



Ohio Revised Code

Section 1349.34 Examination and investigation of records.

Effective: May 24, 2002

Legislation: House Bill 386 - 124th General Assembly

(A) As often as the superintendent of financial institutions considers it necessary, the superintendent may examine a person's records regarding covered loans. The superintendent may recover from the person any costs incurred in connection with and reasonably related to the examination.

(B) The superintendent may investigate alleged failures to comply with sections 1349.25 to 1349.36 of the Revised Code, or any rule adopted thereunder, or complaints concerning any such failure to comply. In conducting any investigation under this section, the superintendent may compel, by subpoena, witnesses to testify in relation to any matter over which the superintendent has jurisdiction and may require the production of any book, record, or other document pertaining to that matter. If a person fails to file any statement or report, obey any subpoena, give testimony, produce any book, record, or other document as required by a subpoena, or permit photocopying of any book, record, or other document subpoenaed, the court of common pleas of any county in this state, upon application made to it by the superintendent, shall compel obedience by attachment proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued from the court or a refusal to testify therein.

(C) Whenever it appears to the superintendent that a person has engaged in, is engaging in, or is about to engage in, any activity constituting a failure to comply with section 1349.26 or 1349.27 of the Revised Code, the superintendent may make application to the court of common pleas of any county in this state for an order enjoining any such activity. Upon a showing by the superintendent that a person has engaged in, is engaging in, or is about to engage in, any activity constituting a failure to comply with section 1349.26 or 1349.27 of the Revised Code, the court shall grant an injunction, restraining order, or other appropriate relief.

(D) Whenever it appears to the superintendent that a person has engaged in, is engaging in, or is about to engage in, any activity that may constitute a failure to comply with section 1349.26 or 1349.27 of the Revised Code, the superintendent, after notice and a hearing conducted in accordance with Chapter 119. of the Revised Code, may issue a cease and desist order. Such an order shall be



enforceable in any court of common pleas in this state.

(E) If a person that fails to comply with section 1349.26 or 1349.27 of the Revised Code is licensed, registered, or chartered by, or otherwise operates under the authority of, the superintendent, the superintendent may, in accordance with Chapter 119. of the Revised Code, suspend, revoke, or deny the renewal of such license, registration, charter, or other authority.

(F) If a person fails to comply with section 1349.26 or 1349.27 of the Revised Code, the superintendent may, in accordance with Chapter 119. of the Revised Code, impose a fine of not more than two thousand five hundred dollars per compliance failure. If the person fails to comply two or more times, the superintendent may, in accordance with Chapter 119. of the Revised Code, impose a fine of not more than five thousand dollars per compliance failure. If the person injured by the failure to comply is sixty-five years of age or older, the superintendent may double the amount of the fine.

An order to pay a fine pursuant to this division shall be enforceable in any court of common pleas in this state. All fines collected under this division shall be paid to the superintendent and shall be deposited by the superintendent into the state treasury to the credit of the consumer finance fund created under section 1321.21 of the Revised Code.

In determining the amount of a fine to be imposed under this division, the superintendent shall consider all of the following:

- (1) The seriousness of the conduct;
- (2) The person's good faith efforts to prevent the conduct;
- (3) The person's history regarding violations and compliance with the superintendent's orders;
- (4) The person's financial resources;
- (5) Any other matter the superintendent considers appropriate in enforcing sections 1349.26 and 1349.27 of the Revised Code.



The superintendent shall not impose a fine under this division if the superintendent has imposed or will impose a fine under another provision of the Revised Code for the same conduct.

(G)(1) The superintendent may take any of the actions set forth in this section with respect to any person other than a federally chartered financial institution or its operating subsidiaries. Whenever it appears to the superintendent that a federally chartered financial institution or its operating subsidiary has engaged in, is engaging in, or is about to engage in, any activity that may constitute a failure to comply with section 1349.26 or 1349.27 of the Revised Code, the superintendent may present any evidence of such activity to the institution's appropriate federal regulatory authority, along with any recommendations regarding the imposition of specific sanctions.

(2) Any action taken by the superintendent under this section shall be commenced within three years after the alleged compliance failure.

(H) The remedies available to the superintendent under this section are cumulative and concurrent, and the exercise of one remedy by the superintendent does not preclude or require the exercise of any other remedy.

(I) The remedies available to the superintendent under this section or to the appropriate federal regulatory authority, the right of rescission described in section 1349.29 of the Revised Code, and the criminal penalty provided in section 1349.31 of the Revised Code shall constitute the sole and exclusive remedies for any failure to comply with section 1349.26 or 1349.27 of the Revised Code.