

As Introduced

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Cosponsors: Representatives Amstutz, Stebelton, Stinziano, Wachtmann

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A B I L L

To amend sections 1707.20 and 1707.37 and to enact 1
section 1707.191 of the Revised Code to permit the 2
Division of Securities to order the payment of 3
administrative assessments and investigatory 4
costs, and to issue consent orders, for violations 5
of the Securities Law and to make other changes to 6
that Law relative to the preparation and auditing 7
of financial statements. 8

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

Section 1. That sections 1707.20 and 1707.37 be amended and 9
section 1707.191 of the Revised Code be enacted to read as 10
follows: 11

Sec. 1707.191. (A) After notice and opportunity for a hearing 12
conducted in accordance with Chapter 119. of the Revised Code, the 13
division of securities may order the payment of an administrative 14
assessment of not more than ten thousand dollars for any violation 15
of sections 1707.01 to 1707.45 of the Revised Code or of any rule 16
adopted or order issued under those sections. Each violation shall 17
constitute a separate offense. In the case of a continuing 18
violation, each calendar day constitutes a separate offense. The 19

ordering of an administrative assessment pursuant to this division 20
does not preclude the exercise of any other remedy provided under 21
sections 1707.01 to 1707.45 of the Revised Code. 22

(B) In addition to or in lieu of ordering an administrative 23
assessment under division (A) of this section, the division may, 24
with respect to any person who has engaged in an act, practice, or 25
course of business constituting a violation of sections 1707.01 to 26
1707.45 of the Revised Code, do either or both of the following: 27

(1) Order the person to pay any investigatory and related 28
costs incurred by the division, including attorney's and witness 29
fees; 30

(2) Enter into and issue a consent order that compels the 31
person to do one or more of the following: 32

(a) Rescind the transaction related to the violation; 33

(b) Disgorge any assets acquired or profits made as a result 34
of the violation; 35

(c) Make restitution, which may include interest not to 36
exceed the criminal usury rate as defined in section 2905.21 of 37
the Revised Code. 38

(C) The division may refer to the attorney general for the 39
collection of any administrative assessment ordered pursuant to 40
division (A) of this section and may take any appropriate action 41
necessary to compel compliance with a consent order issued under 42
division (B) of this section. 43

(D) The ten-thousand-dollar limitation imposed under this 44
section on administrative assessments does not apply to any 45
settlement agreement entered into by the division with the person 46
who is the subject of a violation. 47

Sec. 1707.20. (A)(1) The division of securities may adopt, 48
amend, and rescind such rules, forms, and orders as are necessary 49

to carry out sections 1707.01 to 1707.45 of the Revised Code, 50
including rules and forms governing registration statements, 51
applications, and reports, and defining any terms, whether or not 52
used in sections 1707.01 to 1707.45 of the Revised Code, insofar 53
as the definitions are not inconsistent with these sections. For 54
the purpose of rules and forms, the division may classify 55
securities, persons, and matters within its jurisdiction, and 56
prescribe different requirements for different classes. 57

(2) Notwithstanding sections 121.71 to 121.76 of the Revised 58
Code, the division may incorporate by reference into its rules any 59
statute enacted by the United States congress or any rule, 60
regulation, or form promulgated by the securities and exchange 61
commission, or by another federal agency, in a manner that also 62
incorporates all future amendments to the statute, rule, 63
regulation, or form. 64

(B) No rule, form, or order may be made, amended, or 65
rescinded unless the division finds that the action is necessary 66
or appropriate in the public interest or for the protection of 67
investors, clients, prospective clients, state retirement systems, 68
or the workers' compensation system and consistent with the 69
purposes fairly intended by the policy and provisions of sections 70
1707.01 to 1707.45 of the Revised Code. In prescribing rules and 71
forms and in otherwise administering sections 1707.01 to 1707.45 72
of the Revised Code, the division may cooperate with the 73
securities administrators of the other states and the securities 74
and exchange commission with a view of effectuating the policy of 75
this section to achieve maximum uniformity in the form and content 76
of registration statements, applications, reports, and overall 77
securities regulation wherever practicable. 78

(C) The division may ~~by rule or order~~ prescribe: 79

(1) The form and content of financial statements required 80

under sections 1707.01 to 1707.45 of the Revised Code; 81

(2) The circumstances under which consolidated financial 82
statements will be filed; 83

(3) Whether any required financial statements shall be 84
~~certified~~ audited by independent ~~or~~ certified public accountants. 85
All financial statements shall be prepared in accordance with 86
generally accepted accounting practices principles and comply with 87
all other requirements specified by rule adopted or order issued 88
under sections 1707.01 to 1707.45 of the Revised Code. 89

(D) All rules and forms of the division shall be published; 90
and in addition to fulfilling the requirements of Chapter 119. of 91
the Revised Code, the division shall prescribe, and shall publish 92
and make available its rules regarding the sale of securities, the 93
administration of sections 1707.01 to 1707.45 of the Revised Code, 94
and the procedure and practice before the division. 95

(E)(1) No provision of sections 1707.01 to 1707.45 of the 96
Revised Code imposing any liability applies to any act done or 97
omitted in good faith in conformity with any rule, form, or order 98
of the division of securities, notwithstanding that the rule, 99
form, or order may later be amended or rescinded or be determined 100
by judicial or other authority to be invalid for any reason, 101
except that the issuance of an order granting effectiveness to a 102
registration under section 1707.09 or 1707.091 of the Revised Code 103
for the purposes of this division shall not be deemed an order 104
other than as the establishment of the fact of registration. 105

(2) No provision of sections 1707.01 to 1707.45 of the 106
Revised Code imposing any liability, penalty, sanction, or 107
disqualification applies to any act done or omitted in good faith 108
in conformity with either of the following: 109

(a) Any provision of sections 1707.01 to 1707.45 of the 110
Revised Code that incorporates by reference a federal statute, 111

rule, regulation, or form; 112

(b) Any rule, form, or order of the division that 113
incorporates by reference a federal statute, rule, regulation, or 114
form. 115

Division (E)(2) of this section applies notwithstanding that 116
the incorporation by reference, or any application of the 117
incorporated provision, is later determined by judicial or other 118
authority to be unconstitutional or invalid for any reason. 119

(F) The division shall, in accordance with Chapter 119. of 120
the Revised Code, adopt rules that set forth the criteria that 121
must be met in order to qualify for a hardship exemption from the 122
requirement that financial statements be audited. 123

Sec. 1707.37. (A) All fees and charges collected under this 124
chapter, including investigatory and related costs recovered 125
pursuant to section 1707.191 of the Revised Code, shall be paid 126
into the state treasury to the credit of the division of 127
securities fund, which is hereby created. All expenses of the 128
division of securities, other than those specified in division (B) 129
of this section, shall be paid from the fund. 130

The fund shall be assessed a proportionate share of the 131
administrative costs of the department of commerce in accordance 132
with procedures prescribed by the director of commerce and 133
approved by the director of budget and management. The assessments 134
shall be paid from the division of securities fund to the division 135
of administration fund. 136

If moneys in the division of securities fund are determined 137
by the director of budget and management and the director of 138
commerce to be in excess of those necessary to defray all the 139
expenses in any fiscal year, the director of budget and management 140
shall transfer the excess to the general revenue fund. 141

(B) There is hereby created in the state treasury the 142
division of securities investor education and enforcement expense 143
fund, which shall consist of all administrative assessments 144
collected pursuant to section 1707.191 of the Revised Code, money 145
received in settlement of any violation of this chapter, and any 146
cash transfers. Money in the fund shall be used to pay expenses of 147
the division of securities relating to education or enforcement 148
for the protection of securities investors and the public. The 149
division may adopt rules pursuant to section 1707.20 of the 150
Revised Code that establish what qualifies as such an expense. 151

Section 2. That existing sections 1707.20 and 1707.37 of the 152
Revised Code are hereby repealed. 153

Section 3. Section 1707.191 of the Revised Code, as enacted 154
by this act, applies only to violations that are committed on or 155
after the effective date of this act. 156