

Senate Bill 284

By: Senators Walker III of the 20th, Brass of the 6th, Kennedy of the 18th, Strickland of the 42nd, Summers of the 13th and others

AS PASSED SENATE

A BILL TO BE ENTITLED

AN ACT

1 To amend Chapter 5 of Title 10 of the Official Code of Georgia Annotated, the "Georgia
2 Uniform Securities Act of 2008," so as to authorize the issuance of orders by the
3 Commissioner of Securities directing persons who have violated certain securities provisions
4 to return to investors, customers, or clients sums paid in connection with securities
5 purchases; to provide for related matters; to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Chapter 5 of Title 10 of the Official Code of Georgia Annotated, the "Georgia Uniform
9 Securities Act of 2008," is amended by revising Code Section 10-5-73, relating to cease and
10 desist orders, denying, revoking, or conditioning exemptions for broker-dealers, and civil
11 penalties, as follows:

12 "10-5-73.

13 (a) If the Commissioner determines that a person has engaged, is engaging, or is about to
14 engage in an act, practice, or course of business constituting a violation of this chapter or
15 a rule adopted or order issued under this chapter or that a person has materially aided, is
16 materially aiding, or is about to materially aid an act, practice, or course of business

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17 constituting a violation of this chapter or a rule adopted or order issued under this chapter,
18 the Commissioner may:

19 (1) Issue an order directing the person to cease and desist from engaging in the act,
20 practice, or course of business or to take other action necessary or appropriate to comply
21 with this chapter;

22 (2) Issue an order denying, suspending, revoking, or conditioning the exemptions for a
23 broker-dealer under subparagraph (b)(1)(D) or (b)(1)(F) of Code Section 10-5-30 or an
24 investment adviser under subparagraph (b)(1)(C) of Code Section 10-5-32; ~~or~~

25 (3) Issue an order under Code Section 10-5-13; or

26 (4) Issue an order directing the person to return to investors, customers, or clients the
27 principal dollar amount of their securities purchases, as well as all moneys collected in
28 connection with those securities purchases, if the Commissioner determines that the
29 person has engaged or is engaging in an act, practice, or course of business constituting
30 a violation of Code Section 10-5-50, 10-5-51, or 10-5-54 or that the person has materially
31 aided or is materially aiding in an act, practice, or course of business constituting a
32 violation of Code Section 10-5-50, 10-5-51, or 10-5-54.

33 (b) An order under subsection (a) of this Code section is effective on the date of issuance.
34 Upon issuance of the order, the Commissioner shall promptly serve each person subject to
35 the order with a copy of the order and a notice that the order has been entered. The order
36 ~~must~~ shall include a statement whether the Commissioner will seek a civil penalty or costs
37 of the investigation, a statement of the reasons for the order, and notice that, within 30 days
38 after receipt of a request in a record from the person, the matter will be scheduled for a
39 hearing. If a person subject to the order does not request a hearing and none is ordered by
40 the Commissioner within 30 days after the date of service of the order, the order becomes
41 final as to that person by operation of law. If a hearing is requested or ordered, the
42 Commissioner, after notice of and opportunity for hearing to each person subject to the
43 order, may modify or vacate the order or extend it until final determination.

44 (c) If a hearing is requested or ordered pursuant to subsection (b) of this Code section, a
45 hearing ~~must~~ shall be held pursuant to the provisions of Chapter 13 of Title 50, the 'Georgia
46 Administrative Procedure Act' and this chapter. A final order ~~may~~ shall not be issued
47 unless the Commissioner makes findings of fact and conclusions of law in a record. The
48 final order may make final, vacate, or modify the order issued under subsection (a) of this
49 Code section.

50 (d) In a final order under subsection (c) of this Code section, the Commissioner may
51 impose a civil penalty up to \$50,000.00 for a single violation or up to \$500,000.00 for more
52 than one violation.

53 (e) In a final order under subsection (c) of this Code section, the Commissioner may
54 charge the actual cost of an investigation or proceeding for a violation of this chapter or a
55 rule adopted or order issued under this chapter.

56 (f) If a petition for judicial review of a final order is not filed in accordance with Code
57 Section 10-5-78, the Commissioner may file a certified copy of the final order with the
58 clerk of a court of competent jurisdiction. The order so filed has the same effect as a
59 judgment of the court and may be recorded, enforced, or satisfied in the same manner as
60 a judgment of the court.

61 (g) If a person does not comply with an order under this Code section, the Commissioner
62 may petition a court of competent jurisdiction to enforce the order. The court ~~may~~ shall
63 not require the Commissioner to post a bond in an action or proceeding under this Code
64 section. If the court finds, after service and opportunity for hearing, that the person was
65 not in compliance with the order, the court may adjudge the person in civil contempt of the
66 order. The court may impose a further civil penalty against the person for contempt in an
67 amount not less than \$5,000.00 but not greater than \$50,000.00 for each violation and may
68 grant any other relief the court determines is just and proper in the circumstances."

69

SECTION 2.

70 All laws and parts of laws in conflict with this Act are repealed.