criminality which comes to its 1011
knowledge; and in the event of the neglect or refusal of the 1012
prosecuting attorney to prosecute such violations, or at the 1013
request of the prosecuting attorney, the division shall submit the 1014
evidence to the attorney general, who may proceed in the 1015
prosecution with all the rights, privileges, and powers conferred 1016
by law on prosecuting attorneys, including the power to appear 1017
before grand juries and to interrogate witnesses before such grand 1018
juries. 1019

(F) Require any dealers immediately to furnish to the 1020
division copies of prospectuses, circulars, or advertisements 1021
respecting securities that they publish or generally distribute, 1022
or require any investment advisers immediately to furnish to the 1023
division copies of brochures, advertisements, publications, 1024
analyses, reports, or other writings that they publish or 1025
distribute; 1026

(G) Require any dealers to mail to the division, prior to 1027
sale, notices of intention to sell, in respect to all securities 1028
which are not exempt under section 1707.02 of the Revised Code, or 1029
which are sold in transactions not exempt under section 1707.03 or 1030
1707.04 of the Revised Code; 1031

(H) Issue and cause to be served by certified mail upon all 1032
persons affected an order requiring the person or persons to cease 1033
and desist from the acts or practices appearing to the division to 1034

constitute violations of this chapter or rules adopted under this 1035
chapter by the division. The order shall state specifically the 1036
section or sections of this chapter or the rule or rules adopted 1037
under this chapter by the division that appear to the division to 1038
have been violated and the facts constituting the violation. If 1039
after the issuance of the order it appears to the division that 1040
any person or persons affected by the order have engaged in any 1041
act or practice from which the person or persons shall have been 1042
required, by the order, to cease and desist, the director of 1043
commerce may apply to the court of common pleas of any county for, 1044
and upon proof of the validity of the order of the division, the 1045
delivery of the order to the person or persons affected, and of 1046
the illegality and the continuation of the acts or practices that 1047
are the subject of the order, the court may grant an injunction 1048
implementing the order of the division. 1049

(I) Issue and initiate contempt proceedings in this state 1050
regarding subpoenas and subpoenas duces tecum at the request of 1051
the securities administrator of another state, if it appears to 1052
the division that the activities for which the information is 1053
sought would violate this chapter if the activities had occurred 1054
in this state. 1055

(J) The remedies provided by this section are cumulative and 1056
concurrent with any other remedy provided in this chapter, and the 1057
exercise of one remedy does not preclude or require the exercise 1058
of any other remedy. 1059

Sec. 1707.231. (A) If the attorney general, by referral from the division of securities, or as a result of complaints or otherwise, has reasonable cause to believe that a person has violated sections 1707.01 to 1707.45 of the Revised Code, the attorney general may bring a class action under Civil Rule 23, as amended, seeking an order granting restitution to persons damaged by a violation of sections 1707.01 to 1707.45 of the Revised Code.

(B) The attorney general's exercise of authority pursuant to this section does not require or preclude the exercise of any other authority or remedy in accordance with this chapter.

Sec. 1707.40. ~~Sections~~ Except as provided in section 1707.231 of the Revised Code, sections 1707.01 to 1707.45 of the Revised Code create no new civil liabilities, and do not limit or restrict common law liabilities for deception or fraud other than as specified in sections 1707.042, 1707.043, 1707.41, 1707.42, and 1707.43 of the Revised Code, and there is no civil liability for noncompliance with orders, requirements, rules, or regulations made by the division of securities under sections 1707.19, 1707.20, 1707.201, and 1707.23 of the Revised Code.

Sec. 1707.41. (A) In addition to the other liabilities imposed by law, any person ~~who~~ that, by a written or printed circular, prospectus, or advertisement, offers any security for sale, or receives the profits accruing from such sale, is liable, to any person ~~who~~ that purchased ~~such~~ the security relying on ~~such~~ the circular, prospectus, or advertisement, for the loss or damage sustained by ~~such~~ the relying person by reason of the falsity of any material statement contained therein or for the omission ~~therefrom~~ of material facts, unless ~~such~~ the offeror or person ~~who~~ that receives the profits establishes that ~~he~~ the offeror or person had no knowledge of the publication ~~thereof~~ prior to the

transaction complained of, or had just and reasonable grounds to 1090
believe ~~such~~ the statement to be true or the omitted facts to be 1091
not material. ~~Whenever~~ 1092

(B)(1) Whenever a corporation is ~~so~~ liable as described in 1093
division (A) of this section, each director of the corporation is 1094
likewise liable unless ~~he~~ the director shows that ~~he~~ the director 1095
had no knowledge of the publication complained of, or had just and 1096
reasonable grounds to believe the statement therein to be true or 1097
the omission of facts to be not material. ~~Any such~~ 1098

(2) Any director, upon the payment by ~~him~~ the director of a 1099
judgment so obtained against ~~him~~ the director, shall be 1100
subrogated to the rights of the plaintiff against ~~such~~ the 1101
corporation, and shall have the right of contribution for the 1102
payment of ~~such~~ the judgment against ~~such of his~~ the director's 1103
fellow directors as would be individually liable under this 1104
section. ~~Lack~~ 1105

(C) For purposes of this section, lack of reasonable 1106
diligence in ascertaining the fact of ~~such~~ a publication or the 1107
falsity of any statement contained in it or of the omission of 1108
~~such~~ a material fact shall be deemed knowledge of ~~such~~ the 1109
publication and of the falsity of any untrue statement in it or of 1110
the omission of material facts. 1111

(D) No action brought against any director, based upon the 1112
liability imposed by this section, shall be brought unless it is 1113
brought within two years after the plaintiff knew, or had reason 1114
to know, of the facts by reason of which the actions of the person 1115
or the director were unlawful, or within ~~four~~ five years after the 1116
purchase of the securities, whichever is the shorter period, or, 1117
in the case of an action to enforce a right of contribution under 1118
this section, ~~it~~ the action is brought within two years after the 1119
payment of the judgment for which contribution is sought. 1120

Sec. 1707.42. (A) Whoever, with intent to secure financial 1121
gain to self, advises and procures any person to purchase any 1122
security, and receives any commission or reward for the advice or 1123
services without disclosing to the purchaser the fact of the 1124
person's agency or interest in such sales, shall be liable to the 1125
purchaser for the amount of the purchaser's damage thereby, upon 1126
tender of the security to, and suit brought against, the adviser, 1127
by the purchaser. No suit shall be brought more than one year 1128
subsequent to the purchase. 1129

(B) Whoever acts as an investment adviser or investment 1130
adviser representative in violation of Chapter 1707. of the 1131
Revised Code shall be liable for damages resulting from the 1132
violation in an action at law in a court of competent 1133
jurisdiction. Damages may include consideration paid for the 1134
advice, any loss due to the advice, and all court costs, less the 1135
amount of any income received from the advice. No person may bring 1136
an action under this division more than ~~four~~ five years after the 1137
rendering of investment advice or two years after discovery of 1138
facts constituting the violation, whichever is the shorter period. 1139

Sec. 1707.43. ~~Every~~ (A) Subject to divisions (B) and (C) of 1140
this section, every sale or contract for sale made in violation of 1141
Chapter 1707. of the Revised Code, is voidable at the election of 1142
the purchaser. The person making such sale or contract for sale, 1143
and every person ~~who~~ that has participated in or aided the seller 1144
in any way in making such sale or contract for sale, are jointly 1145
and severally liable to ~~such~~ the purchaser, in an action at law in 1146
any court of competent jurisdiction, upon tender to the seller in 1147
person or in open court of the securities sold or of the contract 1148
made, for the full amount paid by ~~such~~ the purchaser and for all 1149
taxable court costs, unless the court determines that the 1150
violation did not materially affect the protection contemplated by 1151

the violated provision. 1152

(B) No action for the recovery of the purchase price as 1153
provided for in this section, and no other action for any recovery 1154
based upon or arising out of a sale or contract for sale made in 1155
violation of Chapter 1707. of the Revised Code, shall be brought 1156
more than two years after the plaintiff knew, or had reason to 1157
know, of the facts by reason of which the actions of the person or 1158
director were unlawful, or more than ~~four~~ five years from the date 1159
of such sale or contract for sale, whichever is the shorter 1160
period. 1161

(C) No purchaser is entitled to the benefit of this section 1162
who has failed to accept, within thirty days from the date of such 1163
offer, an offer in writing made after two weeks from the date of 1164
~~such~~ the sale or contract of sale, by the seller or by any person 1165
~~who~~ that has participated in or aided the seller in any way in 1166
making ~~such~~ the sale or contract of sale, to take back the 1167
security in question and to refund the full amount paid by ~~such~~ 1168
the purchaser. 1169

Sec. 1707.44. (A)(1) No person shall engage in any act or 1170
practice that violates division (A), (B), or (C) of section 1171
1707.14 of the Revised Code, and no salesperson shall sell 1172
securities in this state without being licensed pursuant to 1173
section 1707.16 of the Revised Code. 1174

(2) No person shall engage in any act or practice that 1175
violates division (A) of section 1707.141 or section 1707.161 of 1176
the Revised Code. 1177

(B) No person shall knowingly make or cause to be made any 1178
false representation concerning a material and relevant fact, in 1179
any oral statement or in any prospectus, circular, description, 1180
application, or written statement, for any of the following 1181
purposes: 1182

(1) Registering securities or transactions, or exempting securities or transactions from registration, under this chapter;	1183 1184
(2) Securing the qualification of any securities under this chapter;	1185 1186
(3) Procuring the licensing of any dealer, salesperson, investment adviser, or investment adviser representative under this chapter;	1187 1188 1189
(4) Selling any securities in this state;	1190
(5) Advising for compensation, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities;	1191 1192 1193
(6) Submitting a notice filing to the division under <u>division (X) of section 1707.03 or section 1707.092 or 1707.141</u> of the Revised Code.	1194 1195 1196
(C) No person shall knowingly sell, cause to be sold, offer for sale, or cause to be offered for sale, any security which comes under any of the following descriptions:	1197 1198 1199
(1) Is not exempt under section 1707.02 of the Revised Code, nor the subject matter of one of the transactions exempted in section 1707.03, 1707.04, or 1707.34 of the Revised Code, has not been registered by coordination or qualification, and is not the subject matter of a transaction that has been registered by description;	1200 1201 1202 1203 1204 1205
(2) The prescribed fees for registering by description, by coordination, or by qualification have not been paid in respect to such security;	1206 1207 1208
(3) Such <u>The</u> person has been notified by the division, or has knowledge of the notice, that the right to buy, sell, or deal in such security has been suspended or revoked, or that the registration by description, by coordination, or by qualification	1209 1210 1211 1212

under which it may be sold has been suspended or revoked; 1213

(4) The offer or sale is accompanied by a statement that the 1214
security offered or sold has been or is to be in any manner 1215
indorsed by the division. 1216

(D) No person who is an officer, director, or trustee of, or 1217
a dealer for, any issuer, and who knows such issuer to be 1218
insolvent in that the liabilities of the issuer exceed its assets, 1219
shall sell any securities of or for any such issuer, without 1220
disclosing the fact of the insolvency to the purchaser. 1221

(E) No person with intent to aid in the sale of any 1222
securities on behalf of the issuer, shall knowingly make any 1223
representation not authorized by such issuer or at material 1224
variance with statements and documents filed with the division by 1225
such issuer. 1226

(F) No person, with intent to deceive, shall sell, cause to 1227
be sold, offer for sale, or cause to be offered for sale, any 1228
securities of an insolvent issuer, with knowledge that such issuer 1229
is insolvent in that the liabilities of the issuer exceed its 1230
assets, taken at their fair market value. 1231

(G) No person in purchasing or selling securities shall 1232
knowingly engage in any act or practice that is, in this chapter, 1233
declared illegal, defined as fraudulent, or prohibited. 1234

(H) No licensed dealer shall refuse to buy from, sell to, or 1235
trade with any person because the person appears on a blacklist 1236
issued by, or is being boycotted by, any foreign corporate or 1237
governmental entity, nor sell any securities of or for any issuer 1238
who is known in relation to the issuance or sale of ~~such~~ the 1239
securities to have engaged in such practices. 1240

(I) No dealer in securities, knowing that the dealer's 1241
liabilities exceed the reasonable value of the dealer's assets, 1242
shall accept money or securities, except in payment of or as 1243

security for an existing debt, from a customer who is ignorant of 1244
the dealer's insolvency, and thereby cause the customer to lose 1245
any part of the customer's securities or the value of those 1246
securities, by doing either of the following without the 1247
customer's consent: 1248

(1) Pledging, selling, or otherwise disposing of such 1249
securities, when the dealer has no lien on or any special property 1250
in such securities; 1251

(2) Pledging such securities for more than the amount due, or 1252
otherwise disposing of such securities for the dealer's own 1253
benefit, when the dealer has a lien or indebtedness on such 1254
securities. 1255

It is an affirmative defense to a charge under this division 1256
that, at the time the securities involved were pledged, sold, or 1257
disposed of, the dealer had in the dealer's possession or control, 1258
and available for delivery, securities of the same kinds and in 1259
amounts sufficient to satisfy all customers entitled to the 1260
securities, upon demand and tender of any amount due on the 1261
securities. 1262

(J) No person, with purpose to deceive, shall make, issue, 1263
publish, or cause to be made, issued, or published any statement 1264
or advertisement as to the value of securities, or as to alleged 1265
facts affecting the value of securities, or as to the financial 1266
condition of any issuer of securities, when the person knows that 1267
such statement or advertisement is false in any material respect. 1268

(K) No person, with purpose to deceive, shall make, record, 1269
or publish or cause to be made, recorded, or published, a report 1270
of any transaction in securities which is false in any material 1271
respect. 1272

(L) No dealer shall engage in any act that violates the 1273
provisions of section 15(c) or 15(g) of the "Securities Exchange 1274

Act of 1934," 48 Stat. 881, 15 U.S.C.A. 78o(c) or (g), or any rule 1275
or regulation promulgated by the securities and exchange 1276
commission thereunder. If, subsequent to October 11, 1994, 1277
additional amendments to section 15(c) or 15(g) are adopted, or 1278
additional rules or regulations are promulgated pursuant to such 1279
sections, the division of securities shall, by rule, adopt the 1280
amendments, rules, or regulations, unless the division finds that 1281
the amendments, rules, or regulations are not necessary for the 1282
protection of investors or in the public interest. 1283

(M)(1) No investment adviser or investment adviser 1284
representative shall do any of the following: 1285

(a) Employ any device, scheme, or artifice to defraud any 1286
person; 1287

(b) Engage in any act, practice, or course of business that 1288
operates or would operate as a fraud or deceit upon any person; 1289

(c) In acting as principal for the investment adviser's or 1290
investment adviser representative's own account, knowingly sell 1291
any security to or purchase any security from a client, or in 1292
acting as salesperson for a person other than such client, 1293
knowingly effect any sale or purchase of any security for the 1294
account of such client, without disclosing to the client in 1295
writing before the completion of the transaction the capacity in 1296
which the investment adviser or investment adviser representative 1297
is acting and obtaining the consent of the client to the 1298
transaction. Division (M)(1)(c) of this section does not apply to 1299
any investment adviser registered with the securities and exchange 1300
commission under section 203 of the "Investment Advisers Act of 1301
1940," 15 U.S.C. 80b-3, or to any transaction with a customer of a 1302
licensed dealer or salesperson if the licensed dealer or 1303
salesperson is not acting as an investment adviser or investment 1304
adviser representative in relation to the transaction. 1305

(d) Engage in any act, practice, or course of business that 1306
is fraudulent, deceptive, or manipulative. The division of 1307
securities may adopt rules reasonably designed to prevent such 1308
acts, practices, or courses of business ~~as~~ that are fraudulent, 1309
deceptive, or manipulative. 1310

(2) No investment adviser or investment adviser 1311
representative licensed or required to be licensed under this 1312
chapter shall take or have custody of any securities or funds of 1313
any person, except as provided in rules adopted by the division. 1314

(3) In the solicitation of clients or prospective clients, no 1315
person shall make any untrue statement of a material fact or omit 1316
to state a material fact necessary in order to make the statements 1317
made not misleading in light of the circumstances under which the 1318
statements were made. 1319

(N) No person knowingly shall influence, coerce, manipulate, 1320
or mislead any person engaged in the preparation, compilation, 1321
review, or audit of financial statements to be used in the 1322
purchase or sale of securities for the purpose of rendering the 1323
financial statements materially misleading. 1324

Sec. 2913.02. (A) No person, with purpose to deprive the 1325
owner of property or services, shall knowingly obtain or exert 1326
control over either the property or services in any of the 1327
following ways: 1328

(1) Without the consent of the owner or person authorized to 1329
give consent; 1330

(2) Beyond the scope of the express or implied consent of the 1331
owner or person authorized to give consent; 1332

(3) By deception; 1333

(4) By threat; 1334

(5) By intimidation. 1335

(B)(1) Whoever violates this section is guilty of theft. 1336

(2) Except as otherwise provided in this division or division 1337
(B)(3), (4), (5), or (6) of this section, a violation of this 1338
section is petty theft, a misdemeanor of the first degree. If the 1339
value of the property or services stolen is five hundred dollars 1340
or more and is less than five thousand dollars or if the property 1341
stolen is any of the property listed in section 2913.71 of the 1342
Revised Code, a violation of this section is theft, a felony of 1343
the fifth degree. If the value of the property or services stolen 1344
is five thousand dollars or more and is less than one hundred 1345
thousand dollars, a violation of this section is grand theft, a 1346
felony of the fourth degree. If the value of the property or 1347
services stolen is one hundred thousand dollars or more, a 1348
violation of this section is aggravated theft, a felony of the 1349
~~third~~ second degree. If the value of the property or services 1350
stolen is one million dollars or more, a violation of this section 1351
is aggravated theft of one million dollars or more, a felony of 1352
the first degree. 1353

(3) Except as otherwise provided in division (B)(4), (5), or 1354
(6) of this section, if the victim of the offense is an elderly 1355
person or disabled adult, a violation of this section is theft 1356
from an elderly person or disabled adult, and division (B)(3) of 1357
this section applies. Except as otherwise provided in this 1358
division, theft from an elderly person or disabled adult is a 1359
felony of the fifth degree. If the value of the property or 1360
services stolen is five hundred dollars or more and is less than 1361
five thousand dollars, theft from an elderly person or disabled 1362
adult is a felony of the fourth degree. If the value of the 1363
property or services stolen is five thousand dollars or more and 1364
is less than twenty-five thousand dollars, theft from an elderly 1365
person or disabled adult is a felony of the third degree. If the 1366

value of the property or services stolen is twenty-five thousand 1367
dollars or more, theft from an elderly person or disabled adult is 1368
a felony of the ~~second~~ first degree. 1369

(4) If the property stolen is a firearm or dangerous 1370
ordnance, a violation of this section is grand theft, a felony of 1371
the fourth degree. 1372

(5) If the property stolen is a motor vehicle, a violation of 1373
this section is grand theft of a motor vehicle, a felony of the 1374
fourth degree. 1375

(6) If the property stolen is any dangerous drug, a violation 1376
of this section is theft of drugs, a felony of the fourth degree, 1377
or, if the offender previously has been convicted of a felony drug 1378
abuse offense, a felony of the third degree. 1379

Section 2. That existing sections 1701.831, 1707.01, 1707.08, 1380
1707.09, 1707.11, 1707.23, 1707.40, 1707.41, 1707.42, 1707.43, 1381
1707.44, and 2913.02 of the Revised Code are hereby repealed. 1382

Section 3. Section 1707.01 of the Revised Code is presented 1383
in this act as a composite of the section as amended by both S.B. 1384
32 and Sub. S.B. 108 of the 124th General Assembly. The General 1385
Assembly, applying the principle stated in division (B) of section 1386
1.52 of the Revised Code that amendments are to be harmonized if 1387
reasonably capable of simultaneous operation, finds that the 1388
composite is the resulting version of the section in effect prior 1389
to the effective date of the section as presented in this act. 1390