

Effective July 1, 1991, this paragraph also applies to children requiring special education who are severely and profoundly handicapped.

Approved April 22, 1991

CHAPTER 40

SECURITIES TRANSACTIONS – REGULATORY AND OTHER PROVISIONS

S.F. 520

AN ACT relating to securities by regulating transactions involving securities and regulating persons engaged in businesses related to the issuance or trading of securities, and providing penalties.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 79.17, Code 1991, is amended to read as follows:

79.17 ADDITIONAL PAYROLL DEDUCTIONS.

1. For the purposes of purchasing insurance and at the request of two hundred fifty or more state officers or employees, the state officer in charge of the payroll system shall deduct from the wages or salaries of the state officers or employees an amount specified by each of the officers or employees for payment to any insurance company authorized to do business in this state if the following conditions are met:

- a. The request for the payroll deduction is made in writing to the officer in charge of the payroll system.
- b. The pay period during which the deduction is made, the frequency, and the amount of the deduction are compatible with the payroll system.
- c. The insurance coverage is not provided by the state.

2. The moneys deducted under this section shall be paid promptly to the insurance company designated by the state officers or employees. The deduction may be made even though the compensation paid to an officer or employee is reduced to an amount below the minimum prescribed by law. Payment to an officer or employee of compensation less the deduction shall constitute a full discharge of claims and demands for services rendered by the officer or employee during the period covered by the payment. The request for the deduction may be withdrawn at any time by filing a written notification of withdrawal with the state officer in charge of the payroll system.

Sec. 2. Section 262.21, Code 1991, is amended to read as follows:

262.21 ANNUITY CONTRACTS.

At the request of an employee through contractual agreement the board may arrange for the purchase of group or individual annuity contracts for any of its employees from any company the employee chooses that is authorized to do business in this state, or the board may arrange for the purchase of an individual mutual fund contract from any company the employee chooses from a broker-dealer, salesperson, or mutual fund registered in this state, for retirement or other purposes, and may make payroll deductions in accordance with the arrangements for the purpose of paying the entire premium due and to become due under the contract. The deductions shall be made in the manner which will qualify the annuity premiums for the benefits under section 403b of the Internal Revenue Code, as defined in section 422.3. The employee's rights under the annuity contract are nonforfeitable except for the failure to pay premiums.

Whenever an existing tax-sheltered annuity contract is to be replaced by a new contract the agent or representative of the company shall submit a letter of intent to the company being

replaced, to the insurance commissioner of the state of Iowa insurance, and to the agent's or representative's own company at least thirty days prior to any action. Each required letter of intent shall be sent by registered mail. This letter of intent shall contain the policy number and description of the contract being replaced and a description of the replacement contract.

Sec. 3. Section 502.102, subsection 4, paragraphs c and d, Code 1991, are amended by striking the paragraphs and inserting the following:

c. A bank when acting on its own account or when exercising trust or fiduciary powers permitted for banks under applicable state or federal laws and regulations providing for the organization, operation, supervision, and examination of such banks;

d. An insurance company which effects transactions in its own accounts;

Sec. 4. Section 502.102, subsection 7, paragraph b, Code 1991, is amended by striking the paragraph and inserting in lieu thereof the following:

b. With respect to a fractional undivided interest in an oil, gas, or other mineral lease or in payments out of production under a lease, right, or royalty, the term "issuer" means the owner of an interest in the lease or payments out of production under a lease, right, or royalty, whether whole or fractional, who creates fractional interests for the purpose of sale.

Sec. 5. Section 502.102, subsection 12, Code 1991, is amended to read as follows:

12. "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in a profit sharing agreement; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting trust certificate; certificate of deposit for a security; ~~certificate of interest or participation in an oil, gas or mining title or fractional undivided interest in an oil, gas, or other mineral lease or in payments out of production under such a title or lease, right, or royalty; or, in general, any interest or instrument commonly known as a "security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.~~ "Security" does not include a ~~time-share interval as defined in section 557A-2 or~~ an insurance or endowment policy or annuity contract under which an insurance company promises to pay money either in a lump sum or periodically for life or for some other specified period.

Sec. 6. Section 502.202, subsection 3, Code 1991, is amended to read as follows:

3. Any security issued by and representing an interest in or a debt of, or guaranteed by, any bank organized under the laws of the United States, or any bank, ~~savings institution,~~ or trust company organized and supervised under the laws of this state.

Sec. 7. Section 502.202, subsection 10, Code 1991, is amended by striking the subsection and inserting in lieu thereof the following:

10. Commercial paper which is a promissory note, draft, bill of exchange, or banker's acceptance which satisfies the following criteria:

a. It evidences an obligation to pay cash within nine months after the date of issuance, exclusive of days of grace.

b. It is issued in denominations of at least fifty thousand dollars.

c. It receives a rating in one of the three highest rating categories from a nationally recognized statistical rating organization.

The exemption under this subsection applies to a renewal of an obligation under this subsection which is likewise limited, and to a guarantee of such an obligation or of a renewal.

Sec. 8. Section 502.202, subsection 11, Code 1991, is amended to read as follows:

11. A security issued in connection with an employee stock purchase, option, savings, pension, profit sharing or similar benefit plan; ~~provided, in the case of plans which are not qualified under section 401 of the Internal Revenue Code and which provide for contribution by employees, the administrator is notified in writing fifteen days before the inception of the plan of the terms of the plan.~~

Sec. 9. Section 502.202, Code 1991, is amended by adding the following new subsection: NEW SUBSECTION. 19. Any security representing a time-share interval as defined in section 557A.2.

Sec. 10. Section 502.203, subsection 2, paragraph c, Code 1991, is amended to read as follows:
c. The security was issued by an issuer which has had or currently has a class of securities registered under this chapter, or under chapter 502 of the Code as it existed prior to January 1, 1976; or

Sec. 11. Section 502.203, subsection 8, Code 1991, is amended to read as follows:

8. An offer or sale to a bank, savings ~~institution~~ and loan association, credit union, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in a fiduciary capacity. However, the administrator, by rule or order, may grant this exemption to a person or class of persons based upon the factors of financial sophistication, net worth, and the amount of assets under investment.

Sec. 12. Section 502.203, subsection 11, Code 1991, is amended by striking the subsection and inserting in lieu thereof the following:

11. Any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants, exercisable within not more than ninety days of their issuance, if:

a. A commission or other remuneration (other than a standby commission) is not paid or given directly or indirectly for soliciting a security holder in this state; or

b. The issuer first files a notice specifying the terms of the offer and the administrator does not by order disallow the exemption within the next ten days.

Sec. 13. Section 502.203, subsection 13, paragraphs a through d, Code 1991, are amended by striking the paragraphs and inserting in lieu thereof the following:

a. The securities to be distributed are registered under the Securities Act of 1933 before the consummation of the transaction; or

b. The securities to be distributed are not required to be registered under the Securities Act of 1933, written notice of the transaction, a filing fee of fifty dollars, and a copy of the materials by which approval of the transaction will be solicited, are given to the administrator at least ten days before the consummation of the transaction, and the administrator does not disallow, by order, the exemption within the next ten days.

Sec. 14. Section 502.203, Code 1991, is amended by adding the following new subsection: NEW SUBSECTION. 17. The offer or sale of securities by a small business investment company under the federal Small Business Investment Act of 1958 if:

a. The securities are offered or sold in compliance with 17 C.F.R. §§ 230.601 through 230.610a; and

b. The issuer has filed with the administrator the offering document to be used in connection with the offer and sale of the securities not later than the first use of the offering document in this state, the issuer has filed with the administrator a copy of the notification of form "1-E" required by 17 C.F.R. § 230.604 to be filed with the federal securities and exchange commission, and the issuer has paid the administrator a fee of one hundred dollars.

Sec. 15. Section 502.206, subsection 3, unnumbered paragraph 1, Code 1991, is amended to read as follows:

A Unless waived by a registrant, a registration statement under this section automatically becomes effective at the moment the federal registration statement or notification becomes effective if:

Sec. 16. Section 502.208, subsection 2, Code 1991, is amended to read as follows:

2. a. Every person filing a registration statement shall pay a filing fee of one-tenth of one percent of the maximum aggregate offering price at which the registered securities are to be offered in this state, but. Except as provided in paragraph "b", the fee shall in no case be less than fifty dollars or more than one thousand dollars.

b. A face-amount certificate company, an open-end management company, or a unit investment trust, as defined in the Investment Company Act of 1940, may register an indefinite amount of securities under a registration statement. The registrant, at the time of filing, may pay the maximum fee of one thousand dollars, or may pay a fee of two hundred fifty dollars and within ninety days after the end of each fiscal year during which its registration statement is effective and within ninety days after the registration is terminated do one of the following:

(1) Pay an additional fee of one thousand two hundred fifty dollars.

(2) File a report on a form that the administrator by rule adopts, reporting sales of securities to persons within this state during the fiscal year, and pay an additional filing fee of one-tenth of one percent of the maximum aggregate offering price at which the registered securities were offered in this state. However, the fee in no case shall be more than one thousand two hundred fifty dollars.

c. When a registration statement is withdrawn before the effective date or a pre-effective stop order is entered under section 502.209, the administrator shall retain the fee.

Sec. 17. Section 502.208, subsection 9, Code 1991, is amended by striking the subsection and inserting in lieu thereof the following:

9. a. A registration statement shall remain effective for one year from its effective date unless it is extended by rule or order of the administrator. All outstanding securities of the same class as a registered security are considered to be registered for the purpose of any transaction by or on behalf of a person who is not the issuer, and who is not in control of the issuer or controlled by the issuer or under common control with the issuer, so long as the registration statement is effective, unless otherwise prescribed by order. A registration statement may not be withdrawn after its effective date if any of the securities has been sold in this state, unless permitted by rule or order of the administrator. A registration statement is not effective during the time a stop order is in effect under section 502.209. A registration statement which never became effective may be withdrawn without prejudice to the issuer upon request and for good cause as determined at the discretion of the administrator.

b. During the effective period of a registration statement, the administrator may by rule or order require the person who filed the registration statement to file reports, not more often than quarterly, to keep reasonably current the information contained in the registration statement and to disclose the progress of the offering. If any of the securities registered has been sold in this state, the administrator may by rule or order extend the period for filing the reports for an additional period not exceeding two years from the date the registration became effective or from the date of its last amendment or extension.

Sec. 18. Section 502.209, subsection 1, Code 1991, is amended by adding the following new paragraph:

NEW PARAGRAPH. j. The applicant or registrant has abandoned the registration statement. The administrator may enter an order under this paragraph if notice is sent to the applicant or registrant, and either the administrator fails to receive a response from the applicant or registrant, or action is not taken by the applicant or registrant within the time specified by the administrator.

Sec. 19. Section 502.301, subsection 1, Code 1991, is amended to read as follows:

1. It is unlawful for any person to transact business in this state as a broker-dealer or agent unless at least one of the following conditions is satisfied:

a. The person is registered under this chapter.

b. The person is a broker-dealer who has no place of business in this state and the broker-dealer satisfies one of the following requirements:

(1) The broker-dealer effects transactions in this state exclusively with or through the issuers of the securities involved in the transaction, other broker-dealers, banks, trust companies, insurance companies, or investment companies as defined in the Investment Company Act of 1940, pension or profit sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees;

(2) During any period of twelve consecutive months the broker-dealer does not effect transactions in this state in any manner with more than three persons other than those specified in subparagraph (1), whether or not the offeror or any of the offerees is then present in this state; or

(3) The administrator designates the broker-dealer as exempt from these requirements by either rule or order.

Sec. 20. Section 502.302, subsection 1, Code 1991, is amended to read as follows:

1. A broker-dealer or agent may obtain an initial or renewal license by filing with the administrator, or an organization which the administrator by rule designates, an application together with a consent to service of process pursuant to section 502.609 and the appropriate filing fee. The application shall contain the information the administrator requires by rule concerning the applicant's form and place of organization, proposed method of doing business and financial condition, the qualifications and experience of the applicant, including, in the case of a broker-dealer, the qualifications and experience of any partner, officer, director or controlling person, any injunction or administrative order or conviction of a misdemeanor involving securities and any conviction of a felony, and any other matters which the administrator determines are relevant to the application. If no denial order is in effect and no proceeding is pending under section 502.304, registration becomes effective at noon of the thirtieth day after an a completed application or an amendment completing the application is filed, unless waived by the applicant. The administrator may by rule or order specify an earlier effective date and may by order defer the effective date until noon of the thirtieth day after the filing of an amendment. Registration of a broker-dealer automatically constitutes registration of an agent named in the application or amendments to the application who is a partner, officer or director, or who is a person occupying a similar status or performing similar functions.

Sec. 21. Section 502.302, subsection 2, Code 1991, is amended to read as follows:

2. Every applicant for initial or renewal registration as a broker-dealer shall pay a filing fee of two hundred dollars. Every applicant for initial or renewal registration as an agent shall pay a filing fee of twenty thirty dollars. A filing fee is not refundable.

Sec. 22. Section 502.302, subsection 5, unnumbered paragraph 1, Code 1991, is amended to read as follows:

Every Except as provided in this subsection, a broker-dealer and every an issuer who employs agents in connection with any security or transaction not exempted either by section 502.202 or section 502.203, shall file and maintain with the administrator a bond conditioned that the broker-dealer or issuer shall properly account for any moneys or securities received from or belonging to another and shall pay, satisfy, and discharge any judgment or decree that may be rendered against such broker-dealer or issuer in a court of competent jurisdiction in a suit or action brought by a purchaser or seller of securities against such broker-dealer or issuer in which it shall be found or adjudged that such securities were sold or purchased by the broker-dealer or issuer in violation of this chapter. Such bond may be drawn to cover the original license and any renewals thereof, and may contain a provision authorizing the surety therein to cancel upon thirty days' notice to the principal and the administrator. A broker-dealer who is a member of the securities investor protection corporation is not required to furnish a bond.

Sec. 23. Section 502.303, subsection 4, Code 1991, is amended to read as follows:

4. The administrator shall may make periodic examinations, within or without this state, of the business and records of each registered broker-dealer, at the times and in the scope as the administrator determines. The examinations may be made without prior notice to the

broker-dealer. The administrator may copy all records the administrator feels are necessary to conduct the examination. The expense reasonably attributable to an examination shall be paid by the broker-dealer whose business is examined, but the expense so payable shall not exceed an amount which the administrator by rule prescribes. For the purpose of avoiding unnecessary duplication of examinations, the administrator may co-operate with securities administrators of other states, the securities and exchange commission, and any national securities exchange or national securities association registered under the Securities Exchange Act of 1934. The administrator shall not make public the information obtained in the course of examinations, except when a duty under this chapter requires the administrator to take action regarding a broker-dealer or to make the information available to one of the agencies specified in this section, or except when the administrator is called as a witness in a criminal or civil proceeding.

Sec. 24. Section 502.304, subsection 1, unnumbered paragraph 1, Code 1991, is amended to read as follows:

The administrator may by order deny, suspend, or revoke a registration or may censure, ~~an applicant or registrant or may impose a civil penalty upon, or bar an applicant, registrant, or any officer, director, partner, or person occupying a similar status or performing similar functions for a registrant.~~ A person barred under this subsection may be prohibited by the administrator from employment with a registered broker-dealer. The administrator may restrict the person barred from engaging in any activity for which registration is required. Any action by the administrator under this subsection may be taken if the order is found to be in the public interest and it is found that the applicant or registrant or, in the case of a broker-dealer, a partner, an officer, or a director, a person occupying a similar status or performing similar functions, or a person directly or indirectly controlling the broker-dealer:

Sec. 25. Section 502.304, subsection 1, paragraph d, Code 1991, is amended to read as follows:

d. Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities, insurance, or commodities business;

Sec. 26. Section 502.304, subsection 1, paragraph f, Code 1991, is amended by striking the paragraph and inserting in lieu thereof the following:

f. Is the subject of an adjudication or order entered after notice and opportunity for hearing, within the past ten years by a securities or commodities agency, an administrator of another state, or a court of competent jurisdiction, that reflects that the person has violated the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, or the Commodity Exchange Act, a securities or commodities law of any other state, or a United States postal service fraud order. However, the administrator may not do either of the following:

- (1) Institute a revocation or suspension proceeding under this paragraph more than one year from the final agency order relied on or, if the order has been appealed, the final court decision.
- (2) Enter an order under this paragraph on the basis of an order under another state law unless that order was based on facts which would currently constitute a ground for an order under this section.

Sec. 27. Section 502.304, subsection 1, paragraph j, Code 1991, is amended to read as follows:

j. If a ~~broker-dealer, it has~~ Has failed reasonably to supervise its agents ~~an agent or employee.~~

Sec. 28. Section 502.304, subsection 1, Code 1991, is amended by adding the following new paragraphs:

NEW PARAGRAPH. k. Has been denied the right to do business in the securities industry, or the person's authority to do business in the securities industry has been revoked for cause by another state, federal, or foreign governmental agency or by a self-regulatory organization.

NEW PARAGRAPH. 1. Has been the subject of a final order in a criminal, civil, injunctive, or administrative action for securities, commodities, or fraud-related violations of the laws of this state or another state, federal, or foreign governmental unit.

Sec. 29. Section 502.304, subsection 2, Code 1991, is amended to read as follows:

2. The administrator may not institute a suspension or revocation proceeding under subsection 1, paragraphs "c" through "f", on the basis of a fact known to the administrator when registration became effective unless the proceeding is instituted within ~~thirty~~ sixty days after the effective date.

Sec. 30. Section 502.304, subsection 7, Code 1991, is amended to read as follows:

7. A civil penalty levied under subsection 1 shall not exceed ~~two hundred fifty one thousand~~ two hundred fifty one thousand dollars per violation per person ~~nor ten and shall not exceed one hundred thousand dollars~~ in a single proceeding against any one person. All administrative fines received shall be deposited in the state general fund of the state.

Sec. 31. Section 502.603, subsection 2, Code 1991, is amended to read as follows:

2. a. For the purpose of any investigation or proceeding under this chapter, the administrator or any officer designated by the administrator may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements or other documents or records which the administrator deems relevant or material to the inquiry, all of which may be enforced in accordance with the Iowa administrative procedure Act chapter 17A.

b. The administrator may issue and bring an action in district court to enforce subpoenas in this state at the request of a securities agency or administrator of another state, if the activity constituting an alleged violation for which the information is sought would be a violation of this chapter had the activity occurred in this state.

Sec. 32. NEW SECTION. 502.603A COOPERATION WITH OTHER AGENCIES.

1. To encourage uniform interpretation and administration of this chapter and effective securities regulation and enforcement, the administrator may cooperate with the securities agencies or administrators of any state, Canadian province or territory, another country, the securities and exchange commission, the commodity futures trading commission, the securities investor protection corporation, any self-regulatory organization, any national or international organization of securities officials or agencies, and any governmental law enforcement or regulatory agency.

2. The cooperation authorized by subsection 1 may include, but is not limited to, the following:

- a. Establishing a central depository for licensing or registration under this chapter and for documents or records required or allowed to be maintained under this chapter.
- b. Making a joint examination or investigation.
- c. Holding a joint administrative hearing.
- d. Filing and prosecuting a joint civil or administrative proceeding.
- e. Sharing and exchanging personnel.
- f. Sharing and exchanging information and documents subject to restriction of confidentiality in section 502.603, subsection 1.
- g. Formulating, in accordance with chapter 17A, rules or proposed rules on matters such as statements of policy, guidelines, and interpretive opinions.

Sec. 33. Section 502.604, Code 1991, is amended to read as follows:

502.604 CEASE AND DESIST ORDERS — INJUNCTIONS.

Whenever ~~If~~ it appears to the administrator that any a person has engaged or is about to engage in any an act or practice constituting a violation of any provision of this chapter or any rule or order hereunder adopted or issued pursuant to this chapter, the administrator may do either or both of the following:

1. Issue an order directed at any ~~such~~ the person requiring ~~such~~ the person to cease and desist from engaging in such act or practice; ~~or~~.

2. Bring an action in the district court to enjoin the aets or praetiees act or practice and to enforce compliance with this chapter or any a rule or order hereunder adopted or issued pursuant to this chapter. Upon a proper showing a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. In addition, upon a proper showing by the administrator, the court may enter an order of rescission, restitution, or disgorgement directed at any person who has engaged in an act constituting a violation of this chapter, or a rule or order adopted or issued pursuant to this chapter. The administrator shall not be required to post a bond.

Sec. 34. **NEW SECTION. 502.604A COURT ACTION.**

If a person fails or refuses to file any statement or report or to produce any books, papers, correspondence, memoranda, agreements, or other documents or records, or to obey any subpoena issued by the administrator, the administrator may refer the matter to the attorney general, who, after notice, may apply to a district court to enforce compliance. The court may order any or all of the following:

1. Injunctive relief, restricting or prohibiting the offer or sale of securities.
2. Revocation or suspension of any license or registration.
3. Production of documents or records, including but not limited to books, papers, correspondence, memoranda, or agreements.
4. Such other relief as may be required.

Such an order shall be effective until the person files the statement or report or produces the documents requested, or obeys the subpoena.

Sec. 35. Section 502.609, subsection 1, unnumbered paragraph 1, Code 1991, is amended to read as follows:

Every applicant for registration under this chapter, and every issuer which proposes to offer a security in this state through any person acting as agent, shall file with the administrator, in such form as the administrator by rule prescribes, an irrevocable consent appointing the administrator or the administrator's successor in office to be such person's attorney to receive service of any lawful process in any noncriminal suit, action or proceeding against such person or the successor, executor or administrator of such person which arises under this chapter or any rule or order hereunder after the consent has been filed, with the same validity as if served personally on the person filing the consent. The consent need not be filed by a person who has filed a consent in connection with a previous registration which is then in effect. Service may be made by leaving a copy of the process in the office of the administrator, but it is not effective unless the plaintiff, including the administrator when acting as such,

Sec. 36. Section 502.210, Code 1991, is repealed.

Approved April 22, 1991

CHAPTER 41

PUBLIC RETIREMENT SYSTEMS – SURVIVING SPOUSE BENEFITS

H.F. 5

AN ACT relating to the payment of pension benefits to surviving spouses under the chapters 97A, 410, and 411 retirement systems, and providing retroactive applicability dates.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 97A.6, subsection 8, paragraph b, unnumbered paragraph 5, Code 1991, is amended to read as follows: