



## WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

**2009 Wisconsin Act 196**  
[2009 Assembly Bill 529]

**Violations of Wisconsin Uniform  
Securities Law**

### **CURRENT LAW**

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.

- **Criminal.** 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.
- **Civil.** A person may also be subject to a civil enforcement proceeding for violating the state's securities laws. The division may: (1) bring a civil enforcement action in circuit court for securities law violations; or (2) 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

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This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature's Web site at: <http://www.legis.state.wi.us/>.

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.

### **2009 WISCONSIN ACT 196**

2009 Wisconsin Act 196 **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 post judgment interest, in addition to imposing a civil penalty. 2009 Wisconsin Act 196 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.**

**Effective date:** 2009 Wisconsin Act 196 took effect on May 6, 2010. The Act first applies to violations committed on the effective date, but does not preclude the counting of other violations as prior violations for the purposes of sentencing a person.

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DLS:jal