



Ohio Revised Code

Section 1707.23 Division of securities - enforcement powers.

Effective: July 1, 2009

Legislation: House Bill 525 - 127th General Assembly

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 a dealer, a salesperson, an investment adviser, investment adviser representative, bureau of workers' compensation chief investment officer, or state retirement system investment officer 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:

(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 a dealer, a salesperson, an investment adviser, investment adviser representative, bureau of workers' compensation chief investment officer, or state retirement system investment officer within this state, and as to other information as it deems material or relevant thereto;

(B) Examine any investment adviser, investment adviser representative, state retirement system investment officer, bureau of workers' compensation chief investment officer, or any seller, dealer, salesperson, or issuer of any securities, and any of their agents, employees, partners, officers, directors, members, or shareholders, wherever located, under oath; and examine and produce records, books, documents, accounts, and papers as the division deems material or relevant to the inquiry;

(C) Require the attendance of witnesses, and the production of books, records, and papers, as are required either by the division or by any party to a hearing before the division, and for that purpose issue a subpoena for any witness, or a subpoena duces tecum to compel the production of any books, records, or papers. The subpoena shall be served by personal service or by certified mail, return



receipt requested. If the subpoena is returned because of inability to deliver, or if no return is received within thirty days of the date of mailing, the subpoena may be served by ordinary mail. If no return of ordinary mail is received within thirty days after the date of mailing, service shall be deemed to have been made. If the subpoena is returned because of inability to deliver, the division may designate a person or persons to effect either personal or residence service upon the witness. The person designated to effect personal or residence service under this division may be the sheriff of the county in which the witness resides or may be found or any other duly designated person. The fees and mileage of the person serving the subpoena shall be the same as those allowed by the courts of common pleas in criminal cases, and shall be paid from the funds of the division. Fees and mileage for the witness shall be determined under section 119.094 of the Revised Code, and shall be paid from the funds of the division upon request of the witness following the hearing.

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

(E) Require any dealers immediately to furnish to the division copies of prospectuses, circulars, or advertisements respecting securities that they publish or generally distribute, or require any investment advisers immediately to furnish to the division copies of brochures, advertisements, publications, analyses, reports, or other writings that they publish or distribute;

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

(G) Issue and cause to be served by certified mail upon all persons affected an order requiring the person or persons to cease and desist from the acts or practices appearing to the division to constitute violations of this chapter or rules adopted under this chapter by the division. The order shall state



specifically the section or sections of this chapter or the rule or rules adopted under this chapter by the division that appear to the division to have been violated and the facts constituting the violation. If after the issuance of the order it appears to the division that any person or persons affected by the order have engaged in any act or practice from which the person or persons shall have been required, by the order, to cease and desist, the director of commerce may apply to the court of common pleas of any county for, and upon proof of the validity of the order of the division, the delivery of the order to the person or persons affected, and of the illegality and the continuation of the acts or practices that are the subject of the order, the court may grant an injunction implementing the order of the division.

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

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