

West's Tennessee Code Annotated
Title 48. Corporations and Associations
Securities
Chapter 1. Securities
Part 1. Tennessee Securities Act of 1980

T. C. A. § 48-1-118
Formerly cited as TNSTS48-2-118

§ 48-1-118. Investigations; subpoenas; compelling testimony; hearings

Effective: July 9, 2012
[Currentness](#)

(a)(1) The commissioner, in the commissioner's discretion, may:

(A) Make such public or private investigations within or outside of this state as the commissioner deems necessary to determine whether or not any person has violated or is about to violate any provision of this part or any rule, regulation, or order hereunder, or to aid in the enforcement of this part, or in the prescribing of rules hereunder;

(B) Require or permit any person to file a statement in writing, under oath or otherwise as the commissioner determines, as to all the facts and circumstances concerning the matter to be investigated; and

(C) Publish information concerning any violation of this part or any rule or order hereunder.

(2) All investigations conducted under this subsection (a) shall be commenced by an order of the commissioner, specifying the specific provision or provisions of this part which may have been or may be about to be violated and the basis for such investigation. Upon request, such order shall be made available to any person named in such order as being investigated.

(b)(1) For the purpose of conducting any investigation as provided in this section, the commissioner has the power to administer oaths, to call any party to testify under oath at such investigations, to require the attendance of witnesses, the production of books, records, and papers, and to take the depositions of witnesses.

(2) For such purposes, the commissioner is authorized to issue a subpoena for any witness or a subpoena duces tecum to compel the production of any books, records or papers. These subpoenas may be served by registered mail, return receipt requested, to the addressee's business mailing address, or by such personnel of the department of commerce and insurance as the commissioner may designate, or shall be directed for service to the sheriff of the county where such witness resides or is found or where such person in custody of any books, records, or papers resides or is found.

(c) In case of a refusal to obey a subpoena issued to any person under subsection (b), any circuit or chancery court of this state within the jurisdiction in which the person refusing to obey the subpoena is found or resides may issue to such person, upon application by the commissioner, an order requiring such person to appear before the court to show cause why the person

should not be held in contempt for refusal to obey the subpoena. Failure to obey a subpoena may be punished by the court as a contempt of court.

(d)(1) The commissioner may, with the written approval of the attorney general and reporter, issue to any person who has been or may be called to a hearing or other proceeding under this part, a written order requiring the individual to give testimony or provide other information which the person refuses to give or provide on the basis of the person's privilege against self-incrimination. Such order shall be issued only if the commissioner finds that:

(A) The testimony or other information from such individual may be in the public interest; and

(B) Such individual has refused or is likely to refuse to testify or provide other information on the basis of the individual's privilege against self-incrimination.

(2) Whenever any witness refuses, on the basis of the witness's privilege against self-incrimination, to testify or provide other information at any hearing or other proceeding under this part, and the person presiding over the proceeding delivers to the witness a written order issued under subdivision (d)(1), the witness may not refuse to comply with the order on the basis of the witness's privilege against self-incrimination; but no testimony or other information compelled under the order as to which the witness could validly assert the privilege against self-incrimination (or any information directly or indirectly derived from such testimony or other information) may be used against the witness in any criminal case, except a prosecution for perjury, false swearing, giving a false statement to the commissioner pursuant to this part, or otherwise failing to comply with the order.

(e)(1) In the case of any investigation conducted under this section, the commissioner may hold hearings, or may appoint an investigative agent to conduct such hearings who shall have the same powers and authority in conducting such hearings as are in this section granted to the commissioner. The agent shall be possessed of such qualifications as the commissioner may require.

(2) A transcript of the testimony and evidence and objections resulting from such hearings shall be taken, unless waived in writing by all parties present at such hearings. Copies of such transcript shall be available to all parties present at the hearing (to the extent of their testimony if a private hearing) upon payment of a reasonable fee for reproducing such transcript.

(3) All recommendations of the investigative agent shall be advisory only and shall not have the effect of an order of the commissioner.

(f) In any case where hearings are conducted by an investigative agent, such agent shall submit to the commissioner a written report which shall include a transcript of the testimony in evidence (if requested by the commissioner), findings of fact, and a recommendation of the action to be taken by the commissioner with reasons therefor. The recommendation of such agent shall be approved, modified, or disapproved by the commissioner. The commissioner may direct an investigative agent to take additional testimony or permit the introduction of further documentary evidence.

(g) In addition to any other hearings and investigations which the commissioner is authorized or required by this part to conduct, the commissioner is also authorized to hold general investigative hearings on the commissioner's own motion with respect to any matter under this part. A general investigative hearing as provided for herein may be conducted by any person designated by the commissioner for that purpose and may, but need not be, transcribed by the commissioner or by any other interested party. No formal action may be taken as a result of such investigative hearing, but the commissioner may take such action as

the commissioner deems appropriate, based on the information developed in the hearing and on any other information which the commissioner may have.

Credits

1980 Pub.Acts, c. 866, § 18; 1981 Pub.Acts, c. 459, § 2.

Formerly § 48-16-118; § 48-2-118.

T. C. A. § 48-1-118, TN ST § 48-1-118

Current through end of the 2015 First Reg. Sess.

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