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SENATE FILE 463

By COMMITTEE ON JUDICIARY  
*(approved 3/23 (p. 940))*

Passed Senate, Date 3-30-79 (p. 1023) Passed House, Date 4-5-79 (p. 1358)

Vote: Ayes 45 Nays 0 Vote: Ayes 85 Nays 8

Approved April 20, 1979

## A BILL FOR

1 An Act relating to the regulation of securities transactions.

2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section five hundred two point one hundred  
2 two (502.102), subsection two (2), Code 1979, is amended to  
3 read as follows:

4 2. "Agent" means any individual other than a broker-dealer  
5 who represents a broker-dealer or issuer in effecting or  
6 attempting to effect purchases or sales of securities. "Agent"  
7 does not include an individual who represents an issuer in:

8 a. Effecting transactions in a security exempted by section  
9 502.202, subsections 1, 2, 3, 4, 6, 10, 11, or a security  
10 issued by an industrial loan company licensed under chapter  
11 536A, Code 1977;

12 b. Effecting transactions exempted by section 502.203;  
13 or

14 c. Effecting transactions with existing employees, partners  
15 or directors of the issuer if no commission or other  
16 remuneration is paid or given directly or indirectly for  
17 soliciting any person in this state. "Agent" also does not  
18 include other individuals who are not within the intent of  
19 this subsection whom the administrator by rule or order  
20 designates. A partner, officer, or director of a broker-  
21 dealer or issuer, or a person occupying a similar status or  
22 performing similar functions, is an agent only if such person  
23 otherwise comes within this definition.

24 Sec. 2. Section five hundred two point one hundred two  
25 (502.102), subsection four (4), paragraphs a, b and c, and  
26 paragraph d, subparagraph two (2), Code 1979, are amended  
27 to read as follows:

28 a. An agent-;

29 b. An issuer-;

30 c. An institutional investor, including an insurance  
31 company or bank, except where the insurance company or bank  
32 is engaged in the business of selling interests (other than  
33 through a subsidiary) in a separate account that are  
34 securities-;

35 (2) During any period of twelve consecutive months does

1 not direct more than fifteen offers to sell or buy into this  
2 state in any manner to persons other than those specified  
3 in subparagraph (1) of this paragraph, whether or not the  
4 offeror or any of the offerees is then present in this state;

5 Sec. 3. Section five hundred two point one hundred two  
6 (502.102), subsection ten (10), paragraph f, subparagraph  
7 two (2), Code 1979, is amended to read as follows:

8 (2) Any stock split, other than a reverse stock split,  
9 or security dividend payable with respect to the securities  
10 of a corporation in the same or any other class of securities  
11 of such corporation, provided nothing of value, including  
12 the surrender of a right or an option to receive a cash or  
13 property dividend, is given by security holders for the  
14 security dividend.

15 Sec. 4. Section five hundred two point one hundred two  
16 (502.102), Code 1979, is amended by adding the following new  
17 subsection:

18 NEW SUBSECTION. "Interest at the legal rate" means the  
19 interest rate for judgments specified in section five hundred  
20 thirty-five point three (535.3) of the Code.

21 Sec. 5. Section five hundred two point two hundred two  
22 (502.202), subsection twelve (12), paragraphs a and b, Code  
23 1979, are amended to read as follows:

24 a. A co-operative association as defined in the  
25 Agricultural Marketing Act, or a federation of such co-  
26 operative associations that possesses no greater powers or  
27 purposes than co-operative associations so defined, if such  
28 stock or similar security:

29 (1) Qualifies its holder for membership in the co-operative  
30 association or federation, or in the case of patronage refund  
31 certificate, is issuable only to members; and

32 (2) Is transferable only to the issuer or to a successor  
33 in interest of the transferor that qualifies for membership  
34 in the co-operative association or federation;

35 b. A co-operative housing corporation described in

1 paragraph 1 of subsection "b" of section 216, of the Internal  
2 Revenue Code of 1954, if its activities are limited to the  
3 ownership, leasing, management, or construction of residential  
4 properties for its members, and activities incidental thereto;  
5 or

6 Sec. 6. Section five hundred two point two hundred two  
7 (502.202), Code 1979, is amended by adding the following new  
8 subsection:

9 NEW SUBSECTION. Any security issued by a corporation  
10 formed under chapter four hundred ninety-six B (496B) of the  
11 Code.

12 Sec. 7. Section five hundred two point two hundred three  
13 (502.203), subsection two (2), paragraphs a, b and c, Code  
14 1979, are amended to read as follows:

15 a. A recognized securities manual approved by the  
16 administrator contains the names of the issuer's officers  
17 and directors, a balance sheet of the issuer as of a date  
18 within eighteen months, and a profit and loss statement for  
19 either the fiscal year preceeding that date or the most recent  
20 year of operations-;

21 b. The security was issued by an issuer which has a class  
22 of securities currently registered under the Securities  
23 Exchange Act of 1934-;

24 c. The security was issued by an issuer which has a class  
25 of securities registered under this chapter, or under chapter  
26 502 of the Code as it existed prior to January 1, 1976-; or

27 Sec. 8. Section five hundred two point two hundred three  
28 (502.203), subsection nine (9), paragraph a, unnumbered  
29 subparagraph one (1), Code 1979, is amended to read as follows:

30 9. a. The sale, as part of a single issue, of securities  
31 other than fractional undivided interests in oil, gas or other  
32 mineral leases, rights or royalties, and interests in a limited  
33 or general partnership organized under the laws of or having  
34 its principal place of business in a foreign jurisdiction,  
35 except as may be permitted by the administration by rule or

1 by order, by the issuer thereof within any period of twelve  
2 consecutive months to not more than thirty-five purchasers  
3 in this state, exclusive of purchases by bona fide  
4 institutional investors for their own account for investment,  
5 provided that the issuer reasonably believes that all the  
6 buyers in this state are purchasing for investment, and that  
7 both of the following are complied with:

8     Sec. 9. Section five hundred two point two hundred three  
9 (502.203), subsection eleven (11), Code 1979, is amended by  
10 adding the following new paragraph:

11     NEW PARAGRAPH.

12     d. The sale, for cash, in connection with a stock dividend,  
13 of less than full shares of stock to avoid the issuance of  
14 fractional shares, by rounding up the stock dividend payable  
15 to any holder to the next higher full share.

16     Sec. 10. Section five hundred two point two hundred three  
17 (502.203), subsection thirteen (13), paragraphs a, b and c,  
18 Code 1979, are amended to read as follows:

19     a. A party to such transaction files proxy or informa-  
20 tional materials pursuant to subsection "a" of section 14,  
21 or subsection "c" of section 14 of the Securities Exchange  
22 Act of 1934, or pursuant to section 20 of the Investment  
23 Company Act of 1940, provided that such materials are, at  
24 least ten days prior to the meeting of security holders called  
25 for the purpose of approving such transactions-;

26         (1) Filed with the administrator, and

27         (2) Distributed to each of the security holders of each  
28 party to such transaction-;

29     b. A party to such transaction is excused from registra-  
30 tion under section 12 of the Securities Exchange Act of 1934  
31 pursuant to subparagraph (G) of paragraph 2 of subsection  
32 "g" of section 12 of that Act, and such party is required  
33 by the laws of its domiciliary state to file proxy materials  
34 with an agency of said state provided that such proxy materials  
35 are, at least ten days prior to the meeting of security holders

1 called for the purpose of approving such transaction-;

2 (1) Filed with the administrator, and

3 (2) Distributed to each of the security holders of each  
4 party to such transaction-;

5 c. One party to a merger owns not less than ninety percent  
6 of the outstanding shares of each class of stock of each other  
7 party to the merger-; or

8 Sec. 11. Section five hundred two point two hundred seven  
9 (502.207), subsection two (2), paragraph p, Code 1979, is  
10 amended to read as follows:

11 p. A balance sheet of the issuer as of a date within four  
12 months prior to the filing of the registration statement;  
13 a profit and loss statement and ~~analysis-of-surplus~~ statement  
14 of changes in financial position for each of the three fiscal  
15 years preceding the date of the balance sheet and for any  
16 period between the close of the last fiscal year and the date  
17 of the balance sheet, or for the period of the issuer's and  
18 any predecessor's existence if less than three years, and,  
19 if any part of the proceeds of the offering is to be applied  
20 to the purchase of any business, the same financial statements  
21 which would be required if that business were the registrant,  
22 or such other financial statements as may be required pur-  
23 suant to section 502.607, subsection 3.

24 Sec. 12. Section five hundred two point two hundred eight  
25 (502.208), Code 1979, is amended by adding the following new  
26 subsection:

27 NEW SUBSECTION. If a registrant sells securities in excess  
28 of the aggregate amount registered for sale in this state,  
29 the registrant may file an amendment to the registration  
30 statement to include the excess sales. Every person filing  
31 such an amendment shall pay a filing fee of three times the  
32 amount calculated in the manner specified in subsection two  
33 (2) of this section as though the additional securities sold  
34 constituted a separate issue. The administrator may order  
35 the amendment effective retroactively as of the effective

1 date of the registration statement being amended.

2 Sec. 13. Section five hundred two point two hundred nine  
3 (502.209), subsection one (1), paragraphs a, b, c, d, e, f,  
4 g and h, Code 1979, are amended to read as follows:

5 a. The registration statement as of its effective date  
6 or as of any earlier date in the case of an order denying  
7 effectiveness, or any amendment filed under either subsection  
8 9 or subsection 11 of section 502.208 as of its effective  
9 date, or any financial statement or report required under  
10 section 502.208, subsection 9 is incomplete in any material  
11 respect or contains any statement which was, in the light  
12 of the circumstances under which it was made, false or  
13 misleading with respect to any material fact;

14 b. Any provision of this chapter or any rule, order or  
15 condition lawfully imposed under this chapter has been  
16 willfully violated, in connection with the offering, by:

17 (1) The person filing the registration statement;

18 (2) The issuer;

19 (3) Any partner, officer or director of the issuer, or  
20 any person occupying a similar status or performing similar  
21 functions;

22 (4) Any affiliate of the issuer, but only if the person  
23 filing the registration statement is an affiliate of the is-  
24 suer; or

25 (5) Any broker-dealer;

26 c. The securities registered or sought to be registered  
27 are the subject of an administrative stop order or similar  
28 order or a permanent or temporary injunction of any court  
29 of competent jurisdiction entered under any other federal  
30 or state Act applicable to the offering; but the administrator  
31 may not institute a proceeding against an effective registra-  
32 tion statement under this section more than one year from  
33 the date of the order or injunction relied on, and the  
34 administrator may not enter an order under this section on  
35 the basis of an order or injunction entered under any other

1 state Act unless that order or injunction was based on facts  
2 which would currently constitute a ground for a stop order  
3 under this section-;

4 d. The issuer's enterprise or method of business includes  
5 or would include activities which are illegal where performed-;

6 e. The issuance or sale of the securities is or would  
7 be unfair or inequitable to purchasers or has worked or tended  
8 to work a fraud upon purchasers or would so operate-;

9 f. The offering has been or would be made with unreason-  
10 able amounts of underwriters' and sellers' discounts, com-  
11 missions, or other compensation, or promoters' profits or  
12 participation, or unreasonable amounts or kinds of options-;

13 g. Advertising has been used in connection with the of-  
14 fering contrary to the provisions of section 502.602-;

15 h. The financial condition of the issuer affects or would  
16 affect the soundness of the securities-; or

17 Sec. 14. Section five hundred two point four hundred three  
18 (502.403), subsection one (1), paragraph b, and subsection  
19 two (2), Code 1979, are amended to read as follows:

20 b. To enter any order or orders for the purchase (or sale)  
21 of the security with the knowledge that an order or orders  
22 of substantially the same size, at substantially the same  
23 time, and at substantially the same price for the sale (or  
24 purchase) of the security have been or will be entered by  
25 or for the same or affiliated persons-;

26 2. To effect, alone or with one or more other persons,  
27 a series of transactions in any security creating actual or  
28 apparent active trading in the security or raising or de-  
29 pressing the price of the security for the purpose of induc-  
30 ing the purchase or sale of the security by others-; or

31 Sec. 15. Section five hundred two point five hundred two  
32 (502.502), Code 1979, is amended to read as follows:

33 502.502 FRAUDULENT PRACTICES.

34 1. Any person, other than an underwriter, who offers or  
35 sells a security in connection with an offering of securi-

1 ties (i) registered under section five hundred two point two  
2 hundred seven (502.207) of the Code or under the Securities  
3 Act of 1933, or (ii) pursuant to an exemption from registra-  
4 tion under section 3(b) of the Securities Act of 1933, in  
5 violation of section five hundred two point four hundred one  
6 (502.401) of the Code, the purchaser not knowing of the  
7 violation, shall be liable to the purchaser, who may sue  
8 either at law or in equity to recover the consideration paid  
9 for the security, together with interest at the legal rate  
10 from the date of payment, costs and reasonable attorneys'  
11 fees, less the amount of any income or distributions, in cash  
12 or in kind, received on the security, upon the tender of the  
13 security, or for damages if the purchaser no longer owns the  
14 security. Damages shall be the amount that would be recover-  
15 able upon a tender less:

16 a. The value of the security when the purchaser disposed  
17 of it; and

18 b. Interest on said value at the legal rate from the date  
19 of disposition.

20 The persons on whose behalf an offering is made shall be  
21 jointly and severally liable under this subsection. Tender  
22 requires only notice of willingness to exchange the security  
23 for the amount specified. Any notice may be given by service  
24 as in civil actions or by certified mail addressed to the  
25 last known address of the person liable.

26 ± 2. Any ~~person~~ underwriter and any person, other than  
27 a person on whose behalf an offering described in subsection  
28 one (1) of this section is made, who offers or sells a security  
29 in violation of ~~sections~~ section 502.401 ~~or-502-404~~, the pur-  
30 chaser not knowing of the violation, and who fails to sustain  
31 the burden of proof that he, she or it did not know and in  
32 the exercise of reasonable care could not have known of the  
33 violation, shall be liable to the purchaser, who may sue  
34 either at law or in equity to recover the consideration paid  
35 for the security, together with interest at the legal rate

1 from the date of payment, costs and reasonable attorneys'  
2 fees, less the amount of any income or distributions, in cash  
3 or in kind, received on the security, upon the tender of the  
4 security, or for damages if the purchaser no longer owns the  
5 security. Damages shall be the amount that would be  
6 recoverable upon a tender less:

7 a. The value of the security when the purchaser disposed  
8 of it; and

9 b. Interest on said value at the legal rate from the date  
10 of disposition.

11 PARAGRAPH DIVIDED. Any person liable under this subsection  
12 on whose behalf an offering is made and any underwriter of  
13 the offering, whether on a best efforts or a firm commitment  
14 basis, shall be jointly and severally liable under this ~~see-~~  
15 ~~tion~~ subsection, but in no event shall any underwriter be  
16 liable in any suit or suits authorized under this ~~section~~  
17 subsection for damages in excess of the total price at which  
18 the securities underwritten by it and distributed to the  
19 public were offered to the public. Tender requires only no-  
20 tice of willingness to exchange the security for the amount  
21 specified. Any notice may be given by service as in civil  
22 actions or by certified mail addressed to the last known  
23 address of the person liable.

24 2 3. Any person who offers to purchase or purchases a  
25 security in violation of ~~sections~~ section 502.401 ~~or~~-502-404,  
26 the seller not knowing of the violation, and who fails to  
27 sustain the burden of proof that he, she or it did not know  
28 and in the exercise of reasonable care could not have known  
29 of the violation, shall be liable to the seller, who may sue  
30 either at law or in equity to recover the security, costs,  
31 and reasonable attorney's fees, plus any income or distribu-  
32 tions, in cash or in kind, received by the purchaser thereon,  
33 upon tender of the consideration received, or for damages  
34 if the purchaser no longer owns the security. Damages shall  
35 be the excess of the value of the security when the purchaser

1 disposed of it, plus interest at the legal rate from the date  
2 of disposition, over the consideration paid for the security.  
3 Tender requires only notice of willingness to pay the amount  
4 specified in exchange for the security. Any notice may be  
5 given by service as in civil actions or by certified mail  
6 to the last known address of the person liable.

7     3 4. Any person who willfully and knowingly participates  
8 in any act or transaction in violation of sections 502.403,  
9 five hundred two point four hundred four (502.404) of the  
10 Code, 502.405 or 502.407 shall be liable to any other person  
11 who purchases or sells any security (but not a mere holder  
12 thereof) at a price which was affected by the act or  
13 transaction for the damages sustained as a result of such  
14 act or transaction. Damages shall not exceed the difference  
15 between the price at which the other person purchased or sold  
16 securities and the market value which the securities would  
17 have had at the time of such purchase or sale in the absence  
18 of the act or transaction, plus interest at the legal rate,  
19 costs and reasonable attorneys' fees.

20     4 5. Any person, referred to in this subsection as the  
21 "defendant", who violates section 502.402 shall be deemed  
22 to be unjustly enriched and liable to any person, referred  
23 to in this subsection as the "plaintiff", who purchased or  
24 may have purchased a security from, or sold or may have sold  
25 a security to, the defendant in connection with such violation,  
26 for damages equal to the difference between the price at which  
27 such security was purchased or sold and the market value which  
28 such security would have had at the time of the purchase or  
29 sale if the information known to the defendant had been  
30 publicly disseminated prior to that time and a reasonable  
31 time had elapsed for the market to absorb the information,  
32 plus interest at the legal rate, costs and reasonable at-  
33 torneys' fees, unless the defendant proves that the plaintiff  
34 knew the information or that the plaintiff would have purchased  
35 or sold at the same price even if the information had been

1 revealed to the plaintiff.

2     5 6. Any person who is aggrieved by a violation of sec-  
3 tion 502.407 may bring an action in the district court to  
4 enjoin the acts complained of and, upon proper showing, to  
5 require that correcting material be disseminated, and such  
6 person may be awarded costs and reasonable attorney's fees.

7     Sec. 16. Section five hundred two point five hundred three  
8 (502.503), subsection one (1), Code 1979, is amended to read  
9 as follows:

10     1. Affiliates of a person liable under either section  
11 502.501 or 502.502, partners, principal executive officers  
12 or directors of such person, persons occupying a similar  
13 status or performing similar functions for such person, em-  
14 ~~ployees-of-such-person~~ persons (whether employees of such  
15 person or otherwise) who materially aid and abet in the act  
16 or transaction constituting the violation, and broker-dealers  
17 or agents who materially aid and abet in the act or transac-  
18 tion constituting the violation, are also liable jointly and  
19 severally with and to the same extent as such person, unless  
20 ~~any-person-liable-hereunder-proves-that-he,-she-or-it-did~~  
21 ~~not-know,-and-in-the-exercise-of-reasonable-care-could-not~~  
22 ~~have-known,-of-the-existence-of-the-facts-by-reason-of-which~~  
23 ~~the-liability-is-alleged-to-exist-:~~

24     a. With respect to section five hundred two point five  
25 hundred one (502.501) of the Code and section five hundred  
26 two point five hundred two (502.502), subsections one (1)  
27 and five (5) of the Code, any person liable hereunder proves  
28 that he, she or it did not know, and in the exercise of  
29 reasonable care could not have known, of the existence of  
30 the facts by reason of which the liability is alleged to  
31 exist; and

32     b. With respect to section five hundred two point five  
33 hundred two (502.502), subsections two (2) and three (3) of  
34 the Code, any person liable hereunder proves that he, she  
35 or it did not know, and was not grossly negligent in failing

1 to know, of the existence of the facts by reason of which  
2 the liability is alleged to exist.

3 Sec. 17. Section five hundred two point six hundred four  
4 (502.604), subsection one (1), Code 1979, is amended to read  
5 as follows:

6 1. Issue an order directed at any such person requiring  
7 such person to cease and desist from engaging in such act  
8 or practice-; or

9 Sec. 18. Section four hundred ninety-six B point eighteen  
10 (496B.18), Code 1979, is repealed. Chapter five hundred one  
11 (501), Code 1979, is repealed.

12 EXPLANATION

13 This bill amends portions of Iowa law which regulate  
14 transactions involving stocks, bonds and other securities.  
15 Sections 1 through 17 contain various amendments to chapter  
16 502 of the Code. Section 18 repeals certain other parts of  
17 the Code relating to securities.

18 The effects of the various provisions of the bill are as  
19 follows:

20 Section 1 authorizes the superintendent of securities by  
21 rule or order to exempt from the definition of "agent", and  
22 thus the agent licensing requirements, persons who other-  
23 wise might literally be included, where the superintendent  
24 determines that the purposes of the law can be accomplished  
25 without requiring the licensing of particular persons as  
26 agents.

27 Section 2 and sections 5, 7, 10, 13, 14 and 17, each make  
28 changes in punctuation used in various sections of chapter  
29 502 to clarify intent. In the various sections involved,  
30 punctuation is added or changed so that interpretation of  
31 Iowa law remains consistent with interpretations of the uniform  
32 securities law from which Iowa law is derived.

33 Section 3 adds commas so that the phrase "other than a  
34 reverse stock split" is not interpreted within the context  
35 of the paragraph to create a broader exception than is

1 intended.

2 Section 4 adds a new definition to the chapter so that  
3 the term "interest at the legal rate", as used in the chapter,  
4 means the rate of interest on judgments set forth in Code  
5 section 535.3.

6 Section 6 provides an exemption from registration under  
7 the Act for securities issued by economic development corpora-  
8 tions organized under chapter 496B of the Code. Section 18  
9 repeals Code section 496B.18, which makes the Act inapplicable  
10 to corporations subject to chapter 496B of the Code. The  
11 effect of these amendments is to continue the exemption from  
12 registration of securities of such corporations, but to subject  
13 the securities to the anti-fraud provisions of the Act.

14 Section 8 relates to the exemption from registration of  
15 securities sold to a limited number of persons for investment  
16 purposes. Under present law, certain issuers are unable to  
17 utilize the limited offering exemption from registration  
18 provided by subsection 12 of section 502.203. The amendment  
19 grants the superintendent of securities authority to permit  
20 exceptions to that prohibition by rule or order.

21 Section 9 adds new language to provide that the issuance  
22 of fractional shares in certain limited cases would be exempt  
23 from registration under the chapter.

24 Section 11 modifies the requirements for documents which  
25 must be filed with a registration statement filed under section  
26 502.207. This amendment reflects a change which has been  
27 made in financial statements required under generally accepted  
28 accounting principles.

29 Section 12 relates to sales of securities which have been  
30 registered. The superintendent of securities indicates that  
31 occasionally securities are inadvertently offered in this  
32 state in excess of the quantity registered. This amendment  
33 codifies administrative practice by allowing the registration  
34 statement to be amended retroactively.

35 Sections 15 and 16 amend Code section 502.502. The

1 superintendent of securities indicates that the intent is  
2 to more closely harmonize the civil liability provisions of  
3 the Act with essentially equivalent civil liability provisions  
4 of the federal securities laws, as interpreted by recent  
5 decisions of the United States Supreme Court.

6 Section 18 repeals Code section 496B.18, as described above  
7 with respect to section 6 of the bill. Section 18 also repeals  
8 chapter 501 of the Code. According to the superintendent  
9 of securities, chapter 501, relating to the sale of stock  
10 on the installment plan, was enacted in 1904, long before  
11 the advent of any federal or state securities regulations.  
12 It was apparently intended to regulate the issuers of face  
13 amount certificates, but the chapter has been used  
14 infrequently. With comprehensive state and federal schemes  
15 for the regulation of securities, chapter 501 is believed  
16 by the superintendent to be obsolete.

17 The bill would take effect July first following its  
18 enactment.

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SENATE FILE 463

AN ACT  
RELATING TO THE REGULATION OF SECURITIES TRANSACTIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section five hundred two point one hundred two (502.102), subsection two (2), Code 1979, is amended to read as follows:

2. "Agent" means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities. "Agent" does not include an individual who represents an issuer in:

a. Effecting transactions in a security exempted by section 502.202, subsections 1, 2, 3, 4, 6, 10, 11, or a security issued by an industrial loan company licensed under chapter 536A, Code 1977;

b. Effecting transactions exempted by section 502.203;

or

c. Effecting transactions with existing employees, partners or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state. "Agent" also does not include other individuals who are not within the intent of this subsection whom the administrator by rule or order designates. A partner, officer, or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions, is an agent only if such person otherwise comes within this definition.

Sec. 2. Section five hundred two point one hundred two (502.102), subsection four (4), paragraphs a, b and c, and paragraph d, subparagraph two (2), Code 1979, are amended to read as follows:

a. An agent+;

b. An issuer+;

c. An institutional investor, including an insurance company or bank, except where the insurance company or bank is engaged in the business of selling interests (other than through a subsidiary) in a separate account that are securities+;

(2) During any period of twelve consecutive months does not direct more than fifteen offers to sell or buy into this state in any manner to persons other than those specified in subparagraph (1) of this paragraph, whether or not the offeror or any of the offerees is then present in this state+;

Sec. 3. Section five hundred two point one hundred two (502.102), subsection ten (10), paragraph f, subparagraph two (2), Code 1979, is amended to read as follows:

(2) Any stock split, other than a reverse stock split, or security dividend payable with respect to the securities of a corporation in the same or any other class of securities of such corporation, provided nothing of value, including the surrender of a right or an option to receive a cash or property dividend, is given by security holders for the security dividend.

Sec. 4. Section five hundred two point one hundred two (502.102), Code 1979, is amended by adding the following new subsection:

NEW SUBSECTION. "Interest at the legal rate" means the interest rate for judgments specified in section five hundred thirty-five point three (535.3) of the Code.

Sec. 5. Section five hundred two point two hundred two (502.202), subsection twelve (12), paragraphs a and b, Code 1979, are amended to read as follows:

a. A co-operative association as defined in the Agricultural Marketing Act, or a federation of such co-operative associations that possesses no greater powers or purposes than co-operative associations so defined, if such stock or similar security;

(1) Qualifies its holder for membership in the co-operative association or federation, or in the case of patronage refund certificate, is issuable only to members; and

(2) Is transferable only to the issuer or to a successor in interest of the transferor that qualifies for membership in the co-operative association or federation;

b. A co-operative housing corporation described in paragraph 1 of subsection "b" of section 216, of the Internal Revenue Code of 1954, if its activities are limited to the ownership, leasing, management, or construction of residential properties for its members, and activities incidental thereto; or

Sec. 6. Section five hundred two point two hundred two (502.202), Code 1979, is amended by adding the following new subsection:

NEW SUBSECTION. Any security issued by a corporation formed under chapter four hundred ninety-six B (496B) of the Code

Sec. 7. Section five hundred two point two hundred three (502.203), subsection two (2), paragraphs a, b and c, Code 1979, are amended to read as follows:

a. A recognized securities manual approved by the administrator contains the names of the issuer's officers and directors, a balance sheet of the issuer as of a date within eighteen months, and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations;

b. The security was issued by an issuer which has a class of securities currently registered under the Securities Exchange Act of 1934;

c. The security was issued by an issuer which has a class of securities registered under this chapter, or under chapter 502 of the Code as it existed prior to January 1, 1976;

Sec. 8. Section five hundred two point two hundred three (502.203), subsection nine (9), paragraph e, unnumbered subparagraph one (1), Code 1979, is amended to read as follows

9. a. The sale, as part of a single issue, of securities other than fractional undivided interests in oil, gas or other mineral leases, rights or royalties, and interests in a limited or general partnership organized under the laws of or having its principal place of business in a foreign jurisdiction, except as may be permitted by the administration by rule or by order, by the issuer thereof within any period of twelve consecutive months to not more than thirty-five purchasers in this state, exclusive of purchases by bona fide institutional investors for their own account for investment, provided that the issuer reasonably believes that all the buyers in this state are purchasing for investment, and that both of the following are complied with:

Sec. 9. Section five hundred two point two hundred three (502.203), subsection eleven (11), Code 1979, is amended by adding the following new paragraph:

NEW PARAGRAPH.

d. The sale, for cash, in connection with a stock dividend, of less than full shares of stock to avoid the issuance of fractional shares, by rounding up the stock dividend payable to any holder to the next higher full share.

Sec. 10. Section five hundred two point two hundred three (502.203), subsection thirteen (13), paragraphs a, b and c, Code 1979, are amended to read as follows:

a. A party to such transaction files proxy or informational materials pursuant to subsection "a" of section 14, or subsection "c" of section 14 of the Securities Exchange Act of 1934, or pursuant to section 20 of the Investment Company Act of 1940, provided that such materials are, at least ten days prior to the meeting of security holders called for the purpose of approving such transactions:

(1) Filed with the administrator; and

(2) Distributed to each of the security holders of each party to such transaction;

b. A party to such transaction is excused from registration under section 12 of the Securities Exchange Act of 1934

pursuant to subparagraph (G) of paragraph 2 of subsection "g" of section 12 of that Act, and such party is required by the laws of its domiciliary state to file proxy materials with an agency of said state provided that such proxy materials are, at least ten days prior to the meeting of security holders called for the purpose of approving such transaction:

- (1) Filed with the administrator, and
- (2) Distributed to each of the security holders of each party to such transaction;

c. One party to a merger owns not less than ninety percent of the outstanding shares of each class of stock of each other party to the merger; or

Sec. 11. Section five hundred two point two hundred seven (502.207), subsection two (2), paragraph p, Code 1979, is amended to read as follows:

p. A balance sheet of the issuer as of a date within four months prior to the filing of the registration statement; a profit and loss statement and ~~analysis-of-surplus statement~~ of changes in financial position for each of the three fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessor's existence if less than three years, and, if any part of the proceeds of the offering is to be applied to the purchase of any business, the same financial statements which would be required if that business were the registrant, or such other financial statements as may be required pursuant to section 502.607, subsection 3.

Sec. 12. Section five hundred two point two hundred eight (502.208), Code 1979, is amended by adding the following new subsection:

NEW SUBSECTION. If a registrant sells securities in excess of the aggregate amount registered for sale in this state, the registrant may file an amendment to the registration statement to include the excess sales. Every person filing such an amendment shall pay a filing fee of three times the

amount calculated in the manner specified in subsection two (2) of this section as though the additional securities sold constituted a separate issue. The administrator may order the amendment effective retroactively as of the effective date of the registration statement being amended.

Sec. 13. Section five hundred two point two hundred nine (502.209), subsection one (1), paragraphs a, b, c, d, e, f, g and h, Code 1979, are amended to read as follows:

a. The registration statement as of its effective date or as of any earlier date in the case of an order denying effectiveness, or any amendment filed under either subsection 9 or subsection 11 of section 502.208 as of its effective date, or any financial statement or report required under section 502.208, subsection 9 is incomplete in any material respect or contains any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

b. Any provision of this chapter or any rule, order or condition lawfully imposed under this chapter has been willfully violated, in connection with the offering, by:

- (1) The person filing the registration statement;
- (2) The issuer;

(3) Any partner, officer or director of the issuer, or any person occupying a similar status or performing similar functions;

(4) Any affiliate of the issuer, but only if the person filing the registration statement is an affiliate of the issuer; or

- (5) Any broker-dealer;

c. The securities registered or sought to be registered are the subject of an administrative stop order or similar order or a permanent or temporary injunction of any court of competent jurisdiction entered under any other federal or state Act applicable to the offering; but the administrator may not institute a proceeding against an effective registration statement under this section more than one year from

the date of the order or injunction relied on, and the administrator may not enter an order under this section on the basis of an order or injunction entered under any other state Act unless that order or injunction was based on facts which would currently constitute a ground for a stop order under this section;

d. The issuer's enterprise or method of business includes or would include activities which are illegal where performed;

e. The issuance or sale of the securities is or would be unfair or inequitable to purchasers or has worked or tended to work a fraud upon purchasers or would so operate;

f. The offering has been or would be made with unreasonable amounts of underwriters' and sellers' discounts, commissions, or other compensation, or promoters' profits or participation, or unreasonable amounts or kinds of options;

g. Advertising has been used in connection with the offering contrary to the provisions of section 502.602;

h. The financial condition of the issuer affects or would affect the soundness of the securities;

Sec. 14. Section five hundred two point four hundred three (502.403), subsection one (1), paragraph b, and subsection two (2), Code 1979, are amended to read as follows:

b. To enter any order or orders for the purchase (or sale) of the security with the knowledge that an order or orders of substantially the same size, at substantially the same time, and at substantially the same price for the sale (or purchase) of the security have been or will be entered by or for the same or affiliated persons;

2. To effect, alone or with one or more other persons, a series of transactions in any security creating actual or apparent active trading in the security or raising or depressing the price of the security for the purpose of inducing the purchase or sale of the security by others;

Sec. 15. Section five hundred two point five hundred two (502.502), Code 1979, is amended to read as follows:

#### 502.502 FRAUDULENT PRACTICES.

1. Any person, other than an underwriter, who offers or sells a security in connection with an offering of securities (1) registered under section five hundred two point two hundred seven (502.207) of the Code or under the Securities Act of 1933, or (ii) pursuant to an exemption from registration under section 3(b) of the Securities Act of 1933, in violation of section five hundred two point four hundred one (502.401) of the Code, the purchaser not knowing of the violation, shall be liable to the purchaser, and may sue either at law or in equity to recover the consideration paid for the security, together with interest at the legal rate from the date of payment, costs and reasonable attorneys' fees, less the amount of any income or distributions, in cash or in kind, received on the security, upon the tender of the security, or for damages if the purchaser no longer owns the security. Damages shall be the amount that would be recoverable upon a tender less:

a. The value of the security when the purchaser disposed of it; and

b. Interest on said value at the legal rate from the date of disposition.

The persons on whose behalf an offering is made shall be jointly and severally liable under this subsection. Tender requires only notice of willingness to exchange the security for the amount specified. Any notice may be given by service as in civil actions or by certified mail addressed to the last known address of the person liable.

2. Any person underwriter and any person, other than a person on whose behalf an offering described in subsection one (1) of this section is made, who offers or sells a security in violation of sections 502.401 or 502.404, the purchaser not knowing of the violation, and who fails to sustain the burden of proof that he, she or it did not know and in the exercise of reasonable care could not have known of the violation, shall be liable to the purchaser, who may sue

either at law or in equity to recover the consideration paid for the security, together with interest at the legal rate from the date of payment, costs and reasonable attorneys' fees, less the amount of any income or distributions, in cash or in kind, received on the security, upon the tender of the security, or for damages if the purchaser no longer owns the security. Damages shall be the amount that would be recoverable upon a tender less:

- a. The value of the security when the purchaser disposed of it; and
- b. Interest on said value at the legal rate from the date of disposition.

PARAGRAPH DIVIDED. Any person liable under this subsection on whose behalf an offering is made and any underwriter of the offering, whether on a best efforts or a firm commitment basis, shall be jointly and severally liable under this ~~section~~ subsection, but in no event shall any underwriter be liable in any suit or suits authorized under this ~~section~~ subsection for damages in excess of the total price at which the securities underwritten by it and distributed to the public were offered to the public. Tender requires only notice of willingness to exchange the security for the amount specified. Any notice may be given by service as in civil actions or by certified mail addressed to the last known address of the person liable.

2 3. Any person who offers to purchase or purchases a security in violation of ~~sections section~~ 502.401 ~~or 502.404~~, the seller not knowing of the violation, and who fails to sustain the burden of proof that he, she or it did not know and in the exercise of reasonable care could not have known of the violation, shall be liable to the seller, who may sue either at law or in equity to recover the security, costs, and reasonable attorney's fees, plus any income or distributions, in cash or in kind, received by the purchaser thereon, upon tender of the consideration received, or for damages if the purchaser no longer owns the security. Damages shall

be the excess of the value of the security when the purchaser disposed of it, plus interest at the legal rate from the date of disposition, over the consideration paid for the security. Tender requires only notice of willingness to pay the amount specified in exchange for the security. Any notice may be given by service as in civil actions or by certified mail to the last known address of the person liable.

3 4. Any person who willfully and knowingly participates in any act or transaction in violation of sections 502.403, five hundred two point four hundred four (502.404) of the Code, 502.405 or 502.407 shall be liable to any other person who purchases or sells any security (but not a mere holder thereof) at a price which was affected by the act or transaction for the damages sustained as a result of such act or transaction. Damages shall not exceed the difference between the price at which the other person purchased or sold securities and the market value which the securities would have had at the time of such purchase or sale in the absence of the act or transaction, plus interest at the legal rate, costs and reasonable attorneys' fees.

4 5. Any person, referred to in this subsection as the "defendant", who violates section 502.402 shall be deemed to be unjustly enriched and liable to any person, referred to in this subsection as the "plaintiff", who purchased or may have purchased a security from, or sold or may have sold a security to, the defendant in connection with such violation, for damages equal to the difference between the price at which such security was purchased or sold and the market value which such security would have had at the time of the purchase or sale if the information known to the defendant had been publicly disseminated prior to that time and a reasonable time had elapsed for the market to absorb the information, plus interest at the legal rate, costs and reasonable attorneys' fees, unless the defendant proves that the plaintiff knew the information or that the plaintiff would have purchased or sold at the same price even if the information had been revealed to the plaintiff.

5 2. Any person who is aggrieved by a violation of section 502.407 may bring an action in the district court to enjoin the acts complained of and, upon proper showing, to require that correcting material be disseminated, and such person may be awarded costs and reasonable attorney's fees.

Sec. 16. Section five hundred two point five hundred three (502.503), subsection one (1), Code 1979, is amended to read as follows:

1. Affiliates of a person liable under either section 502.501 or 502.502, partners, principal executive officers or directors of such person, persons occupying a similar status or performing similar functions for such person, ~~employees of such person~~ persons (whether employees of such person or otherwise) who materially aid and abet in the act or transaction constituting the violation, and broker-dealers or agents who materially aid and abet in the act or transaction constituting the violation, are also liable jointly and severally with and to the same extent as such person, unless ~~any person liable hereunder proves that he, she or it did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist;~~

a. With respect to section five hundred two point five hundred one (502.501) of the Code and section five hundred two point five hundred two (502.502), subsections one (1) and five (5) of the Code, any person liable hereunder proves that he, she or it did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist; and

b. With respect to section five hundred two point five hundred two (502.502), subsections two (2) and three (3) of the Code, any person liable hereunder proves that he, she or it did not know, and was not grossly negligent in failing to know, of the existence of the facts by reason of which the liability is alleged to exist.

Sec. 17. Section five hundred two point six hundred four (502.604), subsection one (1), Code 1979, is amended to read as follows:

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

Sec. 18. Section four hundred ninety-six B point eighteen (496B.18), Code 1979, is repealed. Chapter five hundred one (501), Code 1979, is repealed.

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TERRY E. BRANSTAD  
President of the Senate

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FLOYD H. MILLEN  
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 463, Sixty-eighth General Assembly.

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FRANK J. STORK  
Secretary of the Senate

Approved \_\_\_\_\_, 1979

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ROBERT D. RAY  
Governor

either at law or in equity to recover the consideration paid for the security, together with interest at the legal rate from the date of payment, costs and reasonable attorneys' fees, less the amount of any income or distributions, in cash or in kind, received on the security, upon the tender of the security, or for damages if the purchaser no longer owns the security. Damages shall be the amount that would be recoverable upon a tender less:

- a. The value of the security when the purchaser disposed of it; and
- b. Interest on said value at the legal rate from the date of disposition.

PARAGRAPH DIVIDED. Any person liable under this subsection on whose behalf an offering is made and any underwriter of the offering, whether on a best efforts or a firm commitment basis, shall be jointly and severally liable under this ~~section~~ subsection, but in no event shall any underwriter be liable in any suit or suits authorized under this ~~section~~ subsection for damages in excess of the total price at which the securities underwritten by it and distributed to the public were offered to the public. Tender requires only notice of willingness to exchange the security for the amount specified. Any notice may be given by service as in civil actions or by certified mail addressed to the last known address of the person liable.

§ 3. Any person who offers to purchase or purchases a security in violation of ~~sections~~ section 502.401 or 502.404, the seller not knowing of the violation, and who fails to sustain the burden of proof that he, she or it did not know and in the exercise of reasonable care could not have known of the violation, shall be liable to the seller, who may sue either at law or in equity to recover the security, costs, and reasonable attorney's fees, plus any income or distributions, in cash or in kind, received by the purchaser thereon, upon tender of the consideration received, or for damages if the purchaser no longer owns the security. Damages shall

be the excess of the value of the security when the purchaser disposed of it, plus interest at the legal rate from the date of disposition, over the consideration paid for the security. Tender requires only notice of willingness to pay the amount specified in exchange for the security. Any notice may be given by service as in civil actions or by certified mail to the last known address of the person liable.

§ 4. Any person who willfully and knowingly participates in any act or transaction in violation of sections 502.403, five hundred two point four hundred four (502.404) of the Code, 502.405 or 502.407 shall be liable to any other person who purchases or sells any security (but not a mere holder thereof) at a price which was affected by the act or transaction for the damages sustained as a result of such act or transaction. Damages shall not exceed the difference between the price at which the other person purchased or sold securities and the market value which the securities would have had at the time of such purchase or sale in the absence of the act or transaction, plus interest at the legal rate, costs and reasonable attorneys' fees.

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a. With respect to section five hundred two point five hundred one (502.501) of the Code and section five hundred two point five hundred two (502.502), subsections one (1) and five (5) of the Code, any person liable hereunder proves that he, she or it did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist; and

b. With respect to section five hundred two point five hundred two (502.502), subsections two (2) and three (3) of the Code, any person liable hereunder proves that he, she or it did not know, and was not grossly negligent in failing to know, of the existence of the facts by reason of which the liability is alleged to exist.

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

Sec. 18. Section four hundred ninety-six B point eighteen (496B.18), Code 1979, is repealed. Chapter five hundred one (501), Code 1979, is repealed.

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TERRY E. BRANSTAD  
President of the Senate

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FLOYD H. MILLEN  
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 463, Sixty-eighth General Assembly.

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FRANK J. STORK  
Secretary of the Senate

Approved April 20, 1979

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ROBERT D. RAY  
Governor