



2009 ASSEMBLY BILL 529

October 27, 2009 - Introduced by Representatives HILGENBERG, HIXSON, ZIEGELBAUER, A. OTT, YOUNG, BERCEAU, POPE-ROBERTS, MILROY, SHERMAN, CULLEN, VRUWINK, JORGENSEN, HRAYCHUCK, MASON, PASCH, BENEDICT, CLARK, FIELDS, RICHARDS, BARCA, ZIGMUNT, SMITH, DANOU and GARTHWAITE, cosponsored by Senators WIRCH, MILLER, TAYLOR and SCHULTZ. Referred to Committee on Consumer Protection.

1 **AN ACT to amend** 551.604 (2) and 551.604 (4); and **to create** 551.508 (1m),
2 551.603 (4) and 551.604 (4m) of the statutes; **relating to:** violations of the
3 Wisconsin Uniform Securities Law and providing a penalty.

Analysis by the Legislative Reference Bureau

Current law includes numerous provisions prohibiting fraud, in various forms, in connection with securities transactions or the offering or sale of securities. These provisions include making any untrue statement of a material fact or omitting a material fact necessary to make a statement not misleading in connection with the offer, sale, or purchase of a security; engaging in market manipulation; publishing, circulating, or using false advertising; and making material false or misleading statements or misleading omissions in documents filed with the Division of Securities in the Department of Financial Institutions (division). Broker-dealers and investment advisers also may not engage in fraud or employ manipulative, deceptive, or fraudulent devices.

Under current law, a person who violates the state's securities laws may be subject to criminal liability or civil liability or both. A person who willfully violates the state's securities laws, with certain exceptions, is guilty of a Class H felony, punishable by a maximum fine of \$10,000 or a maximum term of imprisonment of six years or both. The division may refer violations for criminal prosecution to the attorney general or a district attorney. A person may also be subject to a civil enforcement proceeding for violating the state's securities laws. The division may bring a civil enforcement action in circuit court for securities law violations or may

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refer the matter to the attorney general or a district attorney to bring such an action. The division may also issue an order relating to securities law violations and, upon request, must conduct an administrative hearing on the order in which findings of fact and conclusions of law are recorded. In a civil enforcement proceeding, the court in a circuit court proceeding or the division in an administrative proceeding may impose a civil penalty of not more than \$5,000 for a single violation or not more than \$250,000 for more than one violation.

This bill creates a penalty enhancer for violations of the state's securities laws. If a person is convicted of a crime for violating the state's securities laws and the crime is committed against another person who is at least 65 years of age, for each such offense the maximum fine may be increased by not more than \$5,000 and the maximum term of imprisonment may be increased by not more than five years. In a civil enforcement proceeding, the court in a circuit court proceeding or the division in an administrative proceeding may impose a civil penalty of not more than \$10,000 for a single violation, or not more than \$500,000 for more than one violation, if the violation is against another person who is at least 65 years of age when the violation occurs. The fact that the defendant did not know the age of the victim, or reasonably believed the victim was not at least 65 years of age, is not a defense to this penalty enhancement.

Under current law, in a civil enforcement proceeding before the circuit court, the court may order a person who violates the state's securities laws to pay restitution, to disgorge profits, and to pay prejudgment and postjudgment interest, in addition to imposing a civil penalty. This bill allows the division, in an administrative civil enforcement proceeding, to also include in its orders the payment of restitution, the disgorgement of profits, and the payment of interest at the legal rate.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 551.508 (1m) of the statutes is created to read:
2 551.508 **(1m)** ENHANCEMENT OF PENALTIES. (a) If a person is convicted of a crime
3 under sub. (1) and the crime is committed against another person who is at least 65
4 years of age when the crime is committed, for each such offense the maximum fine
5 prescribed under sub. (1) may be increased by not more than \$5,000 and the

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1 maximum term of imprisonment prescribed under sub. (1) may be increased by not
2 more than 5 years.

3 (b) This subsection provides for the enhancement of the penalties applicable
4 for the underlying crime. The court shall direct that the trier of fact find a special
5 verdict as to the age of the victim at the time of the crime.

6 (c) It is no defense to the enhancement of penalties under this subsection that
7 the person convicted did not know the age of the victim or reasonably believed that
8 the victim was not at least 65 years of age.

9 **SECTION 2.** 551.603 (4) of the statutes is created to read:

10 551.603 (4) ENHANCEMENT OF CIVIL PENALTIES. (a) In any action under this
11 section, if the court imposes a civil penalty under sub. (2) (b) 3. for any violation
12 against another person who is at least 65 years of age when the violation occurs, for
13 each such violation the civil penalty prescribed under sub. (2) (b) 3. for a single
14 violation may be increased by not more than \$5,000 and the maximum civil penalty
15 for more than one violation may be increased by not more than \$250,000.

16 (b) This subsection provides for the enhancement of the civil penalties
17 applicable for any underlying violation. If the court is not the trier of fact, the court
18 shall direct that the trier of fact find a special verdict as to the age of any victim at
19 the time of the violation.

20 (c) It is no defense to the enhancement of civil penalties under this subsection
21 that the defendant did not know the age of the victim or reasonably believed that the
22 victim was not at least 65 years of age.

23 **SECTION 3.** 551.604 (2) of the statutes is amended to read:

24 551.604 (2) SUMMARY PROCESS. An order under sub. (1) is effective on the date
25 of issuance. Upon issuance of the order, the administrator shall promptly serve each

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1 person subject to the order with a copy of the order and a notice that the order has
2 been entered. The order must include a statement of any civil penalty, restitution,
3 disgorgement, interest, or costs of investigation the administrator will seek, a
4 statement of the reasons for the order, and notice that, within 15 days after receipt
5 of a request in a record from the person, the matter will be scheduled for a hearing.
6 If a person subject to the order does not request a hearing and none is ordered by the
7 administrator within 30 days after the date of service of the order, the order,
8 including the imposition of a civil penalty or requirement for payment of restitution,
9 disgorgement, interest, or the costs of investigation sought in a statement in the
10 order, becomes final as to that person by operation of law. If a hearing is requested
11 or ordered, the administrator, after notice of and opportunity for hearing to each
12 person subject to the order, may modify or vacate the order or extend it until final
13 determination.

14 **SECTION 4.** 551.604 (4) of the statutes is amended to read:

15 551.604 (4) CIVIL PENALTY. In a final order under sub. (3), the administrator
16 may impose a civil penalty in the form of an administrative assessment up to \$5,000
17 for a single violation or up to \$250,000 for more than one violation except that, if the
18 violation is committed against another person who is at least 65 years of age when
19 the violation occurs, for each such violation the civil penalty may be up to \$10,000
20 for a single violation or up to \$500,000 for more than one violation. It is no defense
21 to the enhancement of civil penalties under this subsection that the defendant did
22 not know the age of the victim or reasonably believed that the victim was not at least
23 65 years of age.

24 **SECTION 5.** 551.604 (4m) of the statutes is created to read:

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1 551.604 (**4m**) RESTITUTION, DISGORGEMENT, AND INTEREST. In a final order under
 2 sub. (3), in addition to any civil penalty under sub. (4) or costs under sub. (5), the
 3 administrator may order a person subject to the order to do any of the following:

4 (a) Pay restitution to any person suffering loss as a result of the violation.

5 (b) Disgorge any profits received as a result of the violation.

6 (c) Pay interest at the legal rate under s. 138.04 from the date of the violation.

7 **SECTION 6. Initial applicability.**

8 (1) This act first applies to violations committed on the effective date of this
 9 subsection, but does not preclude the counting of other violations as prior violations
 10 for purposes of sentencing a person.

11 **(END)**