

HB 2842

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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1997



ENROLLED

HOUSE BILL No. 2842

(By Delegates Givens, Hunt, Coleman, Mahan,
Amores, Trump and L. White)



Passed April 12, 1997

In Effect Ninety Days From Passage

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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COMMITTEE SUBSTITUTE

FOR

H. B. 2842

(BY DELEGATES GIVENS, HUNT, COLEMAN, MAHAN,
AMORES, TRUMP AND L. WHITE)

[Passed April 12, 1997; in effect ninety days from passage.]

AN ACT to amend and reenact sections two hundred one, two hundred two and two hundred three, article two, chapter thirty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections three hundred one and three hundred five, article three of said chapter; to further amend said article by adding thereto a new section, designated section three hundred four-a; to amend and reenact sections four hundred one, four hundred two, four hundred five, four hundred six, four hundred nine, four hundred thirteen and four hundred fourteen, article four of said chapter; and to further amend said article by adding thereto a new section, designated section four hundred seven-a, all relating to revisions to Uniform Securities Act; exempting federal covered advisers and certain other investment advisers from registration requirements; including references to notice filings for federal covered advisers; making it unlawful to employ unregistered investment adviser representatives; requiring investment adviser representatives to make certain notifications; requiring federal covered advisers to comply with notice filing and fee requirements; establishing certain registration fees and compliance assessments; changing

minimum financial, surety bond, record keeping, financial reporting and correcting amendment requirements; establishing notice filing, fee and other requirements for federal covered securities, including provision for oversale assessments; adding and amending certain definitions; establishing registration exemption for federal covered securities; deleting "blue chip exemption" for certain securities; changing funding method for securities division; requiring that violators of chapter pay certain examination expenses; providing for administrative assessments for such violators; and expanding criminal penalties.

Be it enacted by the Legislature of West Virginia:

That sections two hundred one, two hundred two, two hundred three, article two, chapter thirty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections three hundred one and three hundred five, article three of said chapter, be amended and reenacted; that said article be further amended by adding thereto a new section, designated section three hundred four-a; that sections four hundred one, four hundred two, four hundred five, four hundred six, four hundred nine, four hundred thirteen and four hundred fourteen, article four of said chapter be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section four hundred seven-a, all to read as follows:

ARTICLE 2. REGISTRATION OF BROKER-DEALERS AND AGENTS; REGISTRATION AND NOTICE FILING FOR INVESTMENT ADVISERS.

§32-2-201. Registration requirement.

1 (a) It is unlawful for any person to transact business
2 in this state as a broker-dealer or agent unless he or she is
3 registered under this chapter.

4 (b) It is unlawful for any broker-dealer or issuer to
5 employ an agent unless the agent is registered. The
6 registration of an agent is not effective during any period
7 when he or she is not associated with a particular broker-
8 dealer registered under this chapter or a particular issuer.
9 When an agent begins or terminates a connection with a

10 broker-dealer or issuer, or begins or terminates those
11 activities which make him or her an agent, the agent as
12 well as the broker-dealer or issuer shall promptly notify
13 the commissioner.

14 (c) It is unlawful for any person to transact business
15 in this state as an investment adviser unless: (1) He or she
16 is so registered under this chapter; (2) he or she is
17 registered as a broker-dealer without the imposition of a
18 condition under subdivision (5), subsection (b), section
19 two hundred four of this article; (3) he or she is a federal
20 covered advisor except that, until the tenth day of October,
21 one thousand nine hundred ninety-nine, a federal covered
22 adviser for which a nonpayment or underpayment of a fee
23 has not been promptly remedied following written
24 notification to the adviser of such nonpayment or
25 underpayment shall be required to register under this act;
26 or (4) he or she has no place of business in this state and:
27 (A) His or her only clients in this state are investment
28 companies as defined in the Investment Company Act of
29 1940, other investment advisers, federal covered advisers,
30 broker-dealers, banks, trust companies, savings and loan
31 associations, insurance companies, employee benefit plans
32 with assets of not less than one million dollars, and
33 governmental agencies or instrumentalities, whether acting
34 for themselves or as trustees with investment control, or
35 other institutional investors as are designated by rule or
36 order of the commissioner; or (B) during any period of
37 twelve consecutive months he or she does not have more
38 than five clients who are residents of this state, other than
39 those specified in this subsection, whether or not he or she
40 or any of the clients who are residents of this state is then
41 present in the state.

42 (d) Every registration or notice filing expires one
43 year from its effective date unless renewed. The
44 commissioner by rule or order may prepare an initial
45 schedule for renewals of registrations or notice filings so
46 that subsequent renewals of registrations or notice filings
47 effective on the effective date of this chapter may be
48 staggered by calendar months. For this purpose the
49 commissioner by rule may reduce the registration or
50 notice filing fee proportionately.

51 (e) It is unlawful for any:

52 (1) Person required to be registered as an investment
53 adviser under this article to employ an investment adviser
54 representative unless the investment adviser representative
55 is registered under this article: *Provided*, That the
56 registration of an investment adviser representative is not
57 effective during any period when he or she is not
58 employed by an investment adviser registered under this
59 article; or

60 (2) Federal covered adviser to employ, supervise, or
61 associate with an investment adviser representative having
62 a place of business located in this state, unless such
63 investment adviser representative is registered under this
64 article, or is exempt from registration. When an
65 investment adviser representative begins or terminates
66 employment with an investment adviser, the investment
67 adviser (in the case of 210 (f)(i), or the investment adviser
68 representative (in the case of 201 (f)(ii), shall promptly
69 notify the commissioner.

70 (f) Except with respect to advisers whose only clients
71 are those described in subdivision (4), subsection (c) of
72 this section, it is unlawful for any federal covered adviser
73 to conduct advisory business in this state unless such
74 person complies with the provisions of subsection (b),
75 section two hundred two of this article.

§32-2-202. Registration and notice filing procedure.

1 (a) A broker-dealer, agent or investment adviser may
2 obtain an initial or renewal registration by filing with the
3 commissioner an application together with a consent to
4 service of process pursuant to subsection (g), section four
5 hundred fourteen, article four of this chapter. The
6 application shall contain whatever information the
7 commissioner by rule requires concerning matters such as:
8 (1) The applicant's firm and place of organization; (2) the
9 applicant's proposed method of doing business; (3) the
10 qualifications and business history of the applicant and in
11 the case of a broker-dealer or investment adviser, the
12 qualifications and business history of any partner, officer
13 or director, any person occupying a similar status or

14 performing similar functions, or any person, directly or
15 indirectly, controlling the broker-dealer or investment
16 adviser and, in the case of an investment adviser, the
17 qualifications and business history of any employee; (4)
18 any injunction or administrative order or conviction of a
19 misdemeanor involving a security or any aspect of the
20 securities business and any conviction of a felony; and (5)
21 subject to the limitations of §15(h)(1) of the Securities
22 Exchange Act of 1934, the applicant's financial condition
23 and history. The commissioner may by rule or order
24 require an applicant for initial registration to publish an
25 announcement of the application as a Class I legal
26 advertisement in compliance with the provisions of article
27 three, chapter fifty-nine of this code, and the publication
28 area or areas for the publication shall be specified by the
29 commissioner. If no denial order is in effect and no
30 proceeding is pending under section two hundred four of
31 this article, registration becomes effective at noon of the
32 thirtieth day after an application is filed. The
33 commissioner may by rule or order specify an earlier
34 effective date, and he or she may by order defer the
35 effective date until noon of the thirtieth day after the filing
36 of any amendment to an application. Registration of a
37 broker-dealer automatically constitutes registration of any
38 agent who is a partner, officer or director, or a person
39 occupying a similar status or performing similar functions,
40 as designated by the broker-dealer in writing to the
41 commissioner and approved in writing by the
42 commissioner. Registration of an investment adviser
43 automatically constitutes registration of any investment
44 adviser representative who is a partner, officer, or director
45 or a person occupying a similar status or performing
46 similar functions as designated by the investment adviser
47 in writing to the commissioner and approved in writing
48 by the commissioner.

49 (b) Except with respect to federal covered advisers
50 whose only clients are those described in paragraph (A),
51 subdivision (4), subsection (c), section two hundred one of
52 this article, a federal covered adviser shall file with the
53 commissioner, prior to acting as a federal covered adviser
54 in this state, such documents as have been filed with the

55 securities and exchange commissioner as the
56 commissioner, by rule or order, may require along with
57 notice filing fees under subsection (c), section two
58 hundred two, article two, chapter thirty-two of this code.

59 (c) Every applicant for initial or renewal registration
60 shall pay a filing fee of two hundred fifty dollars in the
61 case of a broker-dealer and the agent of an issuer,
62 fifty-five dollars in the case of an agent, one hundred
63 seventy dollars in the case of an investment adviser, and
64 fifty dollars for each investment advisor representative.
65 When an application is denied or withdrawn, the
66 commissioner shall retain all of the fee.

67 (d) A registered broker-dealer or investment adviser
68 may file an application for registration of a successor,
69 whether or not the successor is then in existence, for the
70 unexpired portion of the year. A filing fee of twenty
71 dollars shall be paid.

72 (e) The commissioner may, by rule or order, require
73 a minimum capital for registered broker-dealers, subject to
74 the limitations of section fifteen of the Securities
75 Exchange Act of 1934, and establish minimum financial
76 requirements for investment advisers, subject to the
77 limitations of section 222 of the Investment Advisers Act
78 of 1940, which may include different requirements for
79 those investment advisers who maintain custody of clients'
80 funds or securities or who have discretionary authority
81 over same and those investment advisers who do not.

82 (f) The commissioner may, by rule or order, require
83 registered broker-dealers, agents and investment advisers
84 who have custody of or discretionary authority over client
85 funds or securities, to post surety bonds in amounts as the
86 commissioner may prescribe, by rule or order, subject to
87 the limitations of section fifteen of the Securities
88 Exchange Act of 1934 (for broker-dealers) and section
89 222 of the Investment Advisers Act of 1940 (for
90 investment advisers), up to twenty-five thousand dollars
91 and may determine their conditions. Any appropriate
92 deposit of cash or securities shall be accepted in lieu of
93 any bond so required. No bond may be required of any
94 registrant whose net capital, or, in the case of an

95 investment adviser, whose minimum financial require-
96 ments, which may be defined by rule, exceeds the amounts
97 required by the commissioner. Every bond shall provide
98 for suit thereon by any person who has a cause of action
99 under section four hundred nine, article four of this
100 chapter and, if the commissioner by rule or order requires,
101 by any person who has a cause of action not arising under
102 this chapter. Every bond shall provide that no suit may be
103 maintained to enforce any liability on the bond unless
104 brought within the time limitations of subsection (f),
105 section four hundred nine, article four of this chapter.

106 (g) Every applicant, whether registered under this
107 chapter or not, shall pay a fifty-dollar fee for each name
108 or address change.

109 (h) Every broker-dealer and investment advisor
110 registered under this chapter shall pay an annual fifty-
111 dollar fee for each branch office located in West Virginia.

112 (i) Each agent, representative and associated person
113 of a broker-dealer or investment advisor when applying
114 for an initial license under section two hundred two of this
115 article or changing employers shall pay a compliance
116 assessment of twenty-five dollars. Each agent, repre-
117 sentative and associated person, when applying for a
118 renewal license under section two hundred two of this
119 article, shall pay a compliance assessment of ten dollars.

§32-2-203. Post-registration provisions.

1 (a) Every registered broker-dealer and investment
2 adviser shall make and keep such accounts,
3 correspondence, memoranda, papers, books and other
4 records as the commissioner prescribes by rule or order,
5 except as provided by section fifteen of the Securities
6 Exchange Act of 1934 (in the case of a broker-dealer)
7 and section 222 of the Investment Advisers Act of 1940
8 (in the case of an investment adviser). All records so
9 required, with respect to an investment adviser, shall be
10 preserved for three years unless the commissioner
11 prescribes by rule or order otherwise for particular types
12 of records.

13 (b) With respect to investment advisers, the
14 commissioner may require that certain information be
15 furnished or disseminated as necessary or appropriate in
16 the public interest or for the protection of investors and
17 advisory clients. To the extent determined by the
18 commissioner, in his or her discretion, information
19 furnished to clients or prospective clients of an investment
20 adviser that would be in compliance with the Investment
21 Advisers Act of 1940 and the rules thereunder may be
22 used in whole or partial satisfaction of this requirement.

23 (c) Every registered broker-dealer and investment
24 advisor shall file such financial reports as the
25 commissioner may prescribe by rule or order, except as
26 provided by section fifteen of the Securities Exchange Act
27 of 1934 (in the case of a broker-dealer) and section 222
28 of the Investment Advisers Act of 1940 (in the case of an
29 investment adviser).

30 (d) If the information contained in any document
31 filed with the commissioner is or becomes inaccurate or
32 incomplete in any material respect, the registrant or
33 federal covered adviser shall promptly file a correcting
34 amendment with the commissioner.

35 (e) All the records referred to in subsection (a) of
36 this section are subject at any time or from time to time to
37 such reasonable periodic, special or other examinations by
38 representatives of the commissioner, within or without this
39 state, as the commissioner deems necessary or appropriate
40 in the public interest or for the protection of investors.
41 For the purpose of avoiding unnecessary duplication of
42 examinations, the commissioner, insofar as he or she
43 deems it practicable in administering this subsection, may
44 cooperate with the securities administrators of other states,
45 the securities and exchange commission, and any national
46 securities exchange or national securities association
47 registered under the Securities Exchange Act of 1934.

ARTICLE 3. REGISTRATION OF SECURITIES.

§32-3-301. Registration requirement.

1 It is unlawful for any person to offer or sell any
2 security in this state unless: (1) It is registered under this
3 chapter; or (2) the security or transaction is exempted
4 under section four hundred two of this article; or (3) the
5 security is a federal covered security.

§32-3-304a. Federal covered securities.

1 (a) Securities for which a registration statement has
2 been filed with the securities and exchange commission
3 under the Securities Act of 1933 with respect to a federal
4 covered security under section 18(b)(2) of the Securities
5 Act of 1933 may be offered for sale or sold to residents of
6 this state upon the commissioner's receipt of: (1) A
7 notice as prescribed by the commissioner by rule or
8 otherwise or in lieu thereof a copy of the issuer's federal
9 registration statement as filed with the securities and
10 exchange commissioner; (2) a consent to service of
11 process signed by the issuer; and (3) payment of a fee as
12 provided for in subsection (b), section three hundred five
13 of this article: *Provided*, That up through the tenth day of
14 October, one thousand nine hundred ninety-nine, or such
15 other date as may be legally permissible, a federal covered
16 security for which a fee has not been paid or promptly
17 remedied following written notification from the
18 commissioner to the issuer of the nonpayment or
19 underpayment of such fees, as required by this article,
20 shall be required to register under this act.

21 (b) The commissioner, by rule or otherwise, may
22 require the filing of any or all of the following documents
23 with respect to a federal covered security under section
24 18(b)(2) of the Securities Act of 1933:

25 (1) Prior to the initial offer of such federal covered
26 security in this state, all documents that are part of a
27 current federal registration statement filed with the
28 securities and exchange commission under the Securities
29 Act of 1933; and

30 (2) After the initial offer of such federal covered
31 security in this state, all documents that are part of an
32 amendment to a current federal registration statement filed
33 with the securities and exchange commission under the

34 Securities Act of 1933, which shall be filed concurrently
35 with the commissioner.

36 (c) With respect to any security that is a federal
37 covered security under section 18(b)(4)(D) of the
38 Securities Act of 1933, the commissioner, by rule or order,
39 may require the issuer to file a notice on SEC Form D and
40 a consent to service of process signed by the issuer no
41 later than fifteen days after the first sale of such federal
42 covered security in this state, together with a fee as
43 established by rule by the commissioner.

44 (d) The commissioner, by rule or otherwise, may
45 require the filing of any document filed with the securities
46 and exchange commission under the Securities Act of
47 1933, with respect to a federal covered security under
48 section 18(b)(3) or (4) of the Securities Act of 1933,
49 together with a filing fee for such document as
50 appropriate under subsections (m) and (n), section three
51 hundred five of this article.

52 (e) The commissioner may issue a stop order
53 suspending the offer and sale of a federal covered
54 security, except a federal covered security under section
55 18(b)(1) of the Securities Act of 1933, if it finds that: (1)
56 The order is in the public interest; and (2) there is a failure
57 to comply with any condition established under this
58 section.

59 (f) The commissioner, by rule or order, may waive
60 any or all of the provisions of this section.

**§32-3-305. Provisions applicable to registration and notice
filing generally.**

1 (a) A registration or notice filing statement may be
2 filed by the issuer, any other person on whose behalf the
3 offering is to be made, or a registered broker-dealer. A
4 registration or notice filing statement filed under this
5 chapter registering or noticing investment company shares
6 shall cover only one class, series or portfolio of investment
7 company shares.

8 (b) Every person filing a registration or notice filing
9 statement shall pay a filing fee of one twentieth of one

10 percent of the maximum aggregate offering price at which
11 the registered or noticed securities are to be offered in this
12 state, but the fee shall in no case be less than fifty dollars
13 or more than fifteen hundred dollars. When a registration
14 or notice filing statement is withdrawn before the effective
15 date or a preeffective stop order is entered under section
16 three hundred six of this article, the commissioner shall
17 retain all of the fee.

18 (c) Every registration statement and notice filing
19 shall specify: (1) The amount of securities to be offered
20 in this state; (2) the states in which a registration statement
21 or similar document in connection with the offering has
22 been or is to be filed; and (3) any adverse order, judgment
23 or decree entered in connection with the offering by the
24 regulatory authorities in each state or by any court or the
25 securities and exchange commission.

26 (d) In any case where securities sold in this state are
27 in excess of the aggregate amount of securities specified
28 under subsection (c) of this section, the commissioner may
29 require payment of an oversale assessment which shall be
30 three times an amount which equals the difference
31 between the filing fee that would have been payable under
32 subsection (b) of this section based upon the total amount
33 of securities sold in this state and the total filing fees
34 previously paid to the commissioner with respect to such
35 registration or notice filing, but in no case shall the
36 oversale assessment be less than three hundred fifty dollars
37 or be more than fifteen hundred dollars.

38 (e) Any document filed under this chapter or a
39 predecessor act within five years preceding the filing of a
40 registration statement may be incorporated by reference in
41 the registration statement to the extent that the document
42 is currently accurate.

43 (f) The commissioner may by rule or otherwise
44 permit the omission of any item of information or
45 document from any registration or notice filing statement.

46 (g) In the case of a nonissuer distribution,
47 information may not be required under section three
48 hundred four of this article or subsection (k) of this

49 section unless it is known to the person filing the
50 registration statement or to the persons on whose behalf
51 the distribution is to be made, or can be furnished by them
52 without unreasonable effort or expense.

53 (h) The commissioner may by rule or order require
54 as a condition of registration by qualification or
55 coordination: (1) That any security issued within the past
56 three years or to be issued to a promoter for a
57 consideration substantially different from the public
58 offering price, or to any person for a consideration other
59 than cash, be deposited in escrow; and (2) that the
60 proceeds from the sale of the registered security in this
61 state be impounded until the issuer receives a specified
62 amount from the sale of the security either in this state or
63 elsewhere. The commissioner may by rule or order
64 determine the conditions of any escrow or impounding
65 required under this subsection, but he or she may not
66 reject a depository solely because of location in another
67 state.

68 (i) The commissioner may by rule or order require
69 as a condition of registration that any security registered
70 by qualification or coordination be sold only on a
71 specified form of subscription or sale contract, and that a
72 signed or conformed copy of each contract be filed with
73 the commissioner or preserved for any period up to three
74 years specified in the rule or order.

75 (j) Every registration statement is effective for one
76 year from its effective date, or any longer period during
77 which the security is being offered or distributed in a
78 nonexempted transaction by or for the account of the
79 issuer or other person on whose behalf the offering is
80 being made or by any underwriter or broker-dealer who is
81 still offering part of an unsold allotment or subscription
82 taken by him or her as a participant in the distribution,
83 except during the time a stop order is in effect under
84 section three hundred six of this article. All outstanding
85 securities of the same class as a registered security are
86 considered to be registered for the purpose of any
87 nonissuer transaction: (1) So long as the registration
88 statement is effective; and (2) between the thirtieth day

89 after the entry of any stop order suspending or revoking
90 the effectiveness of the registration statement under
91 section three hundred six of this article (if the registration
92 statement did not relate, in whole or in part, to a nonissuer
93 distribution) and one year from the effective date of the
94 registration statement. A registration statement may not
95 be withdrawn for one year from its effective date if any
96 securities of the same class are outstanding. A registration
97 statement may be withdrawn otherwise only in the
98 discretion of the commissioner.

99 (k) So long as a registration statement is effective,
100 the commissioner may by rule or order require the person
101 who filed the registration statement to file reports, not
102 more often than quarterly, to keep reasonably current the
103 information contained in the registration statement and to
104 disclose the progress of the offering.

105 (l) A registration statement relating to a security
106 issued by a face amount certificate company or a
107 redeemable security issued by an open-end management
108 company or unit investment trust, as those terms are
109 defined in the Investment Company Act of 1940, may be
110 amended after its effective date so as to increase the
111 securities specified as proposed to be offered. The
112 amendment becomes effective when the commissioner so
113 orders. Every person filing an amendment shall pay a
114 filing fee, calculated in the manner specified in subsection
115 (b) of this section, with respect to the additional securities
116 proposed to be offered.

117 (m) Every person changing the name or address of
118 a securities registration or notice filing shall pay a fifty-
119 dollar fee for change.

120 (n) Every person amending a registration statement
121 or notice filing or offering a document without increasing
122 the dollar amount registered shall pay a fifty-dollar fee for
123 each amended statement, notice filing or document.

ARTICLE 4. GENERAL PROVISIONS.

§32-4-401. Definitions.

1 When used in this chapter, unless the context
2 otherwise requires:

3 (a) "Commissioner" means the auditor of the state
4 of West Virginia.

5 (b) "Agent" means any individual other than a
6 broker-dealer who represents a broker-dealer or issuer in
7 effecting or attempting to effect purchases or sales of
8 securities. "Agent" does not include an individual who
9 represents an issuer in: (1) Effecting transactions in a
10 security exempted by subdivisions (1), (2), (3), (10) or
11 (11) of subsection (a), section four hundred two of this
12 article; (2) effecting transactions exempted by subsection
13 (b), section four hundred two of this article; (3) effecting
14 transactions in a covered security as described in section
15 18(b)(3) and section 18(b)(4)(d) of the Securities Act of
16 1933; (4) effecting transactions with existing employees,
17 partners or directors of the issuer if no commission or
18 other remuneration is paid or given, directly or indirectly,
19 for soliciting any person in this state; or (5) effecting
20 transactions in this state limited to those transactions
21 described in section 15(h)(2) of the Securities Exchange
22 Act of 1934. A partner, officer or director of a broker-
23 dealer or issuer, or a person occupying a similar status or
24 performing similar functions, is an agent only if he or she
25 otherwise comes within this definition.

26 (c) "Broker-dealer" means any person engaged in
27 the business of effecting transactions in securities for the
28 account of others or for his or her own account.
29 "Broker-dealer" does not include: (1) An agent; (2) an
30 issuer; (3) a bank, savings institution or trust company; or
31 (4) a person who has no place of business in this state if:
32 (A) He or she effects transactions in this state exclusively
33 with or through; (i) the issuers of the securities involved in
34 the transactions; (ii) other broker-dealers; or (iii) banks,
35 savings institutions, trust companies, insurance companies,
36 investment companies as defined in the Investment
37 Company Act of 1940, pension or profit-sharing trusts, or
38 other financial institutions or institutional buyers, whether
39 acting for themselves or as trustees; or (B) during any
40 period of twelve consecutive months he or she does not

41 direct more than fifteen offers to sell or buy into this state
42 in any manner to persons other than those specified in
43 clause (A), whether or not the offeror or any of the
44 offerees is then present in this state.

45 (d) "Fraud," "deceit" and "defraud" are not
46 limited to common-law deceit.

47 (e) "Guaranteed" means guaranteed as to payment
48 of principal, interest or dividends.

49 (f) "Federal covered adviser" means a person who
50 is: (1) Registered under section 203 of the Investment
51 Advisers Act of 1940; or (2) is excluded from the
52 definition of "investment advisor" under section two
53 hundred two-a (11) of the Investment Advisers Act of
54 1940.

55 (g) "Investment adviser" means any person who, for
56 compensation, engages in the business of advising others,
57 either directly or through publications or writings, as to
58 the value of securities or as to the advisability of investing
59 in, purchasing or selling securities, or who, for
60 compensation and as a part of a regular business, issues or
61 promulgates analyses or reports concerning securities.
62 "Investment adviser" also includes financial planners and
63 other persons who, as an integral component of other
64 financially related services, provide the foregoing
65 investment advisory services to others for compensation
66 and as part of a business or who hold themselves out as
67 providing the foregoing investment advisory services to
68 others for compensation. "Investment adviser" does not
69 include: (1) A bank, savings institution or trust company;
70 (2) a lawyer, accountant, engineer or teacher whose
71 performance of those services is solely incidental to the
72 practice of his or her profession; (3) a broker-dealer
73 whose performance of these services is solely incidental to
74 the conduct of his or her business as a broker-dealer and
75 who receives no special compensation for them; (4) a
76 publisher, employee or columnist of a newspaper, news
77 magazine or business or financial publication, or an
78 owner, operator, producer, or employee of a cable, radio,
79 or television network, station, or production facility if, in
80 either case, the financial or business news published or

81 disseminated is made available to the general public and
82 the content does not consist of rendering advice on the
83 basis of the specific investment situation of each client; (5)
84 a person whose advice, analyses or reports relate only to
85 securities exempted by subdivision (1), subsection (a),
86 section four hundred two of this article; (6) a person who
87 has no place of business in this state if (A) his or her only
88 clients in this state are other investment advisers, broker-
89 dealers, banks, savings institutions, trust companies,
90 insurance companies, investment companies as defined in
91 the Investment Company Act of 1940, pension or profit-
92 sharing trusts, or other financial institutions or institutional
93 buyers, whether acting for themselves or as trustees, or (B)
94 during any period of twelve consecutive months he or she
95 does not have more than five clients who are residents of
96 this state other than those specified in clause (A), whether
97 or not he or she or any of the persons to whom the
98 communications are directed is then present in this state;
99 (7) an investment adviser representative; (8) a "federal
100 covered adviser"; or (9) such other persons not within the
101 intent of this paragraph as the commissioner may by rule
102 or order designate.

103 (h) "Investment adviser representative" means any
104 partner, officer, director of, or a person occupying a
105 similar status or performing similar functions, or other
106 individual, except clerical or ministerial personnel, who is
107 employed by or associated with an investment adviser that
108 is registered or required to be registered under this
109 chapter, or who has a place of business located in this state
110 and is employed by or associated with a federal covered
111 adviser; and including clerical or ministerial personnel,
112 who does any of the following: (1) Makes any
113 recommendations or otherwise renders advice regarding
114 securities; (2) manages accounts or portfolios of clients;
115 (3) determines which recommendation or advice
116 regarding securities should be given; (4) solicits, offers or
117 negotiates for the sale of or sells investment advisory
118 services unless such person is registered as an agent
119 pursuant to this act; or (5) supervises employees who
120 perform any of the foregoing unless such person is
121 registered as an agent pursuant to this act.

122 (i) "Issuer" means any person who issues or
123 proposes to issue any security, except that (1) with respect
124 to certificates of deposit, voting-trust certificates or
125 collateral-trust certificates, or with respect to certificates of
126 interest or shares in an unincorporated investment trust not
127 having a board of directors or persons performing similar
128 functions or of the fixed, restricted management, or unit
129 type, the term "issuer" means the person or persons
130 performing the acts and assuming the duties of depositor
131 or manager pursuant to the provisions of the trust or other
132 agreement or instrument under which the security is
133 issued; and (2) with respect to certificates of interest or
134 participation in oil, gas or mining titles or leases or in
135 payments out of production under such titles or leases,
136 there is not considered to be any "issuer."

137 (j) "Nonissuer" means not, directly or indirectly, for
138 the benefit of the issuer.

139 (k) "Person" means an individual, a corporation, a
140 partnership, an association, a joint-stock company, a trust
141 where the interests of the beneficiaries are evidenced by a
142 security, an unincorporated organization, a government or
143 a political subdivision of a government.

144 (1) "Sale" or "sell" includes every contract of sale
145 of, contract to sell, or disposition of, a security or interest
146 in a security for value.

147 (2) "Offer" or "offer to sell" includes every
148 attempt or offer to dispose of, or solicitation of an offer to
149 buy, a security or interest in a security for value.

150 (3) Any security given or delivered with, or as a
151 bonus on account of, any purchase of securities or any
152 other thing is considered to constitute part of the subject
153 of the purchase and to have been offered and sold for
154 value.

155 (4) A purported gift of assessable stock is considered
156 to involve an offer and sale.

157 (5) Every sale or offer of a warrant or right to
158 purchase or subscribe to another security of the same or
159 another issuer, as well as every sale or offer of a security

160 which gives the holder a present or future right or
161 privilege to convert into another security of the same or
162 another issuer, is considered to include an offer of the
163 other security.

164 (6) The terms defined in this subdivision do not
165 include: (A) Any bona fide pledge or loan; (B) any stock
166 dividend, whether the corporation distributing the
167 dividend is the issuer of the stock or not, if nothing of
168 value is given by stockholders for the dividend other than
169 the surrender of a right to a cash or property dividend
170 when each stockholder may elect to take the dividend in
171 cash or property or in stock; (C) any act incident to a class
172 vote by stockholders, pursuant to the certificate of
173 incorporation or the applicable corporation statute, on a
174 merger, consolidation, reclassification of securities or sale
175 of corporate assets in consideration of the issuance of
176 securities of another corporation; or (D) any act incident
177 to a judicially approved reorganization in which a security
178 is issued in exchange for one or more outstanding
179 securities, claims or property interests, or partly in such
180 exchange and partly for cash.

181 (m) "Securities Act of 1933," "Securities Exchange
182 Act of 1934," "Public Utility Holding Company Act of
183 1935," and "Investment Company Act of 1940" mean
184 the federal statutes of those names as amended before the
185 effective date of this chapter. The National Securities
186 Markets Improvement Act of 1996 ("NSMIA") means
187 the federal statute which makes certain amendments to the
188 Securities Act of 1933, the Securities Exchange Act of
189 1934, the Investment Company Act of 1940, and the
190 Investment Advisers Act of 1940.

191 (n) "Security" means any note; stock; treasury
192 stock; bond; debenture; evidence of indebtedness;
193 certificate of interest or participation in any profit-sharing
194 agreement; collateral-trust certificate; preorganization
195 certificate or subscription; transferable share; investment
196 contract; voting-trust certificate; certificate of deposit for a
197 security; certificate of interest or participation in an oil,
198 gas, or mining title or lease or in payments out of
199 production under such a title or lease; or, in general, any

200 interest or instrument commonly known as a “security,”
201 or any certificate of interest or participation in, temporary
202 or interim certificate for, receipt for, guarantee of, or
203 warrant or right to subscribe to or purchase, any of the
204 foregoing. “Security” does not include any insurance or
205 endowment policy or annuity contract under which an
206 insurance company promises to pay money either in a
207 lump sum or periodically for life or some other specified
208 period.

209 (o) “Federal covered security” means any security
210 that is a covered security under section 18(b) of the
211 Securities Act of 1933, as amended by the National
212 Securities Markets Improvement Act of 1996, or rules
213 promulgated thereunder.

214 (p) “State” means any state, territory or possession
215 of the United States, the District of Columbia and Puerto
216 Rico.

§32-4-402. Exemptions.

1 (a) The following securities are exempt from section
2 three hundred one, article three of this chapter and
3 section ^{four hundred three} of this article:

4 (1) Any security (including a revenue obligation)
5 issued or guaranteed by the United States, any state, any
6 political subdivision of a state, or any agency or corporate
7 or other instrumentality of one or more of the foregoing;
8 or any certificate of deposit for any of the foregoing;

9 (2) Any security issued or guaranteed by Canada,
10 any Canadian province, any political subdivision of any
11 such province, any agency or corporate or other
12 instrumentality of one or more of the foregoing, or any
13 other foreign government with which the United States
14 currently maintains diplomatic relations, if the security is
15 recognized as a valid obligation by the issuer or
16 guarantor;

17 (3) Any security issued by and representing an
18 interest in or a debt of, or guaranteed by, any bank
19 organized under the laws of the United States, or any

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20 bank, savings institution or trust company organized and
21 supervised under the laws of any state;

22 (4) Any security issued by and representing an
23 interest in or a debt of, or guaranteed by, any federal
24 savings and loan association, or any building and loan or
25 similar association organized under the laws of any state
26 and authorized to do business in this state;

27 (5) Any security issued by and representing an
28 interest in or a debt of, or guaranteed by, any insurance
29 company organized under the laws of any state and
30 authorized to do business in this state;

31 (6) Any security issued or guaranteed by any federal
32 credit union or any credit union, industrial loan
33 association or similar association organized and supervised
34 under the laws of this state;

35 (7) Any security issued or guaranteed by any
36 railroad, other common carrier, public utility or holding
37 company which is: (A) Subject to the jurisdiction of the
38 interstate commerce commission; (B) a registered holding
39 company under the Public Utility Holding Company Act
40 of 1935, or a subsidiary of such a company within the
41 meaning of that act; (C) regulated in respect of its rates
42 and charges by a governmental authority of the United
43 States or any state; or (D) regulated in respect of the
44 issuance or guarantee of the security by a governmental
45 authority of the United States, any state, Canada, or any
46 Canadian province;

47 (8) Any security listed or approved for listing upon
48 notice of issuance on the New York Stock Exchange, the
49 American Stock Exchange, or the Midwest Stock
50 Exchange, any other stock exchange approved by the
51 commissioner, the National Association of Securities
52 Dealers Automated Quotation/National Market System
53 (NASDAQ/NMS), or any other market system approved
54 by the commissioner, any other security of the same issuer
55 which is of senior or substantially equal rank, any security
56 called for by subscription rights or warrants so listed or
57 approved, or any warrant or right to purchase or subscribe
58 to any of the foregoing, except that the commissioner may

59 adopt and promulgate rules pursuant to chapter
60 twenty-nine-a of this code which, after notice to such
61 exchange or market system and an opportunity to be
62 heard, remove any such exchange or market system from
63 this exemption if the commissioner finds that the listing
64 requirements or market surveillance of such exchange or
65 market system are such that the continued availability of
66 such exemption for such exchange or market system is
67 not in the public interest and that removal is necessary for
68 the protection of investors;

69 (9) Any security issued by any person organized and
70 operated not for private profit but exclusively for
71 religious, educational, benevolent, charitable, fraternal,
72 social, athletic or reformatory purposes, or as a chamber
73 of commerce or trade or professional association, and no
74 part of the net earnings of which inures to the benefit of
75 any person, private stockholder or individual;

76 (10) Any commercial paper which arises out of a
77 current transaction or the proceeds of which have been or
78 are to be used for current transactions, and which
79 evidences an obligation to pay cash within twelve months
80 of the date of issuance, exclusive of days of grace, or any
81 renewal of such paper which is likewise limited, or any
82 guarantee of such paper or of any such renewal;

83 (11) Any investment contract issued in connection
84 with an employees' stock purchase, savings, pension,
85 profit-sharing or similar benefit plan if the commissioner
86 is notified in writing thirty days before the inception of
87 the plan or, with respect to plans which are in effect on the
88 effective date of this chapter, within sixty days thereafter
89 (or within thirty days before they are reopened if they are
90 closed on the effective date of this chapter);

91 (12) Any security issued by an agricultural
92 cooperative association operating in this state and
93 organized under article four, chapter nineteen of this code,
94 or by a foreign cooperative association organized under
95 the laws of another state and duly qualified to transact
96 business in this state.

97 (b) The following transactions are exempt from
98 sections 301 and 403:

99 (1) Any isolated nonissuer transaction, whether
100 effected through a broker-dealer or not;

101 (2) Any nonissuer distribution of an outstanding
102 security if: (A) A recognized securities manual contains
103 the names of the issuer's officers and directors, a balance
104 sheet of the issuer as of a date within eighteen months, and
105 a profit and loss statement for either the fiscal year
106 preceding that date or the most recent year of operations;
107 or (B) the security has a fixed maturity or a fixed interest
108 or dividend provision and there has been no default
109 during the current fiscal year or within the three preceding
110 fiscal years, or during the existence of the issuer and any
111 predecessors if less than three years, in the payment of
112 principal, interest or dividends on the security;

113 (3) Any nonissuer transaction effected by or through
114 a registered broker-dealer pursuant to an unsolicited order
115 or offer to buy; but the commissioner may by rule require
116 that the customer acknowledge upon a specified form that
117 the sale was unsolicited, and that a signed copy of each
118 such form be preserved by the broker-dealer for a
119 specified period;

120 (4) Any transaction between the issuer or other
121 person on whose behalf the offering is made and an
122 underwriter, or among underwriters;

123 (5) Any transaction in a bond or other evidence of
124 indebtedness secured by a real or chattel mortgage or
125 deed of trust, or by an agreement for the sale of real estate
126 or chattels, if the entire mortgage, deed of trust, or
127 agreement, together with all the bonds or other evidences
128 of indebtedness secured thereby, is offered and sold as a
129 unit;

130 (6) Any transaction by an executor, administrator,
131 sheriff, marshal, constable, receiver, trustee in bankruptcy,
132 guardian or conservator, and any transaction constituting a
133 judicial sale;

134 (7) Any transaction executed by a bona fide pledgee
135 without any purpose of evading this chapter;

136 (8) Any offer or sale to a bank, savings institution,
137 trust company, insurance company, investment company
138 as defined in the Investment Company Act of 1940,
139 pension or profit-sharing trust, or other financial
140 institution or institutional buyer, or to a broker-dealer,
141 whether the purchaser is acting for itself or in some
142 fiduciary capacity;

143 (9) Any transaction pursuant to an offer directed by
144 the offeror to not more than ten persons (other than those
145 designated in subdivision (8) above) in this state during
146 any period of twelve consecutive months, whether or not
147 the offeror or any of the offerees is then present in this
148 state, if: (A) The seller reasonably believes that all the
149 buyers in this state (other than those designated in
150 subdivision (8) above) are purchasing for investment; and
151 (B) no commission or other remuneration is paid or given,
152 directly or indirectly, for soliciting any prospective buyer
153 in this state (other than those designated in subdivision (8)
154 above), but the commissioner may by rule or order, as to
155 any security or transaction or any type of security or
156 transaction, withdraw or further condition this exemption,
157 or increase or decrease the number of offerees permitted,
158 or waive the conditions in clauses (A) and (B) with or
159 without the substitution of a limitation on remuneration;

160 (10) Any offer or sale of a preorganization
161 certificate or subscription if: (A) No commission or other
162 remuneration is paid or given, directly or indirectly, for
163 soliciting any prospective subscriber; (B) the number of
164 subscribers does not exceed ten; and (C) no payment is
165 made by any subscriber;

166 (11) Any transaction pursuant to an offer to existing
167 security holders of the issuer, including persons who at the
168 time of the transaction are holders of convertible
169 securities, nontransferable warrants or transferable
170 warrants exercisable within not more than ninety days of
171 their issuance, if: (A) No commission or other
172 remuneration (other than a standby commission) is paid
173 or given, directly or indirectly, for soliciting any security

174 holder in this state; or (B) the issuer first files a notice
175 specifying the terms of the offer and the commissioner
176 does not by order disallow the exemption within the next
177 five full business days;

178 (12) Any offer (but not a sale) of a security for
179 which registration statements have been filed under both
180 this chapter and the Securities Act of 1933 if no stop
181 order or refusal order is in effect and no public
182 proceeding or examination looking toward such an order
183 is pending under either chapter.

184 (c) The commissioner may by order deny or revoke
185 any exemption specified in subdivision (9) or (11) of
186 subsection (a) or in subsection (b) of this section with
187 respect to a specific security or transaction. No such order
188 may be entered without appropriate prior notice to all
189 interested parties, opportunity for hearing, and written
190 findings of fact and conclusions of law, except that the
191 commissioner may by order summarily deny or revoke
192 any of the specified exemptions pending final
193 determination of any proceeding under this subsection.
194 Upon the entry of a summary order, the commissioner
195 shall promptly notify all interested parties that it has been
196 entered and of the reasons therefor and that within fifteen
197 days of the receipt of a written request the matter will be
198 set down for hearing. If no hearing is requested and none
199 is ordered by the commissioner, the order will remain in
200 effect until it is modified or vacated by the commissioner.
201 If a hearing is requested or ordered, the commissioner,
202 after notice of and opportunity for hearing to all
203 interested persons, may modify or vacate the order or
204 extend it until final determination. No order under this
205 subsection may operate retroactively. No person may be
206 considered to have violated section 301 or 403 by reasons
207 of any offer or sale effected after the entry of an order
208 under this subsection if he or she sustains the burden of
209 proof that he or she did not know, and in the exercise of
210 reasonable care could not have known, of the order.

211 (d) In any proceeding under this chapter, the burden
212 of proving an exemption or an exception from a
213 definition is upon the person claiming it.

§32-4-405. Unlawful representations concerning registration, exemption or notice filing.

1 (a) Neither (1) the fact that a notice filing or an
2 application for registration under article two of this
3 chapter or a registration statement under article three of
4 this chapter has been filed nor (2) the fact that a person or
5 security is effectively registered constitutes a finding by
6 the commissioner that any document filed under this
7 chapter is true, complete and not misleading. Neither any
8 such fact nor the fact that an exemption or exception is
9 available for a security or a transaction means that the
10 commissioner has passed in any way upon the merits or
11 qualifications of, or recommended or given approval to,
12 any person, security or transaction.

13 (b) It is unlawful to make, or cause to be made, to
14 any prospective purchaser, customer or client any
15 representation inconsistent with subsection (a).

§32-4-406. Administration of chapter; operating fund for securities department.

1 (a) This chapter shall be administered by the auditor
2 of this state, and he or she is hereby designated, and shall
3 be, the commissioner of securities of this state. He or she
4 has the power and authority to appoint or employ such
5 assistants as are necessary for the administration of this
6 chapter.

7 (b) The auditor shall set up a special operating fund
8 for the securities division in his or her office. The auditor
9 shall pay into the fund twenty percent of all fees collected
10 as provided for in this chapter. If, at the end of any fiscal
11 year, the balance in the operating fund exceeds one
12 hundred fifty thousand dollars, the excess shall be
13 withdrawn from the special fund and deposited in the
14 general revenue fund.

15 The special operating fund shall be used by the
16 auditor to fund the operation of the securities division
17 located in his or her office. The special operating fund
18 shall be appropriated by line item by the Legislature.

19 (c) Moneys payable for assessments established by
20 section four hundred seven-a of this article shall be
21 collected by the commissioner and deposited into the
22 general revenue fund.

23 (d) It is unlawful for the commissioner or any of his
24 or her officers or employees to use for personal benefit
25 any information which is filed with or obtained by the
26 commissioner and which is not made public. No
27 provision of this chapter authorizes the commissioner or
28 any of his or her officers or employees to disclose any
29 information except among themselves or when necessary
30 or appropriate in a proceeding or investigation under this
31 chapter. No provision of the chapter either creates or
32 derogates from any privilege which exists at common law
33 or otherwise when documentary or other evidence is
34 sought under a subpoena directed to the commissioner or
35 any of his or her officers or employees.

ARTICLE 4. GENERAL PROVISIONS.

§32-4-407a. Administrative assessments.

1 (a) A registrant, applicant for registration, issuer or
2 other person upon whom the commissioner has conducted
3 an examination, audit, investigation or prosecution and
4 who has been determined by the commissioner to have
5 violated this article or rule or order of the commissioner
6 under this article shall pay for all the costs incurred in the
7 conduct of such examination, audit, investigation or
8 prosecution. These costs shall include, but not be limited
9 to, the salaries and other compensation paid to clerical,
10 accounting, administrative, investigative, examiner and
11 legal personnel, the actual amount of expenses reasonably
12 incurred by such personnel and the commissioner in the
13 conduct of such examination, audit, investigation or
14 prosecution, including a pro rata portion of the
15 commissioner's administrative expense.

16 (b) After giving notice and opportunity for a
17 hearing, the commissioner may issue an order
18 accompanied by written findings of fact and conclusions
19 of law which imposes an administrative assessment in an
20 amount provided in paragraph (1) against a broker-dealer,
21 agent, investment adviser or investment adviser
22 representative registered under section two hundred one,

23 article two of this chapter, or an affiliate of the broker-
24 dealer or investment adviser where the commissioner finds
25 that the person either willfully has violated this act or a
26 rule or order of the commissioner under this act or has
27 engaged in dishonest or unethical practices in the
28 securities business or has taken unfair advantage of a
29 customer.

30 (1) The commissioner, in issuing an order under this
31 subsection may impose an administrative assessment of up
32 to ten thousand dollars for a single violation or of up to
33 fifty thousand dollars for multiple violations in a single
34 proceeding or a series of related proceedings. Each act or
35 omission that provides a basis for issuing an order under
36 this subsection shall constitute a separate violation.

37 (2) For purposes of determining the amount of
38 administrative assessment to be imposed in an order issued
39 under this subsection, the commissioner shall consider:

40 (i) The circumstances, nature, frequency, seriousness,
41 magnitude, persistence and willfulness of the conduct
42 constituting the violation;

43 (ii) The scope of the violation, including the number
44 of persons in and out of this state affected by the conduct
45 constituting the violation;

46 (iii) The amount of restitution or compensation that
47 the violator has made and the number of persons in this
48 state to whom the restitution or compensation has been
49 made;

50 (iv) Past and concurrent conduct of the violator that
51 has given rise to any sanctions or judgment imposed by,
52 or plea of guilty or nolo contendere or settlement with, the
53 commissioner or any securities administrator of any other
54 state or other country, any court of competent jurisdiction,
55 the securities and exchange commissioner, the commodity
56 futures trading commission, any other federal or state
57 agency or any national securities association or national
58 securities exchange as defined in the Securities Exchange
59 Act of 1934 (48 Stat. 88a, 15 U.S.C. 78A et seq.);

60 (v) Any other factor that the commissioner finds
61 appropriate in the public interest or for the protection of

62 investors and consistent with the purposes fairly intended
63 by the policy and provisions of this act.

64 (3) An administrative assessment imposed by an
65 order issued under this subsection is not mutually
66 exclusive of any other remedy available under this act.

67 (4) The commissioner shall not impose an
68 administrative assessment with respect to any public
69 proceeding which was instituted prior to the date of
70 enactment of this section.

§32-4-409. Criminal penalties.

1 (a) Any person who willfully violates any provision
2 of this chapter, except section 404, or who willfully
3 violates any rule or order under this chapter, or who
4 willfully violates section 404 knowing the statement made
5 to be false or misleading in any material respect, shall be
6 guilty of a felony, and, upon conviction thereof, shall be
7 fined not more than fifty thousand dollars, or imprisoned
8 in the penitentiary not less than one nor more than three
9 years, or both fined and imprisoned; but no person may
10 be imprisoned for the violation of any rule or order if he
11 or she proves that he or she had no knowledge of the rule
12 or order. No indictment may be returned under this
13 chapter more than five years after the alleged violation.

14 (b) The commissioner may refer such evidence as is
15 available concerning violations of this chapter or of any
16 rule or order hereunder to the proper prosecuting
17 attorney, who may, with or without such a reference,
18 institute the appropriate criminal proceedings under this
19 chapter.

20 (c) Nothing in this chapter limits the power of the
21 state to punish any person for any conduct which
22 constitutes a crime by statute or at common law.

§32-4-413. Administrative files and opinions.

1 (a) A document is filed when it is received by the
2 commissioner.

3 (b) The commissioner shall keep a register of all
4 notice filings and all applications for registration and
5 registration statements which are or have ever been

6 effective under this chapter and all denial, suspension or
7 revocation orders which have been entered under this
8 chapter. The register shall be open for public inspection.

9 (c) The information contained in or filed with any
10 registration statement, application or report may be made
11 available to the public under rules prescribed by the
12 commissioner.

13 (d) Upon request and at such reasonable charges as
14 he or she prescribes, the commissioner shall furnish to any
15 person photostatic or other copies (certified under his or
16 her seal of office if requested) of any entry in the register
17 or any document which is a matter of public record. In
18 any proceeding or prosecution under this chapter, any
19 copy so certified is prima facie evidence of the contents of
20 the entry or document certified.

21 (e) The commissioner in his or her discretion may
22 honor requests from interested persons for interpretative
23 opinions. Copies of the opinions shall be filed in a special
24 file maintained for that purpose and shall be public
25 records available for public inspection. The commissioner
26 shall charge a one hundred-dollar fee for each
27 interpretative opinion.

§32-4-414. Scope of the chapter and service of process.

1 (a) Sections 101, 201(a), 301, 405 and 410 apply to
2 persons who sell or offer to sell when (1) an offer to sell is
3 made in this state, or (2) an offer to buy is made and
4 accepted in this state.

5 (b) Sections 101, 201(a) and 405 apply to persons
6 who buy or offer to buy when (1) an offer to buy is made
7 in this state, or (2) an offer to sell is made and accepted in
8 this state.

9 (c) For the purpose of this section, an offer to sell or
10 to buy is made in this state, whether or not either party is
11 then present in this state, when the offer: (1) Originates
12 from this state; or (2) is directed by the offeror to this state
13 and received at the place to which it is directed (or at any
14 post office in this state in the case of a mailed offer).

15 (d) For the purpose of this section, an offer to buy or
16 to sell is accepted in this state when acceptance: (1) Is

17 communicated to the offeror in this state; and (2) has not
18 previously been communicated to the offeror, orally or in
19 writing, outside this state; and acceptance is communicated
20 to the offeror in this state, whether or not either party is
21 then present in this state, when the offeree directs it to the
22 offeror in this state reasonably believing the offeror to be
23 in this state and it is received at the place to which it is
24 directed (or at any post office in this state in the case of a
25 mailed acceptance).

26 (e) An offer to sell or to buy is not made in this state
27 when (1) the publisher circulates or there is circulated on
28 his or her behalf in this state any bona fide newspaper or
29 other publication of general, regular and paid circulation
30 which is not published in this state, or which is published
31 in this state but has had more than two thirds of its
32 circulation outside this state during the past twelve months,
33 or (2) a radio or television program originating outside
34 this state is received in this state.

35 (f) Sections 102 and 201(c), as well as section 405 so
36 far as investment advisers are concerned, apply when any
37 act instrumental in effecting prohibited conduct is done in
38 this state, whether or not either party is then present in this
39 state.

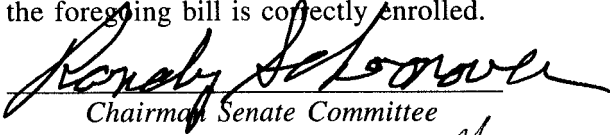
40 (g) Every person making a notice filing and every
41 applicant for registration under this chapter and every
42 issuer which proposes to offer a security in this state
43 through any person acting on an agency basis in the
44 common-law sense shall file with the commissioner, in
45 such form as he or she by rule prescribes, an irrevocable
46 consent appointing the commissioner or his or her
47 successor in office to be his or her attorney to receive
48 service of any lawful process in any noncriminal suit,
49 action or proceeding against him or her or his or her
50 successor, executor or administrator which arises under
51 this chapter or any rule or order hereunder after the
52 consent has been filed, with the same force and validity as
53 if served personally on the person filing the consent. A
54 person who has filed such a consent in connection with a
55 previous registration need not file another. Service may
56 be made by leaving a copy of the process in the office of
57 the commissioner, but it is not effective unless: (1) The
58 plaintiff, who may be the commissioner in a suit, action or

59 proceeding instituted by him, forthwith sends notice of the
60 service and a copy of the process by registered or certified
61 mail to the defendant or respondent at his or her last
62 address on file with the commissioner; and (2) the
63 plaintiff's affidavit of compliance with this subsection is
64 filed in the case on or before the return day of the process,
65 if any, or within such further time as the court allows.

66 (h) When any person, including any nonresident of
67 this state, engages in conduct prohibited or made
68 actionable by this chapter or any rule or order hereunder,
69 and he or she has not filed a consent to service of process
70 under subsection (g) of this section and personal
71 jurisdiction over him or her cannot otherwise be obtained
72 in this state, that conduct shall be considered equivalent to
73 his or her appointment of the commissioner or his or her
74 successor in office to be his or her attorney to receive
75 service of any lawful process in any noncriminal suit,
76 action or proceeding against him or her or his or her
77 successor, executor or administrator which grows out of
78 that conduct and which is brought under this chapter or
79 any rule or order hereunder, with the same force and
80 validity as if served on him or her personally. Service
81 may be made by leaving a copy of the process in the
82 office of the commissioner, and it is not effective unless
83 (1) the plaintiff, who may be the commissioner in a suit,
84 action or proceeding instituted by him, forthwith sends
85 notice of the service and a copy of the process by
86 registered or certified mail to the defendant or respondent
87 at his or her last-known address or takes other steps which
88 are reasonably calculated to give actual notice, and (2) the
89 plaintiff's affidavit of compliance with this subsection is
90 filed in the case on or before the return day of the process,
91 if any, or within such further time as the court allows.

92 (i) When process is served under this section, the
93 court, or the commissioner in a proceeding before him,
94 shall order such continuance as may be necessary to
95 afford the defendant or respondent reasonable oppor-
96 tunity to defend.

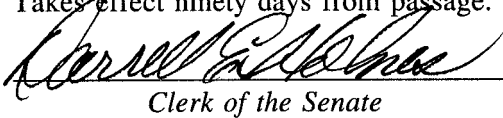
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

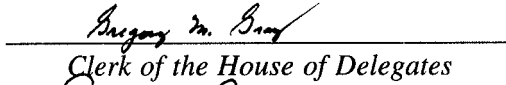

Chairman Senate Committee

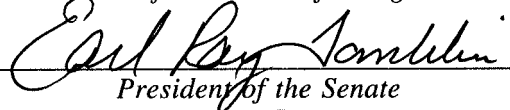

Chairman House Committee

Originating in the House.

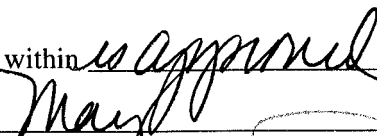
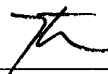

Takes effect ninety days from passage.

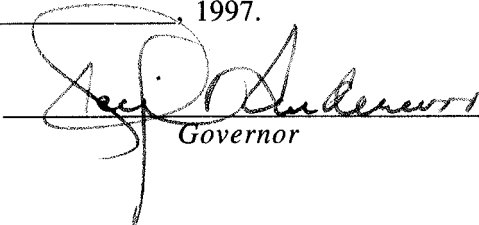

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within  this the 
day of  1997.


Governor

PRESENTED TO THE

GOVERNOR

Date 5/1/97

Time 3:01 pm