Ohio | Department of Commerce

Mike DeWine, Governor
Jon Husted, Lt. Governor

Sheryl Maxfield, Director

To: Chairman McColley and members of the Senate Transportation, Commerce, and Workforce Committee

From: Sheryl Maxfield, Director, Ohio Department of Commerce

Date: December 15, 2020

Re: Sub. House Bill 263 - Division of Securities

HB 263 was amended on December 09, 2020 to allow a state licensing authority to consider a conviction of judicial finding of guilt of, or plea of guilty to a disqualifying offense that involved a breach of fiduciary duty within ten years from date of application when deciding whether an individual is disqualified from receiving an initial license. The Division of Securities greatly appreciates the committee's commitment to ensuring qualified professionals in fiduciary responsibilities to be licensed, however, the division believes that even with the added ten-year provision, the language would still allow individuals to be licensed who have harmed or will harm the citizens of Ohio.

Securities professionals are fiduciaries who stand in a special position of trust and confidence with their customers. A securities applicant's reputation for "honesty, integrity, and competence in business and personal dealings" is very much the cornerstone for securities licensure. Thousands of Ohio families have lost hundreds of millions of dollars to individuals as the result of theft and securities laws violations. Whether it is the 169 victims that lost $20 million to John Ulmer in Toledo, nearly a thousand who lost $60 million in Cleveland to Joanne Schneider, the 480 Dayton-area victims of William and Connie Apostelos who lost around $30 million, or the more than 5,000 victims in the $250 million Fair Finance fraud in Akron, the crimes are still being felt by the victims' families and those communities today. HB263 would grant presumptive licensure to many of these individuals if enacted without exempting securities licenses.

Statistically, 48.3% of person convicted of federal white-collar crimes such as antitrust offenses, securities fraud, mail and wire fraud, false claims and statements, credit fraud, bank embezzlement, tax fraud, and bribery are repeat offenders. Those who are sentenced to prison, if given the opportunity, are more likely to recidivate than those who are not.

The Division consistently sees cases involving individuals with criminal histories who went on to engage in fraud or other violations in the sale of securities after they were convicted and completed the sentences imposed. Recent examples of individuals that would currently qualify for a license under the current language:

- In Tuscarawas County, Keith Elsesser, who had a prior federal criminal conviction for conspiracy to commit wire and mail fraud and money laundering. After serving his prison sentence starting in 2002, Mr. Elsesser went on to defraud two Ohioans, one of whom was a recent widow, of over $91,000.
- Thomas Gilmartin, who had prior federal criminal conviction for securities fraud and money laundering who went on to engage in further fraud in the sale of securities after serving his sentence.
- William Baker, an individual with a prior federal and state convictions for drug trafficking and drug related offenses and a state conviction for unlawful carrying of a weapon, who went on to engage in a fraudulent scheme to sell oil and gas securities to Ohio residents.
- Malik Akbar, and an individual with prior criminal convictions for tax fraud and healthcare fraud who went on to cold-call Ohio residents to invest in a promissory note scheme offering returns between 15-20%.

Under current law, applicants with criminal offenses are not automatically barred from securities licensure but are reviewed on a case-by-case basis. This allows the Division to utilize the agency's existing process and the factors in OAC 1301:6-3-19(D) to demonstrate rehabilitation or explain how the underlying conviction does not interfere with their ability to perform the duties of a securities professional.

Currently as drafted, the Division will lose the ability to have an in-depth review of candidates and will have to allow anyone who qualifies for the minimal standards after the ten-year look back to be licensed. When it comes to matters of the publics personal finances and trust, coupled with the high recidivism rates of financial crimes, the Division believes that this is a potentially dangerous practice. To ensure the licensure of safe and professional applicants, the Division of Securities recommends maintaining the current standard of licensure review.

If there are questions or comments please contact Sr. Legislative Liaison, Jonithon LaCross, at jonithon.lacross@com.state.oh.us, or 614-420-0161.

Sheryl Maxfield
Director

Ohio Department of Commerce
Division of Administration