

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

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 amend Part 10 of Article 6 of Chapter 2 of Title 20 of the Official Code of
6 Georgia Annotated, relating to capital outlay funds under the "Quality Basic Education Act,"
7 so as to provide for the award of low-wealth capital outlay grants to qualifying local school
8 systems that award certain contracts for roofing improvements to suppliers that meet certain
9 criteria; to provide for such criteria; to amend Chapter 91 of Title 36 of the Official Code of
10 Georgia Annotated, relating to public works bidding, so as to provide that certain contracts
11 for roofing improvements with suppliers that meet certain criteria shall be deemed to have
12 complied with notice and competitive award requirements for certain contracts; to provide
13 for such criteria; to provide for related matters; to provide for an effective date and
14 applicability; to repeal conflicting laws; and for other purposes.

15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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SECTION 1.

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

"10-5-73.

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

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

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

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

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

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

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

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

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

65 (f) If a petition for judicial review of a final order is not filed in accordance with Code
66 Section 10-5-78, the Commissioner may file a certified copy of the final order with the
67 clerk of a court of competent jurisdiction. The order so filed has the same effect as a

68 judgment of the court and may be recorded, enforced, or satisfied in the same manner as
69 a judgment of the court.

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

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SECTION 2.

79 Part 10 of Article 6 of Chapter 2 of Title 20 of the Official Code of Georgia Annotated,
80 relating to capital outlay funds under the "Quality Basic Education Act," is amended in Code
81 Section 20-2-262, relating to low-wealth capital outlay grants to local school systems and
82 criteria for eligibility, by redesignating subsection (g) as subsection (h) and by adding a new
83 subsection to read as follows:

84 "(g) Each local school system which meets the eligibility criteria in subsection (d) of this
85 Code section shall, upon utilizing a contract for the improvement of the roof of an existing
86 structure or building to a supplier approved by a cooperative purchasing organization and
87 designated by the Department of Administrative Services as an authorized source of supply
88 pursuant to subsection (i) of Code Section 36-91-21, receive low-wealth capital outlay
89 grants pursuant to this Code section for such roofing improvement, provided that such
90 improvement is included in the local school system's most recently approved local facilities
91 plan, as provide for in subsection (c) of this Code section."

92 **SECTION 3.**

93 Chapter 91 of Title 36 of the Official Code of Georgia Annotated, relating to public works
94 bidding, is amended in Code Section 36-91-2, relating to definitions, by revising
95 paragraph (12) as follows:

96 "(12) 'Public works construction' means the building, altering, repairing, improving, or
97 demolishing of any public structure or building or other public improvements of any kind
98 to any public real property other than those projects covered by Chapter 4 of Title 32 or
99 by Chapter 37 of Title 50. Such term ~~does~~ shall not include the routine operation, repair,
100 or maintenance of existing structures, buildings, or real property, or any energy savings
101 performance contract ~~or~~, any improvements or installations performed as part of an
102 energy savings performance contract, or any improvement of the roof of an existing
103 structure or building; provided, however, that such improvement to the roof of an existing
104 structure or building shall not include any ancillary items to be placed on such roof."

105 **SECTION 4.**

106 Said chapter is further amended in Code Section 36-91-21, relating to competitive award
107 requirements, by adding a new subsection to read as follows:

108 "(i) The notice and competitive award requirements of this chapter shall be deemed to have
109 been satisfied when a contract for the improvement of the roof of an existing structure or
110 building is awarded to a supplier approved by a cooperative purchasing organization and
111 designated by the Department of Administrative Services as an authorized source of
112 supply."

113 **SECTION 5.**

114 This Act shall become effective upon its approval by the Governor or upon its becoming law
115 without such approval and shall apply to all contracts entered into on or after the effective
116 date of this Act.

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SECTION 6.

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