

PENNSYLVANIA SECURITIES ACT OF 1972 - COMMISSION TO PETITION FOR
ESCROW OF EXTRAORDINARY PAYMENTS BY ISSUERS IN CERTAIN CIRCUMSTANCES
Act of Nov. 23, 2004, P.L. 922, No. 127 Cl. 70
Session of 2004
No. 2004-127

HB 553

AN ACT

Amending the act of December 5, 1972 (P.L.1280, No.284), entitled "An act relating to securities; prohibiting fraudulent practices in relation thereto; requiring the registration of broker-dealers, agents, investment advisers, and securities; and making uniform the law with reference thereto," authorizing the commission to petition for the escrow of extraordinary payments by issuers in certain circumstances.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. The act of December 5, 1972 (P.L.1280, No.284), known as the Pennsylvania Securities Act of 1972, is amended by adding a section to read:

Section 515. Temporary Freeze Authority.--(a) Whenever, during the course of a lawful investigation involving possible violations of this act or rule or order issued thereunder by an issuer that is not subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. §§ 78m and 78o(d)) or any of its directors, officers, partners, controlling persons, agents or employees, it shall appear to the commission that it is likely that the issuer will make extraordinary payments, whether compensation or otherwise, to any such persons, the commission may petition the Commonwealth Court or any court of common pleas for a temporary order requiring the issuer to escrow, subject to court supervision, those payments in an interest-bearing account for forty-five days. A temporary order may be issued and entered under this subsection only after notice and opportunity for hearing unless the court determines that notice and hearing prior to entry of the order would be impracticable or contrary to the public interest.

(b) A temporary order issued under subsection (a) shall:

(i) become effective immediately;
(ii) be served upon the parties subject to it; and
(iii) be effective and enforceable for forty-five days unless set aside, limited or suspended by a court of competent jurisdiction and may be extended by the court upon good cause shown for not longer than forty-five additional days, provided that the combined period of the order shall not exceed ninety days.

(c) If the issuer or other person described in subsection (a) is charged with a violation of this act or rule or order issued under this act before the expiration of the effective period of a temporary order as set forth in subsection (b), including any applicable extension period, the order shall remain in effect, subject to court approval, until the conclusion of any legal proceedings related thereto, and the affected issuer or other person shall have the right to petition the court for review of the order.

(d) If the issuer or other person described in subsection (a) is not charged with a violation of this act or rule or order issued under this act before the expiration of the effective period of a

temporary order as set forth in subsection (b), including any applicable extension period, the escrow shall terminate at the expiration of the forty-five-day effective period or the expiration of any extension period, as applicable, and the disputed payments with accrued interest shall be returned to the issuer or other affected person.

(e) This section shall not apply to an issuer or director, officer, partner, controlling person, agent or employe of an issuer that has not more than one hundred equity security holders.

Section 2. This act shall take effect in 60 days.

APPROVED--The 23rd day of November, A. D. 2004.

EDWARD G. RENDELL