

SENATE BILL 830

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II

2000 Regular Session
Olr2970
CF HB 727

By: **Senators Sfikas, Dorman, Conway, Pinsky, Hughes, Teitelbaum, and Della**

Introduced and read first time: February 18, 2000

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Commissioner of Financial Regulation - Investigative and Enforcement**
3 **Powers**

4 FOR the purpose of providing that the investigative and enforcement powers of the
5 Commissioner of Financial Regulation authorized under this Act are in addition
6 to any investigative or enforcement powers of the Commissioner authorized
7 under any other provision of law; beginning in fiscal year 2001, requiring the
8 Governor to appropriate in each fiscal year to the Division of Financial
9 Regulation to fund the positions necessary to implement the investigative and
10 enforcement powers authorized under this Act; authorizing the Commissioner to
11 make investigations under certain circumstances to determine whether a person
12 has violated or is about to violate a provision of law, regulation, rule, or order
13 over which the Commissioner has jurisdiction; authorizing the Commissioner to
14 administer oaths, subpoena witnesses, compel the attendance of witnesses, take
15 evidence, and require the production of certain documents for the purpose of an
16 investigation or inquiry under certain circumstances; limiting the right of a
17 person not to testify or produce documents under order of the Commissioner
18 under certain circumstances; authorizing the Commissioner to issue a summary
19 cease and desist order for a certain violation prior to a hearing under certain
20 circumstances; authorizing the Commissioner to take certain actions for a
21 certain violation after a certain notice and hearing under certain circumstances;
22 requiring the Commissioner to consider certain factors in determining the
23 amount of a financial penalty for a certain violation under certain
24 circumstances; authorizing the Commissioner to bring certain actions to obtain
25 certain remedies under certain circumstances; and generally relating to the
26 investigative and enforcement powers of the Commissioner of Financial
27 Regulation.

28 BY adding to
29 Article - Financial Institutions
30 Section 2-113 through 2-116, inclusive
31 Annotated Code of Maryland
32 (1998 Replacement Volume and 1999 Supplement)

1 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
2 MARYLAND, That the Laws of Maryland read as follows:

3 **Article - Financial Institutions**

4 2-113.

5 (A) THE INVESTIGATIVE AND ENFORCEMENT POWERS OF THE
6 COMMISSIONER AUTHORIZED UNDER THIS SUBTITLE ARE IN ADDITION TO ANY
7 INVESTIGATIVE OR ENFORCEMENT POWERS OF THE COMMISSIONER AUTHORIZED
8 UNDER ANY OTHER PROVISION OF LAW.

9 (B) BEGINNING IN FISCAL YEAR 2001, THE GOVERNOR SHALL APPROPRIATE IN
10 EACH FISCAL YEAR TO THE DIVISION OF FINANCIAL REGULATION TO FUND THE
11 POSITIONS NECESSARY TO IMPLEMENT THE INVESTIGATIVE AND ENFORCEMENT
12 POWERS AUTHORIZED UNDER THIS SUBTITLE.

13 2-114.

14 (A) THE COMMISSIONER MAY:

15 (1) MAKE PUBLIC OR PRIVATE INVESTIGATIONS WITHIN OR OUTSIDE OF
16 THIS STATE AS THE COMMISSIONER CONSIDERS NECESSARY TO:

17 (I) DETERMINE WHETHER A PERSON HAS VIOLATED OR IS ABOUT
18 TO VIOLATE A PROVISION OF LAW, REGULATION, RULE, OR ORDER OVER WHICH THE
19 COMMISSIONER HAS JURISDICTION; OR

20 (II) AID IN THE ENFORCEMENT OF A LAW OR IN THE PRESCRIBING
21 OF REGULATIONS, RULES, AND ORDERS OVER WHICH THE COMMISSIONER HAS
22 JURISDICTION;

23 (2) REQUIRE OR PERMIT A PERSON TO FILE A STATEMENT IN WRITING,
24 UNDER OATH OR OTHERWISE AS THE COMMISSIONER DETERMINES, AS TO ALL THE
25 FACTS AND CIRCUMSTANCES CONCERNING THE MATTER TO BE INVESTIGATED; AND

26 (3) PUBLISH INFORMATION CONCERNING A VIOLATION OF A LAW,
27 REGULATION, RULE, OR ORDER OVER WHICH THE COMMISSIONER HAS
28 JURISDICTION.

29 (B) FOR THE PURPOSE OF AN INVESTIGATION OR PROCEEDING, THE
30 COMMISSIONER OR AN OFFICER DESIGNATED BY THE COMMISSIONER MAY
31 ADMINISTER OATHS AND AFFIRMATIONS, SUBPOENA WITNESSES, COMPEL THEIR
32 ATTENDANCE, TAKE EVIDENCE, AND REQUIRE THE PRODUCTION OF BOOKS, PAPERS,
33 CORRESPONDENCE, MEMORANDA, AGREEMENTS, OR OTHER DOCUMENTS OR
34 RECORDS WHICH THE COMMISSIONER CONSIDERS RELEVANT OR MATERIAL TO THE
35 INQUIRY.

36 (C) (1) IN CASE OF CONTUMACY BY OR REFUSAL TO OBEY A SUBPOENA
37 ISSUED TO A PERSON, THE CIRCUIT COURT OF THE COUNTY IN WHICH THE PERSON

1 RESIDES OR TRANSACTS BUSINESS, ON APPLICATION BY THE COMMISSIONER, MAY
2 ISSUE TO THE PERSON AN ORDER REQUIRING THE PERSON TO APPEAR BEFORE THE
3 COMMISSIONER OR THE OFFICER DESIGNATED BY THE COMMISSIONER TO PRODUCE
4 DOCUMENTARY EVIDENCE IF SO ORDERED OR TO GIVE EVIDENCE TOUCHING THE
5 MATTER UNDER INVESTIGATION OR IN QUESTION.

6 (2) FAILURE TO OBEY THE ORDER OF THE COURT MAY BE PUNISHED BY
7 THE COURT AS A CONTEMPT OF COURT.

8 (D) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, A PERSON IS NOT
9 EXCUSED FROM ATTENDING AND TESTIFYING OR FROM PRODUCING A DOCUMENT
10 OR RECORD BEFORE THE COMMISSIONER, OR IN OBEDIENCE TO THE SUBPOENA OF
11 THE COMMISSIONER OR AN OFFICER DESIGNATED BY THE COMMISSIONER, OR IN A
12 PROCEEDING INSTITUTED BY THE COMMISSIONER, ON THE GROUND THAT THE
13 TESTIMONY OR EVIDENCE, DOCUMENTARY OR OTHERWISE, REQUIRED OF THE
14 PERSON MAY TEND TO INCRIMINATE THE PERSON OR SUBJECT THE PERSON TO A
15 PENALTY OR FORFEITURE.

16 (2) AN INDIVIDUAL MAY NOT BE PROSECUTED OR SUBJECTED TO A
17 PENALTY OR FORFEITURE FOR OR ON ACCOUNT OF A SPECIFIC SUBJECT
18 CONCERNING WHICH THE INDIVIDUAL IS COMPELLED, AFTER CLAIMING THE
19 INDIVIDUAL'S PRIVILEGE AGAINST SELF-INCRIMINATION AS TO THAT SPECIFIC
20 SUBJECT, TO TESTIFY OR PRODUCE EVIDENCE, DOCUMENTARY OR OTHERWISE,
21 EXCEPT THAT THE INDIVIDUAL TESTIFYING IS NOT EXEMPT FROM PROSECUTION
22 AND PUNISHMENT FOR PERJURY OR CONTEMPT COMMITTED IN TESTIFYING.

23 2-115.

24 (A) WHEN THE COMMISSIONER DETERMINES THAT A PERSON HAS ENGAGED
25 OR IS ABOUT TO ENGAGE IN AN ACT OR PRACTICE CONSTITUTING A VIOLATION OF A
26 LAW, REGULATION, RULE OR ORDER OVER WHICH THE COMMISSIONER HAS
27 JURISDICTION, AND THAT IMMEDIATE ACTION AGAINST THE PERSON IS IN THE
28 PUBLIC INTEREST, THE COMMISSIONER MAY IN THE COMMISSIONER'S DISCRETION
29 ISSUE, WITHOUT A PRIOR HEARING, A SUMMARY ORDER DIRECTING THE PERSON TO
30 CEASE AND DESIST FROM ENGAGING IN THE ACTIVITY, PROVIDED THAT THE
31 SUMMARY CEASE AND DESIST ORDER GIVES THE PERSON:

32 (1) NOTICE OF THE OPPORTUNITY FOR A HEARING BEFORE THE
33 COMMISSIONER TO DETERMINE WHETHER THE SUMMARY CEASE AND DESIST
34 ORDER SHOULD BE VACATED, MODIFIED, OR ENTERED AS FINAL; AND

35 (2) NOTICE THAT THE SUMMARY CEASE AND DESIST ORDER WILL BE
36 ENTERED AS FINAL IF THE PERSON DOES NOT REQUEST A HEARING WITHIN 15 DAYS
37 OF RECEIPT OF THE SUMMARY CEASE AND DESIST ORDER.

38 (B) WHEN THE COMMISSIONER DETERMINES AFTER NOTICE AND A HEARING
39 IN ACCORDANCE WITH THE ADMINISTRATIVE PROCEDURES ACT, UNLESS THE RIGHT
40 TO NOTICE AND A HEARING IS WAIVED, THAT A PERSON HAS ENGAGED IN AN ACT OR
41 PRACTICE CONSTITUTING A VIOLATION OF A LAW, REGULATION, RULE OR ORDER
42 OVER WHICH THE COMMISSIONER HAS JURISDICTION, THE COMMISSIONER MAY IN

1 THE COMMISSIONER'S DISCRETION AND IN ADDITION TO TAKING ANY OTHER
2 ACTION AUTHORIZED BY LAW:

- 3 (1) ISSUE A FINAL CEASE AND DESIST ORDER AGAINST THE PERSON;
- 4 (2) SUSPEND OR REVOKE THE LICENSE OF THE PERSON;
- 5 (3) ISSUE A PENALTY ORDER AGAINST THE PERSON IMPOSING A CIVIL
6 PENALTY UP TO THE MAXIMUM AMOUNT OF \$1,000 FOR A FIRST VIOLATION AND A
7 MAXIMUM AMOUNT OF \$5,000 FOR A SUBSEQUENT VIOLATION; OR
- 8 (4) TAKE ANY COMBINATION OF THE ACTIONS SPECIFIED IN THIS
9 SUBSECTION.

10 (C) IN DETERMINING THE AMOUNT OF FINANCIAL PENALTY TO BE IMPOSED
11 UNDER SUBSECTION (B) OF THIS SECTION, THE COMMISSIONER SHALL CONSIDER
12 THE FOLLOWING FACTORS:

- 13 (1) THE SERIOUSNESS OF THE VIOLATION;
- 14 (2) THE GOOD FAITH OF THE VIOLATOR;
- 15 (3) THE VIOLATOR'S HISTORY OF PREVIOUS VIOLATIONS;
- 16 (4) THE DELETERIOUS EFFECT OF THE VIOLATION ON THE PUBLIC AND
17 THE INDUSTRY INVOLVED;
- 18 (5) THE ASSETS OF THE VIOLATOR; AND
- 19 (6) ANY OTHER FACTORS RELEVANT TO THE DETERMINATION OF THE
20 FINANCIAL PENALTY.

21 2-116.

22 (A) WHEN IT APPEARS TO THE COMMISSIONER THAT A PERSON IS ABOUT TO
23 ENGAGE IN AN ACT OR PRACTICE CONSTITUTING A VIOLATION OF A LAW,
24 REGULATION, RULE, OR ORDER OVER WHICH THE COMMISSIONER HAS
25 JURISDICTION, THE COMMISSIONER MAY BRING AN ACTION TO OBTAIN ONE OR
26 MORE OF THE FOLLOWING REMEDIES:

- 27 (1) A TEMPORARY RESTRAINING ORDER; OR
- 28 (2) A TEMPORARY OR PERMANENT INJUNCTION.

29 (B) WHEN IT APPEARS TO THE COMMISSIONER THAT A PERSON HAS ENGAGED
30 IN AN ACT OR PRACTICE CONSTITUTING A VIOLATION OF A LAW, REGULATION, RULE,
31 OR ORDER OVER WHICH THE COMMISSIONER HAS JURISDICTION, THE
32 COMMISSIONER MAY BRING AN ACTION TO OBTAIN ONE OR MORE OF THE
33 FOLLOWING REMEDIES:

- 34 (1) A TEMPORARY RESTRAINING ORDER;

- 1 (2) A TEMPORARY OR PERMANENT INJUNCTION;
- 2 (3) A CIVIL PENALTY UP TO A MAXIMUM AMOUNT OF \$1,000 FOR A FIRST
3 VIOLATION AND A MAXIMUM AMOUNT OF \$5,000 FOR A SUBSEQUENT VIOLATION;
- 4 (4) A DECLARATORY JUDGMENT;
- 5 (5) AN ORDER PREVENTING ACCESS TO THE VIOLATOR'S ASSETS;
- 6 (6) RESCISSION;
- 7 (7) RESTITUTION; AND
- 8 (8) ANY OTHER RELIEF AS THE COURT DEEMS JUST.

9 (C) THE COMMISSIONER MAY NOT BE REQUIRED TO POST A BOND IN AN
10 ACTION UNDER THIS SECTION.

11 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
12 June 1, 2000.