



Ohio Revised Code Section 1121.35 Civil penalty.

Effective: January 1, 1997

Legislation: House Bill 538 - 121st General Assembly

(A) The superintendent of financial institutions may assess civil penalties against a bank, trust company, or, in relation to matters concerning a state bank, foreign bank, or trust company, a regulated person for each day a violation, unsafe or unsound practice, or breach continues as follows:

(1) The superintendent may assess a civil penalty of not more than five thousand dollars per day if the bank, trust company, or regulated person violates any of the following:

(a) Any law or rule;

(b) Any order issued pursuant to any of section 1121.32, 1121.33, 1121.34, or 1121.41 of the Revised Code;

(c) Any condition imposed in writing by the superintendent in connection with granting any application or notice that is subject to the superintendent's approval or an opportunity for the superintendent to disapprove or other request by the bank, trust company, or regulated person;

(d) A written agreement between the bank, trust company, or regulated person and the superintendent.

(2) The superintendent may assess a civil penalty of not more than twenty-five thousand dollars per day if both of the following apply:

(a) The bank, trust company, or regulated person does any of the following:

(i) Commits any violation listed in division (A)(1) of this section;

(ii) Recklessly engages in an unsafe or unsound practice;



(iii) Breaches any fiduciary duty.

(b) The violation, unsafe or unsound practice, or breach is any of the following:

(i) Part of a pattern of misconduct;

(ii) Causes or is likely to cause more than a minimal loss to the bank or trust company;

(iii) Results in pecuniary gain or other benefit to the regulated person.

(3) The superintendent may assess a civil penalty of not more than one hundred thousand dollars per day or, in the case of a bank or trust company, the lesser of one per cent of the assets of the bank or trust company or one hundred thousand dollars per day if both of the following apply:

(a) The bank, trust company, or regulated person knowingly does any of the following:

(i) Commits any violation listed in division (A)(1) of this section;

(ii) Engages in an unsafe or unsound practice;

(iii) Breaches any fiduciary duty.

(b) By reason of the violation, unsafe or unsound practice, or breach, the bank, trust company, or regulated person knowingly or recklessly causes either:

(i) Substantial loss to the bank or trust company;

(ii) Substantial pecuniary benefit to the regulated person.

(B) The notice of assessment of a civil penalty shall include all of the following:

(1) A statement of the violation or violations or unsafe or unsound practice or practices or breach or breaches alleged;



(2) A statement of the facts supporting the assessment of the civil penalty;

(3) Notice that the bank, trust company, or regulated person is entitled to a hearing, in accordance with section 1121.38 of the Revised Code to determine whether a civil penalty should be assessed against the bank, trust company, or regulated person, if the bank, trust company, or regulated person requests the hearing within thirty days of service of the notice of assessment of a civil penalty;

(4) Notice that, if the bank, trust company, or regulated person makes a timely request for a hearing, the bank, trust company, or regulated person may appear at the hearing in person, by attorney, or by presenting positions, arguments, and contentions in writing, and at the hearing may present evidence and examine witnesses for and against the bank, trust company, or regulated person;

(5) Notice that failure of the bank, trust company, or regulated person to make a timely request for a hearing to determine whether a civil penalty should be assessed against the bank, trust company, or regulated person, or to appear at the hearing, in person, by attorney, or by writing, is consent by the bank, trust company, or regulated person to the assessment of the civil penalty.

(C) The superintendent may assess a civil penalty if either of the following applies:

(1) The bank, trust company, or regulated person consents to the assessment of the civil penalty;

(2) Upon the record of the hearing the superintendent finds a violation, unsafe or unsound practice, or breach has been established.

(D) In determining the amount of the civil penalty to be assessed, the superintendent shall consider all of the following:

(1) The seriousness of and the risk posed by the violation, unsafe or unsound practice, or breach;

(2) The bank's, trust company's, or regulated person's good faith efforts to prevent the violation, unsafe or unsound practice, or breach;



(3) The bank's, trust company's, or regulated person's history regarding violations, unsafe or unsound practices, and breaches;

(4) The bank's, trust company's, or regulated person's financial resources;

(5) Any other matters justice may require.

(E) A regulated person is personally liable for the payment of any civil penalty the regulated person is assessed pursuant to this section. No bank or trust company of which a regulated person is a director, officer, employee, or controlling shareholder, or in the conduct of the affairs of which the regulated person participated, shall pay or cause to be paid on behalf of the regulated person, or indemnify or otherwise reimburse the regulated person for paying, any civil penalty assessed against the regulated person.

(F) Any bank, trust company, or regulated person assessed a civil penalty pursuant to this section shall pay the civil penalty to the superintendent, and the superintendent shall deposit any civil penalty paid into the state treasury to the credit of the general revenue fund.