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SENATE FILE 520
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO SSB 299)

Passed Senate, Date 4/5/91 (7.10.88) Passed House, Date 4/9/91 (P. 1175)
Vote: Ayes 46 Nays 0 Vote: Ayes 95 Nays 0
Approved April 23, 1991

A BILL FOR

1 An Act relating to securities by regulating transactions
2 involving securities and regulating persons engaged in
3 businesses related to the issuance or trading of securities,
4 and providing penalties.

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

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

3 79.17 ADDITIONAL PAYROLL DEDUCTIONS.

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

11 a. The request for the payroll deduction is made in
12 writing to the officer in charge of the payroll system.

13 b. The pay period during which the deduction is made, the
14 frequency, and the amount of the deduction are compatible with
15 the payroll system.

16 c. The insurance coverage is not provided by the state.

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26 withdrawn at any time by filing a written notification of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

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

31 262.21 ANNUITY CONTRACTS.

32 At the request of an employee through contractual agreement
33 the board may arrange for the purchase of group or individual
34 annuity contracts for any of its employees from any company
35 the employee chooses that is authorized to do business in this

1 state, or the board may arrange for the purchase of an
2 individual mutual fund contract from any company the employe
3 chooses from a broker-dealer, salesperson, or mutual fund
4 registered in this state, for retirement or other purposes,
5 and may make payroll deductions in accordance with the
6 arrangements for the purpose of paying the entire premium due
7 and to become due under the contract. The deductions shall be
8 made in the manner which will qualify the annuity premiums for
9 the benefits under section 403b of the Internal Revenue Code,
10 as defined in section 422.3. The employee's rights under the
11 annuity contract are nonforfeitable except for the failure to
12 pay premiums.

13 Whenever an existing tax-sheltered annuity contract is to
14 be replaced by a new contract the agent or representative of
15 the company shall submit a letter of intent to the company
16 being replaced, to the insurance commissioner of the state of
17 Iowa insurance, and to the agent's or representative's own
18 company at least thirty days prior to any action. Each
19 required letter of intent shall be sent by registered mail.
20 This letter of intent shall contain the policy number and
21 description of the contract being replaced and a description
22 of the replacement contract.

3.505 23 Sec. 3. Section 502.102, subsection 4, paragraph c, Code
24 1991, is amended by striking the paragraph and inserting the
25 following:

26 c. A bank when acting on its own account or when exer-
27 cising trust or fiduciary powers permitted for banks under
28 applicable state or federal laws and regulations providing for
29 the organization, operation, supervision, and examination of
30 such banks;

3.505 31 Sec. 4. Section 502.102, subsection 4, paragraph d, Code
32 1991, is amended by striking the paragraph.

33 Sec. 5. Section 502.102, subsection 7, paragraph b, Code
34 1991, is amended by striking the paragraph and inserting in
35 lieu thereof the following:

1 b. With respect to a fractional undivided interest in an
2 oil, gas, or other mineral lease or in payments out of pro-
3 duction under a lease, right, or royalty, the term "issuer"
4 means the owner of an interest in the lease or payments out of
5 production under a lease, right, or royalty, whether whole or
6 fractional, who creates fractional interests for the purpose
7 of sale.

8 Sec. 6. Section 502.102, subsection 12, Code 1991, is
9 amended to read as follows:

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

29 Sec. 7. Section 502.202, subsection 3, Code 1991, is
30 amended to read as follows:

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

1 Sec. 8. Section 502.202, subsection 10, Code 1991, is
2 amended by striking the subsection and inserting in lieu
3 thereof the following:

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

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

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

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

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

17 Sec. 9. Section 502.202, subsection 11, Code 1991, is
18 amended to read as follows:

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

26 Sec. 10. Section 502.202, Code 1991, is amended by adding
27 the following new subsection:

28 NEW SUBSECTION. 19. Any security representing a time-
29 share interval as defined in section 557A.2.

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

32 8. An offer or sale to a bank, savings ~~institution~~ and
33 loan association, credit union, trust company, insurance
34 company, investment company as defined in the Investment
35 Company Act of 1940, pension or profit sharing trust, or other

1 financial institution or institutional buyer, or to a broker-
2 dealer, whether the purchaser is acting for itself or in a
3 fiduciary capacity. However, the administrator, by rule or
4 order, may grant this exemption to a person or class of
5 persons based upon the factors of financial sophistication,
6 net worth, and the amount of assets under investment.

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

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

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

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

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

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

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

1 Sec. 14. Section 502.203, Code 1991, is amended by adding
2 the following new subsection:

3 NEW SUBSECTION. 17. The offer or sale of securities by
4 small business investment company under the federal Small
5 Business Investment Act of 1958 if:

6 a. The securities are offered or sold in compliance with
7 17 C.F.R. §§ 230.601 through 230.610a; and

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

16 Sec. 15. Section 502.206, subsection 3, unnumbered para-
17 graph 1, Code 1991, is amended to read as follows:

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

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

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

30 b. A face-amount certificate company, an open-end
31 management company, or a unit investment trust, as defined in
32 the Investment Company Act of 1940, may register an indefinite
33 amount of securities under a registration statement. The
34 registrant, at the time of filing, may pay the maximum fee of
35 one thousand dollars, or may pay a fee of two hundred fifty

1 dollars and within ninety days after the end of each fiscal
2 year during which its registration statement is effective and
3 within ninety days after the registration is terminated do one
4 of the following:

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

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

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

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

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

1 cause as determined at the discretion of the administrator.

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

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

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

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

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

- 27 a. The person is registered under this chapter.
- 28 b. The person is a broker-dealer who has no place of
29 business in this state and the broker-dealer satisfies one of
30 the following requirements:

31 (1) The broker-dealer effects transactions in this state
32 exclusively with or through the issuers of the securities
33 involved in the transaction, other broker-dealers, banks,
34 trust companies, insurance companies, or investment companies
35 as defined in the Investment Company Act of 1940, pension or

1 profit sharing trusts, or other financial institutions or
2 institutional buyers, whether acting for themselves or as
3 trustees;

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

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

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

13 1. A broker-dealer or agent may obtain an initial or
14 renewal license by filing with the administrator, or an
15 organization which the administrator by rule designates, an
16 application together with a consent to service of process
17 pursuant to section 502.609 and the appropriate filing fee.
18 The application shall contain the information the
19 administrator requires by rule concerning the applicant's form
20 and place of organization, proposed method of doing business
21 and financial condition, the qualifications and experience of
22 the applicant, including, in the case of a broker-dealer, the
23 qualifications and experience of any partner, officer,
24 director or controlling person, any injunction or
25 administrative order or conviction of a misdemeanor involving
26 securities and any conviction of a felony, and any other
27 matters which the administrator determines are relevant to the
28 application. If no denial order is in effect and no
29 proceeding is pending under section 502.304, registration
30 becomes effective at noon of the thirtieth day after an a
31 completed application or an amendment completing the
32 application is filed, unless waived by the applicant. The
33 administrator may by rule or order specify an earlier
34 ~~effective date and may by order defer the effective date until~~
35 ~~noon of the thirtieth day after the filing of an amendment.~~

1 Registration-of-a-broker-dealer-automatically-constitutes
2 registration-of-an-agent-named-in-the-application-or
3 amendments-to-the-application-who-is-a-partner,-officer-or
4 director,-or-who-is-a-person-occupying-a-similar-status-or
5 performing-similar-functions-

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

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

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

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

35 Sec. 23. Section 502.303, subsection 4, Code 1991, is

1 amended to read as follows:

2 4. The administrator ~~shall~~ may make periodic examinations,
3 within or without this state, of the business and records of
4 each registered broker-dealer, at the times and in the scope
5 as the administrator determines. The examinations may be made
6 without prior notice to the broker-dealer. The administrator
7 may copy all records the administrator feels are necessary to
8 conduct the examination. The expense reasonably attributable
9 to an examination shall be paid by the broker-dealer whose
10 business is examined, but the expense so payable shall not
11 exceed an amount which the administrator by rule prescribes.
12 For the purpose of avoiding unnecessary duplication of
13 examinations, the administrator may co-operate with securities
14 administrators of other states, the securities and exchange
15 commission, and any national securities exchange or national
16 securities association registered under the Securities
17 Exchange Act of 1934. The administrator shall not make public
18 the information obtained in the course of examinations, except
19 when a duty under this chapter requires the administrator to
20 take action regarding a broker-dealer or to make the
21 information available to one of the agencies specified in this
22 section, or except when the administrator is called as a
23 witness in a criminal or civil proceeding.

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

26 The administrator may by order deny, suspend, or revoke a
27 registration or may censure, ~~an applicant or registrant or may~~
28 impose a civil penalty upon, or bar an applicant, registrant,
29 or any officer, director, partner, or person occupying a
30 similar status or performing similar functions for a
31 registrant. A person barred under this subsection may be
32 prohibited by the administrator from employment with a
33 registered broker-dealer. The administrator may restrict the
34 person barred from engaging in any activity for which
35 registration is required. Any action by the administrator

1 under this subsection may be taken if the order is found to be
2 in the public interest and it is found that the applicant or
3 registrant or, in the case of a broker-dealer, a partner, a
4 officer, or a director, a person occupying a similar status
5 performing similar functions, or a person directly or
6 indirectly controlling the broker-dealer:

7 Sec. 25. Section 502.304, subsection 1, paragraph d, Code
8 1991, is amended to read as follows:

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

13 Sec. 26. Section 502.304, subsection 1, paragraph f, Code
14 1991, is amended by striking the paragraph and inserting in
15 lieu thereof the following:

16 f. Is the subject of an adjudication or order entered
17 after notice and opportunity for hearing, within the past ten
18 years by a securities or commodities agency, an administrator
19 of another state, or a court of competent jurisdiction, that
20 reflects that the person has violated the Securities Act of
21 1933, the Securities Exchange Act of 1934, the Investment
22 Advisers Act of 1940, the Investment Company Act of 1940, or
23 the Commodity Exchange Act, a securities or commodities law of
24 any other state, or a United States postal service fraud
25 order. However, the administrator may not do either of the
26 following:

27 (1) Institute a revocation or suspension proceeding under
28 this paragraph more than one year from the final agency order
29 relied on or, if the order has been appealed, the final court
30 decision.

31 (2) Enter an order under this paragraph on the basis of an
32 order under another state law unless that order was based on
33 facts which would currently constitute a ground for an order
34 under this section.

35 Sec. 27. Section 502.304, subsection 1, paragraph j, Code

1 1991, is amended to read as follows:

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

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

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

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

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

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

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

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

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

33 2. a. For the purpose of any investigation or proceeding
34 under this chapter, the administrator or any officer
35 designated by the administrator may administer oaths and

1 affirmations, subpoena witnesses, compel their attendance,
2 take evidence, and require the production of any books,
3 papers, correspondence, memoranda, agreements or other
4 documents or records which the administrator deems relevant
5 material to the inquiry, all of which may be enforced in
6 accordance with ~~the-Iowa-administrative-procedure-Act~~ chapter
7 17A.

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

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

16 1. To encourage uniform interpretation and administration
17 of this chapter and effective securities regulation and en-
18 forcement, the administrator may cooperate with the securities
19 agencies or administrators of any state, Canadian province or
20 territory, another country, the securities and exchange com-
21 mission, the commodity futures trading commission, the
22 securities investor protection corporation, any self-
23 regulatory organization, any national or international
24 organization of securities officials or agencies, and any
25 governmental law enforcement or regulatory agency.

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

28 a. Establishing a central depository for licensing or
29 registration under this chapter and for documents or records
30 required or allowed to be maintained under this chapter.

31 b. Making a joint examination or investigation.

32 c. Holding a joint administrative hearing.

33 d. Filing and prosecuting a joint civil or administrative
34 proceeding.

35 e. Sharing and exchanging personnel.

1 f. Sharing and exchanging information and documents
2 subject to restriction of confidentiality in section 502.603,
3 subsection 1.

4 g. Formulating, in accordance with chapter 17A, rules or
5 proposed rules on matters such as statements of policy, guide-
6 lines, and interpretive opinions.

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

9 502.604 CEASE AND DESIST ORDERS -- INJUNCTIONS.

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

16 1. Issue an order directed at ~~any-such~~ the person
17 requiring ~~such~~ the person to cease and desist from engaging in
18 such act or practice, ~~or~~.

19 2. Bring an action in the district court to enjoin the
20 acts or practices and to enforce compliance with this chapter
21 ³²⁸² ⁵³⁰⁵ or any a rule or order hereunder adopted or issued pursuant to
22 this chapter. Upon a proper showing a permanent or temporary
23 injunction, restraining order, or writ of mandamus shall be
24 granted and a receiver or conservator may be appointed for the
25 defendant or the defendant's assets. In addition, upon a
26 proper showing by the administrator, the court may enter an
27 order of rescission, restitution, or disgorgement directed at
28 any person who has engaged in an act constituting a violation
29 of this chapter, or a rule or order adopted or issued pursuant
30 to this chapter. The administrator shall not be required to
31 post a bond.

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

33 If a person fails or refuses to file any statement or
34 report or to produce any books, papers, correspondence,
35 memoranda, agreements, or other documents or records, or to

1 obey any subpoena issued by the administrator, the
2 administrator may refer the matter to the attorney general,
3 who, after notice, may apply to a district court to enforce
4 compliance. The court may order any or all of the followin

5 1. Injunctive relief, restricting or prohibiting the of. r
6 or sale of securities.

7 2. Revocation or suspension of any license or registra-
8 tion.

9 3. Production of documents or records, including but not
10 limited to books, papers, correspondence, memoranda, or
11 agreements.

12 4. Such other relief as may be required.

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

16 Sec. 35. Section 502.609, subsection 1, unnumbered para-
17 graph 1, Code 1991, is amended to read as follows:

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

1 bills of exchange, and banker's acceptances. The commercial
2 paper must evidence an obligation to pay within nine months
3 after the date of issuance, must be issued in denominations of
4 at least \$50,000, and must receive a rating in one of the
5 three highest rating categories from a nationally recognized
6 statistical rating organization.

7 Section 9 amends a provision exempting from certain
8 regulations, securities which are connected to an employee
9 stock purchase, savings, pension, profit sharing, or a benefit
10 plan. The bill eliminates a provision requiring that certain
11 of these securities must be filed with the administrator.

12 Section 10 exempts from certain regulations, securities
13 having a time-share interval.

14 Section 11 amends a provision which exempts from certain
15 regulations transactions involving securities. The current
16 provision exempts transactions involving savings institutions.
17 The bill replaces the term "savings institution" with the term
18 "savings and loan association." The bill also exempts similar
19 transactions by credit unions.

20 Section 12 amends a provision which currently exempts from
21 certain regulations transactions involving the conversion of
22 securities, the exercise of nontransferable rights, the
23 purchase of securities pursuant to preemptive rights, and a
24 sale for cash in connection with a stock dividend. This bill
25 rewrites the provision to exempt transactions with persons who
26 are holders of convertible securities, nontransferable
27 warrants, and transferable warrants exercisable within a time
28 certain. The bill limits the amount of a paid commission or
29 requires the issuer to file a notice with the administrator.

30 Section 13 amends a provision which exempts from certain
31 regulations transactions incident to a vote by security
32 holders or written consent of security holders which involves
33 company management, including stock reclassification, reverse
34 stock splits, mergers, or the transfer of assets. The
35 provision establishes requirements relating to filing

1 documents relating to the action. The bill replaces filing
2 procedures, by providing filing may be eliminated if the
3 securities are registered with the federal government. If the
4 securities are not registered, a written notice of the
5 transaction and a filing fee of \$50 must be submitted to the
6 administrator.

7 Section 14 adds a new exemption for transactions involving
8 the sale of securities by small business investment companies
9 made under the federal Small Business Investment Act of 1958.

10 Section 15 provides that a registrant may have the
11 automatic effectiveness of a registration statement.

12 Section 16 provides an alternative method of registering
13 securities. The section also provides for alternative methods
14 of paying registration fees.

15 Section 17 provides for the effectiveness of a registration
16 statement. A statement which has not become effective may be
17 withdrawn by the applicant. The bill provides that the
18 administrator may require the person filing a registration
19 statement to file quarterly reports.

20 Section 18 amends a provision relating to denial,
21 suspension, and revocation of registration under the chapter.
22 The bill provides that the administrator may take action under
23 the section if the applicant or registrant has abandoned a
24 registration statement.

25 Section 19 amends a provision which provides for
26 registration requirements. The bill provides that a person
27 who previously was exempt from the definition of broker-
28 dealer, is now exempt from registration requirements. The
29 exemption was removed from the definition of broker-dealer in
30 section 4 of the bill.

31 Section 20 provides that a complete filing is necessary
32 before registration procedures may be initiated. A registrant
33 may waive the automatic effectiveness of the registration.
34 The bill eliminates a provision specifying that registration
35 of a broker-dealer automatically constitutes registration of

1 an agent named in the application.

2 Section 21 provides that a \$30 fee is required for an
3 applicant for an initial or renewal registration as an agent
4 of a broker-dealer.

5 Section 22 amends a provision requiring broker-dealers and
6 issuers to file a bond. The bill provides that a broker-
7 dealer who is a member of the Securities Investor Protection
8 Corporation is not required to furnish the bond.

9 Section 23 amends a provision which requires the
10 administrator to make periodic examinations of registered
11 broker-dealers. The bill provides that examinations are
12 performed according to the discretion of the administrator.

13 Section 24 amends a provision which provides that the
14 administrator may take action against a registrant or deny
15 registration to an applicant. This bill provides that the
16 administrator may bar an applicant, registrant, or any
17 officer, director, partner, or person occupying a similar
18 status or performing similar functions for a registrant. The
19 bar may prohibit a person from being employed in the business
20 of a broker-dealer or restrict the types of activities that
21 the person may perform.

22 Section 25 provides that the administrator may take
23 disciplinary action or deny an application, if a person
24 referred to in section 24 of the bill has been enjoined from
25 conducting aspects of the insurance or commodities business.

26 Section 26 amends current law which provides that the
27 administrator may take disciplinary action or deny an
28 application, if a person is the subject of a disciplinary
29 order entered within the past five years by a securities
30 administrator of another state, or is subject to a
31 disciplinary order by the securities and exchange commission,
32 or the United States post office. This bill provides that
33 administrative action against a person referred to in section
34 24 of the bill may depend upon an adjudication or order within
35 the past 10 years which is rendered by a securities or

1 commodities agency, an administrator of another state, or a
2 court of competent jurisdiction. That adjudication or order
3 must reflect a violation of a federal securities or
4 commodities statute, a securities or commodities violation of
5 another state, or an order by the United States post office.

6 Section 27 provides that a disciplinary action may be taken
7 against a broker-dealer who has failed to reasonably supervise
8 an employee.

9 Section 28 provides that a disciplinary action or action
10 denying registration may be based on a person having been
11 denied a right to do business in the securities industry or
12 the revocation of such right by an authority in another state,
13 the federal government, a foreign government, or a self-
14 regulatory organization. The action may also be based on a
15 final order in a criminal, civil, injunctive, or
16 administrative action relating to securities or commodities
17 violations or fraud.

18 Section 29 amends a provision which limits the
19 administrator's discretion to institute a suspension or
20 revocation proceeding on the basis of a fact known to the
21 administrator when the registration became effective. The
22 bill provides that the limitation does not apply to material
23 falsehoods or omissions in applications, willful violations of
24 the securities law, dishonest conduct, insolvency, lack of
25 qualifications, or failure to supervise agents or employees.
26 The bill also lengthens the time for instituting such a
27 proceeding from 30 to 60 days.

28 Section 30 raises the amount of a civil penalty that can be
29 assessed against a person disciplined by the administrator.
30 The penalty is raised from \$250 to \$1,000 per violation, and
31 from \$10,000 to \$100,000 per proceeding.

32 Section 31 provides that the administrator may issue and
33 apply to enforce subpoenas at the request of a securities
34 agency of another state.

35 Section 32 provides that the administrator may cooperate

1 with securities agencies or administrators of different
2 states, countries, the federal government, or regulatory
3 organizations.

4 Section 33 provides that a court may enter an order of
5 rescission, restitution, or disgorgement directed at a person
6 who has engaged in an act constituting a violation of the
7 chapter, or a rule or order adopted or issued pursuant to the
8 chapter.

9 Section 34 provides that a court may take action against a
10 person who fails to file statements or reports under the
11 chapter, or to produce materials under a subpoena. The court
12 order may grant injunctive relief, suspend or revoke a license
13 or registration, order the production of documents, or grant
14 other relief as necessary.

15 Section 35 amends a provision providing that issuers
16 proposing to offer securities through an agent must file
17 consent of process with the administrator. The bill provides
18 that all issuers must file consent of process.

19 Section 36 repeals a section which prohibits securities
20 from being registered if the aggregate offering price of all
21 securities of the issuer which is sold as part of a single
22 issue is in reliance upon an exemption from federal
23 registration requirements and exceeds certain dollar amounts.

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SENATE FILE 520

S-3282

- 1 Amend Senate File 520 as follows:
- 2 1. Page 4, by inserting after line 29 the
- 3 following:
- 4 "Sec. ____ . Section 502.203, subsection 2,
- 5 paragraph c, Code 1991, is amended to read as follows:
- 6 c. The security was issued by an issuer which has
- 7 had or currently has a class of securities registered
- 8 under this chapter, or under chapter 502 of the Code
- 9 as it existed prior to January 1, 1976; or".
- 10 2. Page 15, line 20, by striking the words "acts
- 11 or practices" and inserting the following: "acts-or
- 12 practices act or practice".
- 13 3. By renumbering as necessary.

By WILLIAM PALMER

S-3282 FILED APRIL 3, 1991

w/15 4/5/91

SENATE FILE 520

S-3305

- 1 Amend Senate File 520 as follows:
- 2 1. Page 2, line 23, by striking the words
- 3 "paragraph c" and inserting the following:
- 4 "paragraphs c and d".
- 5 2. Page 2, line 24, by striking the word "is" and
- 6 inserting the following: "are".
- 7 3. Page 2, line 24, by striking the word
- 8 "paragraph" and inserting the following:
- 9 "paragraphs".
- 10 4. Page 2, by striking lines 31 and 32, and
- 11 inserting the following:
- 12 "d. An insurance company which effects
- 13 transactions in its own accounts;".
- 14 5. Page 4, by inserting after line 29 the
- 15 following:
- 16 "Sec. ____ . Section 502.203, subsection 2,
- 17 paragraph c, Code 1991, is amended to read as follows:
- 18 c. The security was issued by an issuer which has
- 19 had or currently has a class of securities registered
- 20 under this chapter, or under chapter 502 of the Code
- 21 as it existed prior to January 1, 1976; or".
- 22 6. Page 15, line 20, by striking the words "acts
- 23 or practices" and inserting the following: "acts-or
- 24 practices act or practice".
- 25 7. By renumbering as necessary.

By WILLIAM D. PALMER

S-3305 FILED APRIL 4, 1991

Adopted 4/5 (p. 520)

SENATE FILE 520
BY COMMITTEE ON COMMERCE
Substituted for H.F. 652
(SUCCESSOR TO SSB 299)

(AS AMENDED AND PASSED BY THE SENATE APRIL 5, 1991)

~~_____~~ - New Language by the Senate

Passed Senate, Date 4/5/91 (p. 1088) Passed House, Date 4/9/91 (p. 1175)
Vote: Ayes 46 Nays 0 Vote: Ayes 75 Nays 0
Approved April 23, 1991 (p. 1432)

A BILL FOR

1 An Act relating to securities by regulating transactions
2 involving securities and regulating persons engaged in
3 businesses related to the issuance or trading of securities,
4 and providing penalties.

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

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SF 520

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

3 79.17 ADDITIONAL PAYROLL DEDUCTIONS.

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

11 a. The request for the payroll deduction is made in
12 writing to the officer in charge of the payroll system.

13 b. The pay period during which the deduction is made, the
14 frequency, and the amount of the deduction are compatible with
15 the payroll system.

16 c. The insurance coverage is not provided by the state.

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

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

31 262.21 ANNUITY CONTRACTS.

32 At the request of an employee through contractual agreement
33 the board may arrange for the purchase of group or individual
34 annuity contracts for any of its employees from any company
35 the employee chooses that is authorized to do business in this

1 state, or the board may arrange for the purchase of an
2 individual mutual fund contract from any company the employee
3 chooses from a broker-dealer, salesperson, or mutual fund
4 registered in this state, for retirement or other purposes,
5 and may make payroll deductions in accordance with the
6 arrangements for the purpose of paying the entire premium due
7 and to become due under the contract. The deductions shall be
8 made in the manner which will qualify the annuity premiums for
9 the benefits under section 403b of the Internal Revenue Code,
10 as defined in section 422.3. The employee's rights under the
11 annuity contract are nonforfeitable except for the failure to
12 pay premiums.

13 Whenever an existing tax-sheltered annuity contract is to
14 be replaced by a new contract the agent or representative of
15 the company shall submit a letter of intent to the company
16 being replaced, to the ~~insurance~~ commissioner of the ~~state of~~
17 ~~Iowa~~ insurance, and to the agent's or representative's own
18 company at least thirty days prior to any action. Each
19 required letter of intent shall be sent by registered mail.
20 This letter of intent shall contain the policy number and
21 description of the contract being replaced and a description
22 of the replacement contract.

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

26 c. A bank when acting on its own account or when exer-
27 cising trust or fiduciary powers permitted for banks under
28 applicable state or federal laws and regulations providing for
29 the organization, operation, supervision, and examination of
30 such banks;

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

33 Sec. 4. Section 502.102, subsection 7, paragraph b, Code
34 1991, is amended by striking the paragraph and inserting in
35 lieu thereof the following:

1 b. With respect to a fractional undivided interest in an
2 oil, gas, or other mineral lease or in payments out of pro-
3 duction under a lease, right, or royalty, the term "issuer"
4 means the owner of an interest in the lease or payments out of
5 production under a lease, right, or royalty, whether whole or
6 fractional, who creates fractional interests for the purpose
7 of sale.

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

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

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

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

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

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

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

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

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

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

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

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

26 Sec. 9. Section 502.202, Code 1991, is amended by adding
27 the following new subsection:

28 NEW SUBSECTION. 19. Any security representing a time-
29 share interval as defined in section 557A.2.

30 Sec. 10. Section 502.203, subsection 2, paragraph c, Code
31 1991, is amended to read as follows:

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

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

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

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

16 11. Any transaction pursuant to an offer to existing
17 security holders of the issuer, including persons who at the
18 time of the transaction are holders of convertible securities,
19 nontransferable warrants, or transferable warrants,
20 exercisable within not more than ninety days of their is-
21 suance, if:

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

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

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

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

34 b. The securities to be distributed are not required to be
35 registered under the Securities Act of 1933, written notice of

1 the transaction, a filing fee of fifty dollars, and a copy of
2 the materials by which approval of the transaction will be
3 solicited, are given to the administrator at least ten days
4 before the consummation of the transaction, and the adminis-
5 trator does not disallow, by order, the exemption within the
6 next ten days.

7 Sec. 14. Section 502.203, Code 1991, is amended by adding
8 the following new subsection:

9 NEW SUBSECTION. 17. The offer or sale of securities by a
10 small business investment company under the federal Small
11 Business Investment Act of 1958 if:

12 a. The securities are offered or sold in compliance with
13 17 C.F.R. §§ 230.601 through 230.610a; and

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

22 Sec. 15. Section 502.206, subsection 3, unnumbered para-
23 graph 1, Code 1991, is amended to read as follows:

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

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

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

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

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

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

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

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

26 9. a. A registration statement shall remain effective for
27 one year from its effective date unless it is extended by rule
28 or order of the administrator. All outstanding securities of
29 the same class as a registered security are considered to be
30 registered for the purpose of any transaction by or on behalf
31 of a person who is not the issuer, and who is not in control
32 of the issuer or controlled by the issuer or under common
33 control with the issuer, so long as the registration statement
34 is effective, unless otherwise prescribed by order. A
35 registration statement may not be withdrawn after its

1 effective date if any of the securities has been sold in this
2 state, unless permitted by rule or order of the administrator.
3 A registration statement is not effective during the time a
4 stop order is in effect under section 502.209. A registration
5 statement which never became effective may be withdrawn
6 without prejudice to the issuer upon request and for good
7 cause as determined at the discretion of the administrator.

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

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

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

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

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

33 a. The person is registered under this chapter.

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

1 the following requirements:

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

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

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

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

19 1. A broker-dealer or agent may obtain an initial or
20 renewal license by filing with the administrator, or an
21 organization which the administrator by rule designates, an
22 application together with a consent to service of process
23 pursuant to section 502.609 and the appropriate filing fee.
24 The application shall contain the information the
25 administrator requires by rule concerning the applicant's form
26 and place of organization, proposed method of doing business
27 and financial condition, the qualifications and experience of
28 the applicant, including, in the case of a broker-dealer, the
29 qualifications and experience of any partner, officer,
30 director or controlling person, any injunction or
31 administrative order or conviction of a misdemeanor involving
32 securities and any conviction of a felony, and any other
33 matters which the administrator determines are relevant to the
34 application. If no denial order is in effect and no
35 proceeding is pending under section 502.304, registration

1 becomes effective at noon of the thirtieth day after an a
2 completed application or an amendment completing the
3 application is filed, unless waived by the applicant. The
4 administrator may by rule or order specify an earlier
5 effective date ~~and may by order defer the effective date until~~
6 ~~noon of the thirtieth day after the filing of an amendment.~~
7 ~~Registration of a broker-dealer automatically constitutes~~
8 ~~registration of an agent named in the application or~~
9 ~~amendments to the application who is a partner, officer or~~
10 ~~director, or who is a person occupying a similar status or~~
11 ~~performing similar functions.~~

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

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

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

21 Every Except as provided in this subsection, a broker-
22 dealer and every an issuer who employs agents in connection
23 with any security or transaction not exempted either by
24 section 502.202 or section 502.203, shall file and maintain
25 with the administrator a bond conditioned that the broker-
26 dealer or issuer shall properly account for any moneys or
27 securities received from or belonging to another and shall
28 pay, satisfy, and discharge any judgment or decree that may be
29 rendered against such broker-dealer or issuer in a court of
30 competent jurisdiction in a suit or action brought by a
31 purchaser or seller of securities against such broker-dealer
32 or issuer in which it shall be found or adjudged that such
33 securities were sold or purchased by the broker-dealer or
34 issuer in violation of this chapter. Such bond may be drawn
35 to cover the original license and any renewals thereof, and

1 may contain a provision authorizing the surety therein to
2 cancel upon thirty days' notice to the principal and the
3 administrator. A broker-dealer who is a member of the
4 securities investor protection corporation is not required to
5 furnish a bond.

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

8 4. The administrator ~~shall~~ may make ~~periodic~~ examinations,
9 within or without this state, of the business and records of
10 each registered broker-dealer, at the times and in the scope
11 as the administrator determines. The examinations may be made
12 without prior notice to the broker-dealer. The administrator
13 may copy all records the administrator feels are necessary to
14 conduct the examination. The expense reasonably attributable
15 to an examination shall be paid by the broker-dealer whose
16 business is examined, but the expense so payable shall not
17 exceed an amount which the administrator by rule prescribes.
18 For the purpose of avoiding unnecessary duplication of
19 examinations, the administrator may co-operate with securities
20 administrators of other states, the securities and exchange
21 commission, and any national securities exchange or national
22 securities association registered under the Securities
23 Exchange Act of 1934. The administrator shall not make public
24 the information obtained in the course of examinations, except
25 when a duty under this chapter requires the administrator to
26 take action regarding a broker-dealer or to make the
27 information available to one of the agencies specified in this
28 section, or except when the administrator is called as a
29 witness in a criminal or civil proceeding.

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

32 The administrator may by order deny, suspend, or revoke a
33 registration or may censure, ~~an applicant or registrant or may~~
34 impose a civil penalty upon, or bar an applicant, registrant,
35 or any officer, director, partner, or person occupying a

1 similar status or performing similar functions for a
2 registrant. A person barred under this subsection may be
3 prohibited by the administrator from employment with a
4 registered broker-dealer. The administrator may restrict the
5 person barred from engaging in any activity for which
6 registration is required. Any action by the administrator
7 under this subsection may be taken if the order is found to be
8 in the public interest and it is found that the applicant or
9 registrant or, in the case of a broker-dealer, a partner, an
10 officer, or a director, a person occupying a similar status or
11 performing similar functions, or a person directly or
12 indirectly controlling the broker-dealer:

13 Sec. 25. Section 502.304, subsection 1, paragraph d, Code
14 1991, is amended to read as follows:

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

19 Sec. 26. Section 502.304, subsection 1, paragraph f, Code
20 1991, is amended by striking the paragraph and inserting in
21 lieu thereof the following:

22 f. Is the subject of an adjudication or order entered
23 after notice and opportunity for hearing, within the past ten
24 years by a securities or commodities agency, an administrator
25 of another state, or a court of competent jurisdiction, that
26 reflects that the person has violated the Securities Act of
27 1933, the Securities Exchange Act of 1934, the Investment
28 Advisers Act of 1940, the Investment Company Act of 1940, or
29 the Commodity Exchange Act, a securities or commodities law of
30 any other state, or a United States postal service fraud
31 order. However, the administrator may not do either of the
32 following:

33 (1) Institute a revocation or suspension proceeding under
34 this paragraph more than one year from the final agency order
35 relied on or, if the order has been appealed, the final court

1 decision.

2 (2) Enter an order under this paragraph on the basis of an
3 order under another state law unless that order was based on
4 facts which would currently constitute a ground for an order
5 under this section.

6 Sec. 27. Section 502.304, subsection 1, paragraph j, Code
7 1991, is amended to read as follows:

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

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

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

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

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

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

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

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

1 general fund of the state.

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

4 2. a. For the purpose of any investigation or proceeding
5 under this chapter, the administrator or any officer
6 designated by the administrator may administer oaths and
7 affirmations, subpoena witnesses, compel their attendance,
8 take evidence, and require the production of any books,
9 papers, correspondence, memoranda, agreements or other
10 documents or records which the administrator deems relevant or
11 material to the inquiry, all of which may be enforced in
12 accordance with ~~the Iowa administrative procedure Act~~ chapter
13 17A.

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

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

22 1. To encourage uniform interpretation and administration
23 of this chapter and effective securities regulation and en-
24 forcement, the administrator may cooperate with the securities
25 agencies or administrators of any state, Canadian province or
26 territory, another country, the securities and exchange com-
27 mission, the commodity futures trading commission, the
28 securities investor protection corporation, any self-
29 regulatory organization, any national or international
30 organization of securities officials or agencies, and any
31 governmental law enforcement or regulatory agency.

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

34 a. Establishing a central depository for licensing or
35 registration under this chapter and for documents or records

1 required or allowed to be maintained under this chapter.

2 b. Making a joint examination or investigation.

3 c. Holding a joint administrative hearing.

4 d. Filing and prosecuting a joint civil or administrative
5 proceeding.

6 e. Sharing and exchanging personnel.

7 f. Sharing and exchanging information and documents
8 subject to restriction of confidentiality in section 502.603,
9 subsection 1.

10 g. Formulating, in accordance with chapter 17A, rules or
11 proposed rules on matters such as statements of policy, guide-
12 lines, and interpretive opinions.

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

15 502.604 CEASE AND DESIST ORDERS -- INJUNCTIONS.

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

22 1. Issue an order directed at ~~any-such~~ the person
23 requiring ~~such~~ the person to cease and desist from engaging in
24 such act or practice, ~~or~~.

25 2. Bring an action in the district court to enjoin the
26 ~~acts-or-practices~~ act or practice and to enforce compliance
27 with this chapter or ~~any a~~ rule or order ~~hereunder~~ adopted or
28 issued pursuant to this chapter. Upon a proper showing a
29 permanent or temporary injunction, restraining order, or writ
30 of mandamus shall be granted and a receiver or conservator may
31 be appointed for the defendant or the defendant's assets. In
32 addition, upon a proper showing by the administrator, the
33 court may enter an order of rescission, restitution, or
34 disgorgement directed at any person who has engaged in an act
35 constituting a violation of this chapter, or a rule or order

1 adopted or issued pursuant to this chapter. The administrator
2 shall not be required to post a bond.

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

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

11 1. Injunctive relief, restricting or prohibiting the offer
12 or sale of securities.

13 2. Revocation or suspension of any license or registra-
14 tion.

15 3. Production of documents or records, including but not
16 limited to books, papers, correspondence, memoranda, or
17 agreements.

18 4. Such other relief as may be required.

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

22 Sec. 35. Section 502.609, subsection 1, unnumbered para-
23 graph 1, Code 1991, is amended to read as follows:

24 Every applicant for registration under this chapter, and
25 every issuer which proposes to offer a security in this state
26 ~~through-any-person-acting-as-agent~~, shall file with the
27 administrator, in such form as the administrator by rule
28 prescribes, an irrevocable consent appointing the
29 administrator or the administrator's successor in office to be
30 such person's attorney to receive service of any lawful
31 process in any noncriminal suit, action or proceeding against
32 such person or the successor, executor or administrator of
33 such person which arises under this chapter or any rule or
34 order hereunder after the consent has been filed, with the
35 same validity as if served personally on the person filing the

1 consent. The consent need not be filed by a person who has
2 filed a consent in connection with a previous registration
3 which is then in effect. Service may be made by leaving a
4 copy of the process in the office of the administrator, but it
5 is not effective unless the plaintiff, including the
6 administrator when acting as such,

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

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PALMER, CH.
DELUHERY
NYSTRDM

SSB 299
COMMERCE

SENATE/HOUSE FILE 520
BY (PROPOSED DEPARTMENT OF
COMMERCE/INSURANCE DIVI-
SION BILL)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to securities by regulating transactions
2 involving securities and regulating persons engaged in
3 businesses related to the issuance or trading of securities,
4 and providing penalties.

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

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1 Section 1. Section 502.102, subsection 4, paragraph c,
2 Code 1991, is amended by striking the paragraph and inserting
3 the following:

4 c. A bank when acting on its own account or when exer-
5 cising trust or fiduciary powers permitted for banks under
6 applicable state or federal laws and regulations providing for
7 the organization, operation, supervision, and examination of
8 such banks;

9 Sec. 2. Section 501.102, subsection 4, paragraph d, Code
10 1991, is amended by striking the paragraph.

11 Sec. 3. Section 502.102, subsection 7, paragraph b, Code
12 1991, is amended by striking the paragraph and inserting in
13 lieu thereof the following:

14 b. With respect to a fractional undivided interest in an
15 oil, gas, or other mineral lease or in payments out of pro-
16 duction under a lease, right, or royalty, the term "issuer"
17 means the owner of an interest in the lease or payments out of
18 production under a lease, right, or royalty, whether whole or
19 fractional, who creates fractional interests for the purpose
20 of sale.

21 Sec. 4. Section 502.102, subsection 12, Code 1991, is
22 amended to read as follows:

23 12. "Security" means any note; stock; treasury stock;
24 bond; debenture; evidence of indebtedness; certificate of
25 interest or participation in a profit sharing agreement;
26 collateral trust certificate; preorganization certificate or
27 subscription; transferable share; investment contract; voting
28 trust certificate; certificate of deposit for a security;
29 ~~certificate of interest or participation in an oil, gas or~~
30 ~~mining title or~~ fractional undivided interest in an oil, gas,
31 or other mineral lease or in payments out of production under
32 such a title or lease, right, or royalty; or, in general, any
33 interest or instrument commonly known as a "security", or any
34 certificate of interest or participation in, temporary or
35 interim certificate for, receipt for, guarantee of, or warrant

1 or right to subscribe to or purchase, any of the foregoing.
2 "Security" does not include ~~a-time-share-interval-as-defined~~
3 ~~in-section-557A-2-or~~ an insurance or endowment policy or
4 annuity contract under which an insurance company promises to
5 pay money either in a lump sum or periodically for life or for
6 some other specified period.

7 Sec. 5. Section 502.202, subsection 3, Code 1991, is
8 amended to read as follows:

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

14 Sec. 6. Section 502.202, subsection 10, Code 1991, is
15 amended by striking the subsection and inserting in lieu
16 thereof the following:

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

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

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

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

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

30 Sec. 7. Section 502.202, subsection 11, Code 1991, is
31 amended to read as follows:

32 11. A security issued in connection with an employee stock
33 purchase, option, savings, pension, profit sharing or similar
34 benefit plan, ~~provided, in the case of plans which are not~~
35 ~~qualified under section 401 of the Internal Revenue Code and~~

1 ~~which provide for contribution by employees, the administrator~~
2 ~~is notified in writing fifteen days before the inception of~~
3 ~~the plan of the terms of the plan.~~

4 Sec. 8. Section 502.202, Code 1991, is amended by adding
5 the following new subsection:

6 NEW SUBSECTION. 19. Any security representing a time-
7 share interval as defined in section 557A.2.

8 Sec. 9. Section 502.203, subsection 8, Code 1991, is
9 amended to read as follows:

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

20 Sec. 10. Section 502.203, subsection 11, Code 1991, is
21 amended by striking the subsection and inserting in lieu
22 thereof the following:

23 11. Any transaction pursuant to an offer to existing
24 security holders of the issuer, including persons who at the
25 time of the transaction are holders of convertible securities,
26 nontransferable warrants, or transferable warrants,
27 exercisable within not more than ninety days of their is-
28 suance, if:

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

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

35 Sec. 11. Section 502.203, subsection 13, paragraphs a

1 through d, Code 1991, are amended by striking the paragraphs
2 and inserting in lieu thereof the following:

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

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

14 Sec. 12. Section 502.203, Code 1991, is amended by adding
15 the following new subsection:

16 NEW SUBSECTION. 17. The offer or sale of securities by a
17 small business investment company under the federal Small
18 Business Investment Act of 1958 if:

19 a. The securities are offered or sold in compliance with
20 17 C.F.R. §§ 230.601 through 230.610a; and

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

29 Sec. 13. Section 502.206, subsection 3, unnumbered para-
30 graph 1, Code 1991, is amended to read as follows:

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

35 Sec. 14. Section 502.208, subsection 2, Code 1991, is

1 amended to read as follows:

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

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

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

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

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

30 Sec. 15. Section 502.208, subsection 9, Code 1991, is
31 amended by striking the subsection and inserting in lieu
32 thereof the following:

33 9. a. A registration statement shall remain effective for
34 one year from its effective date unless it is extended by rule
35 or order of the administrator. All outstanding securities of

1 the same class as a registered security are considered to be
2 registered for the purpose of any transaction by or on behalf
3 of a person who is not the issuer, and who is not in control
4 of the issuer or controlled by the issuer or under common
5 control with the issuer, so long as the registration statement
6 is effective, unless otherwise prescribed by order. A
7 registration statement may not be withdrawn after its
8 effective date if any of the securities has been sold in this
9 state, unless permitted by rule or order of the administrator.
10 A registration statement is not effective during the time a
11 stop order is in effect under section 502.209. A registration
12 statement which never became effective may be withdrawn
13 without prejudice to the issuer upon request and for good
14 cause as determined at the discretion of the administrator.

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

26 Sec. 16. Section 502.209, subsection 1, Code 1991, is
27 amended by adding the following new paragraph:

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

35 Sec. 17. Section 502.301, subsection 1, Code 1991, is

1 amended to read as follows:

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

5 a. The person is registered under this chapter.

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

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

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

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

24 Sec. 18. Section 502.302, subsection 1, Code 1991, is
25 amended to read as follows:

26 1. A broker-dealer or agent may obtain an initial or
27 renewal license by filing with the administrator, or an
28 organization which the administrator by rule designates, an
29 application together with a consent to service of process
30 pursuant to section 502.609 and the appropriate filing fee.
31 The application shall contain the information the
32 administrator requires by rule concerning the applicant's form
33 and place of organization, proposed method of doing business
34 and financial condition, the qualifications and experience of
35 the applicant, including, in the case of a broker-dealer, the

1 qualifications and experience of any partner, officer,
2 director or controlling person, any injunction or
3 administrative order or conviction of a misdemeanor involving
4 securities and any conviction of a felony, and any other
5 matters which the administrator determines are relevant to the
6 application. If no denial order is in effect and no
7 proceeding is pending under section 502.304, registration
8 becomes effective at noon of the thirtieth day after an a
9 completed application or an amendment completing the
10 application is filed, unless waived by the applicant. The
11 administrator may by rule or order specify an earlier
12 effective date and ~~may by order defer the effective date until~~
13 ~~noon of the thirtieth day after the filing of an amendment.~~
14 ~~Registration of a broker-dealer automatically constitutes~~
15 ~~registration of an agent named in the application or~~
16 ~~amendments to the application who is a partner, officer or~~
17 ~~director, or who is a person occupying a similar status or~~
18 ~~performing similar functions.~~

19 Sec. 19. Section 502.302, subsection 2, Code 1991, is
20 amended to read as follows:

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

26 Sec. 20. Section 502.302, subsection 5, unnumbered
27 paragraph 1, Code 1991, is amended to read as follows:

28 Every Except as provided in this subsection, a broker-
29 dealer and every an issuer who employs agents in connection
30 with any security or transaction not exempted either by
31 section 502.202 or section 502.203, shall file and maintain
32 with the administrator a bond conditioned that the broker-
33 dealer or issuer shall properly account for any moneys or
34 securities received from or belonging to another and shall
35 pay, satisfy, and discharge any judgment or decree that may be

1 rendered against such broker-dealer or issuer in a court of
2 competent jurisdiction in a suit or action brought by a
3 purchaser or seller of securities against such broker-dealer
4 or issuer in which it shall be found or adjudged that such
5 securities were sold or purchased by the broker-dealer or
6 issuer in violation of this chapter. Such bond may be drawn
7 to cover the original license and any renewals thereof, and
8 may contain a provision authorizing the surety therein to
9 cancel upon thirty days' notice to the principal and the
10 administrator. A broker-dealer who is a member of the
11 securities investor protection corporation is not required to
12 furnish a bond.

13 Sec. 21. Section 502.303, subsection 4, Code 1991, is
14 amended to read as follows:

15 4. The administrator ~~shall~~ may make ~~periodic~~ examinations,
16 within or without this state, of the business and records of
17 each registered broker-dealer, at the times and in the scope
18 as the administrator determines. The examinations may be made
19 without prior notice to the broker-dealer. The administrator
20 may copy all records the administrator feels are necessary to
21 conduct the examination. The expense reasonably attributable
22 to an examination shall be paid by the broker-dealer whose
23 business is examined, but the expense so payable shall not
24 exceed an amount which the administrator by rule prescribes.
25 For the purpose of avoiding unnecessary duplication of
26 examinations, the administrator may co-operate with securities
27 administrators of other states, the securities and exchange
28 commission, and any national securities exchange or national
29 securities association registered under the Securities
30 Exchange Act of 1934. The administrator shall not make public
31 the information obtained in the course of examinations, except
32 when a duty under this chapter requires the administrator to
33 take action regarding a broker-dealer or to make the
34 information available to one of the agencies specified in this
35 section, or except when the administrator is called as a

1 witness in a criminal or civil proceeding.

2 Sec. 22. Section 502.304, subsection 1, unnumbered
3 paragraph 1, Code 1991, is amended to read as follows:

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

20 Sec. 23. Section 502.304, subsection 1, paragraph d, Code
21 1991, is amended to read as follows:

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

26 Sec. 24. Section 502.304, subsection 1, paragraph f, Code
27 1991, is amended by striking the paragraph and inserting in
28 lieu thereof the following:

29 f. Is the subject of an adjudication or order entered
30 after notice and opportunity for hearing, within the past ten
31 years by a securities or commodities agency, an administrator
32 of another state, or a court of competent jurisdiction, that
33 reflects that the person has violated the Securities Act of
34 1933, the Securities Exchange Act of 1934, the Investment
35 Advisers Act of 1940, the Investment Company Act of 1940, or

1 the Commodity Exchange Act, a securities or commodities law of
2 any other state, or a United States postal service fraud
3 order. However, the administrator may not do either of the
4 following:

5 (1) Institute a revocation or suspension proceeding under
6 this paragraph more than one year from the final agency order
7 relied on or, if the order has been appealed, the final court
8 decision.

9 (2) Enter an order under this paragraph on the basis of an
10 order under another state law unless that order was based on
11 facts which would currently constitute a ground for an order
12 under this section.

13 Sec. 25. Section 502.304, subsection 1, paragraph j, Code
14 1991, is amended to read as follows:

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

17 Sec. 26. Section 502.304, subsection 1, Code 1991, is
18 amended by adding the following new paragraphs:

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

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

29 Sec. 27. Section 502.304, subsection 2, Code 1991, is
30 amended to read as follows:

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

1 Sec. 28. Section 502.304, subsection 7, Code 1991, is
2 amended to read as follows:

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

9 Sec. 29. Section 502.603, subsection 2, Code 1991, is
10 amended to read as follows:

11 2. a. For the purpose of any investigation or proceeding
12 under this chapter, the administrator or any officer
13 designated by the administrator may administer oaths and
14 affirmations, subpoena witnesses, compel their attendance,
15 take evidence, and require the production of any books,
16 papers, correspondence, memoranda, agreements or other
17 documents or records which the administrator deems relevant or
18 material to the inquiry, all of which may be enforced in
19 accordance with ~~the Iowa administrative procedure Act~~ chapter
20 17A.

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

27 Sec. 30. NEW SECTION. 502.603A COOPERATION WITH OTHER
28 AGENCIES.

29 1. To encourage uniform interpretation and administration
30 of this chapter and effective securities regulation and en-
31 forcement, the administrator may cooperate with the securities
32 agencies or administrators of any state, Canadian province or
33 territory, another country, the securities and exchange com-
34 mission, the commodity futures trading commission, the
35 securities investor protection corporation, any self-

1 regulatory organization, any national or international
2 organization of securities officials or agencies, and any
3 governmental law enforcement or regulatory agency.

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

6 a. Establishing a central depository for licensing or
7 registration under this chapter and for documents or records
8 required or allowed to be maintained under this chapter.

9 b. Making a joint examination or investigation.

10 c. Holding a joint administrative hearing.

11 d. Filing and prosecuting a joint civil or administrative
12 proceeding.

13 e. Sharing and exchanging personnel.

14 f. Sharing and exchanging information and documents
15 subject to restriction of confidentiality in section 502.603,
16 subsection 1.

17 g. Formulating, in accordance with chapter 17A, rules or
18 proposed rules on matters such as statements of policy, guide-
19 lines, and interpretive opinions.

20 Sec. 31. Section 502.604, Code 1991, is amended to read as
21 follows:

22 502.604 CEASE AND DESIST ORDERS -- INJUNCTIONS.

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

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

32 2. Bring an action in the district court to enjoin the
33 acts or practices and to enforce compliance with this chapter
34 or any a rule or order hereunder adopted or issued pursuant to
35 this chapter. Upon a proper showing a permanent or temporary

1 injunction, restraining order, or writ of mandamus shall be
2 granted and a receiver or conservator may be appointed for the
3 defendant or the defendant's assets. In addition, upon a
4 proper showing by the administrator, the court may enter an
5 order of rescission, restitution, or disgorgement directed at
6 any person who has engaged in an act constituting a violation
7 of this chapter, or a rule or order adopted or issued pursuant
8 to this chapter. The administrator shall not be required to
9 post a bond.

10 Sec. 32. NEW SECTION. 502.604A COURT ACTION.

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

18 1. Injunctive relief, restricting or prohibiting the offer
19 or sale of securities.

20 2. Revocation or suspension of any license or registra-
21 tion.

22 3. Production of documents or records, including but not
23 limited to books, papers, correspondence, memoranda, or
24 agreements.

25 4. Such other relief as may be required.

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

29 Sec. 33. Section 502.609, subsection 1, unnumbered para-
30 graph 1, Code 1991, is amended to read as follows:

31 Every applicant for registration under this chapter, and
32 every issuer which proposes to offer a security in this state
33 through-any-person-acting-as-agent, shall file with the
34 administrator, in such form as the administrator by rule
35 prescribes, an irrevocable consent appointing the

1 administrator or the administrator's successor in office to be
2 such person's attorney to receive service of any lawful
3 process in any noncriminal suit, action or proceeding against
4 such person or the successor, executor or administrator of
5 such person which arises under this chapter or any rule or
6 order hereunder after the consent has been filed, with the
7 same validity as if served personally on the person filing the
8 consent. The consent need not be filed by a person who has
9 filed a consent in connection with a previous registration
10 which is then in effect. Service may be made by leaving a
11 copy of the process in the office of the administrator, but it
12 is not effective unless the plaintiff, including the
13 administrator when acting as such,

14 Sec. 34. Section 502.210, Code 1991, is repealed.

15 EXPLANATION

16 This bill amends chapter 502 relating to the regulation of
17 securities, by doing the following:

18 Section 1 amends a provision defining persons regulated as
19 broker-dealers, by providing that a bank is not considered a
20 broker-dealer when acting on its own account or exercising
21 trust or fiduciary powers.

22 Section 2 removes the exemption from the definition of
23 broker dealer which includes out-of-state issuers of
24 securities, other broker-dealers, banks, savings institutions,
25 trust companies, insurance companies, investment companies,
26 pension or profit-sharing trusts, or other financial
27 institutions. These persons are exempted from registration
28 requirements under section 17 of the bill.

29 Section 3 amends the definition of "issuer" to delete an
30 exclusion from regulation for issuing a type of security which
31 is an interest in oil, gas, or mineral leases.

32 Section 4 amends the definition of "security" to rewrite
33 the provision to include a type of security which is an
34 interest in oil, gas, or mineral leases.

35 Section 5 amends a provision exempting from regulation

1 certain securities issued by institutions. The bill
2 eliminates a reference to "savings institutions". The chapter
3 retains the exemption for securities issued by banks, credit
4 unions, and savings and loan associations.

5 Section 6 amends a provision exempting from certain
6 regulations, securities which are commercial paper. The bill
7 rewrites this exception to apply to promissory notes, drafts,
8 bills of exchange, and banker's acceptances. The commercial
9 paper must evidence an obligation to pay within nine months
10 after the date of issuance, must be issued in denominations of
11 at least \$50,000, and must receive a rating in one of the
12 three highest rating categories from a nationally recognized
13 statistical rating organization.

14 Section 7 amends a provision exempting from certain
15 regulations, securities which are connected to an employee
16 stock purchase, savings, pension, profit sharing, or a benefit
17 plan. The bill eliminates a provision requiring that certain
18 of these securities must be filed with the administrator.

19 Section 8 exempts from certain regulations, securities
20 having a time-share interval.

21 Section 9 amends a provision which exempts from certain
22 regulations transactions involving securities. The current
23 provision exempts transactions involving savings institutions.
24 The bill replaces the term "savings institution" with the term
25 "savings and loan association." The bill also exempts similar
26 transactions by credit unions.

27 Section 10 amends a provision which currently exempts from
28 certain regulations transactions involving the conversion of
29 securities, the exercise of nontransferable rights, the
30 purchase of securities pursuant to preemptive rights, and a
31 sale for cash in connection with a stock dividend. This bill
32 rewrites the provision to exempt transactions with persons who
33 are holders of convertible securities, nontransferable
34 warrants, and transferable warrants exercisable within a time
35 certain. The bill limits the amount of a paid commission or

1 requires the issuer to file a notice with the administrator.

2 Section 11 amends a provision which exempts from certain
3 regulations transactions incident to a vote by security
4 holders or written consent of security holders which involves
5 company management, including stock reclassification, reverse
6 stock splits, mergers, or the transfer of assets. The
7 provision establishes requirements relating to filing
8 documents relating to the action. The bill replaces filing
9 procedures, by providing filing may be eliminated if the
10 securities are registered with the federal government. If the
11 securities are not registered, a written notice of the
12 transaction and a filing fee of \$50 must be submitted to the
13 administrator.

14 Section 12 adds a new exemption for transactions involving
15 the sale of securities by small business investment companies
16 made under the federal Small Business Investment Act of 1958.

17 Section 13 provides that a registrant may have the
18 automatic effectiveness of a registration statement.

19 Section 14 provides an alternative method of registering
20 securities. The section also provides for alternative methods
21 of paying registration fees.

22 Section 15 provides for the effectiveness of a registration
23 statement. A statement which has not become effective may be
24 withdrawn by the applicant. The bill provides that the
25 administrator may require the person filing a registration
26 statement to file quarterly reports.

27 Section 16 amends a provision relating to denial,
28 suspension, and revocation of registration under the chapter.
29 The bill provides that the administrator may take action under
30 the section if the applicant or registrant has abandoned a
31 registration statement.

32 Section 17 amends a provision which provides for
33 registration requirements. The bill provides that a person
34 who previously was exempt from the definition of broker-
35 dealer, is now exempt from registration requirements. The

1 exemption was removed from the definition of broker-dealer in
2 section 2 of the bill.

3 Section 18 provides that a complete filing is necessary
4 before registration procedures may be initiated. A registrant
5 may waive the automatic effectiveness of the registration.
6 The bill eliminates a provision specifying that registration
7 of a broker-dealer automatically constitutes registration of
8 an agent named in the application.

9 Section 19 provides that a \$30 fee is required for an
10 applicant for an initial or renewal registration as an agent
11 of a broker-dealer is required to pay.

12 Section 20 amends a provision requiring broker-dealers and
13 issuers to file a bond. The bill provides that a broker-
14 dealer who is a member of the Securities Investor Protection
15 Corporation is not required to furnish the bond.

16 Section 21 amends a provision which requires the
17 administrator to make periodic examinations of registered
18 broker-dealers. The bill provides that examinations are
19 performed according to the discretion of the administrator.

20 Section 22 amends a provision which provides that the
21 administrator may take action against a registrant or deny
22 registration to an applicant. This bill provides that the
23 administrator may bar an applicant, registrant, or any
24 officer, director, partner, or person occupying a similar
25 status or performing similar functions for a registrant. The
26 bar may prohibit a person from being employed in the business
27 of a broker-dealer or restrict the types of activities that
28 the person may perform.

29 Section 23 provides that the administrator may take
30 disciplinary action or deny an application, if a person
31 referred to in section 22 of the bill has been enjoined from
32 conducting aspects of the insurance or commodities business.

33 Section 24 amends current law which provides that the
34 administrator may take disciplinary action or deny an
35 application, if a person is the subject of a disciplinary

1 order entered within the past five years by a securities
2 administrator of another state, or is subject to a
3 disciplinary order by the securities and exchange commission,
4 or the United States post office. This bill provides that
5 administrative action against a person referred to in section
6 22 of the bill may depend upon an adjudication or order within
7 the past 10 years which is rendered by a securities or
8 commodities agency, an administrator of another state, or a
9 court of competent jurisdiction. That adjudication or order
10 must reflect a violation of a federal securities or
11 commodities statute, a securities or commodities violation of
12 another state, or an order by the United States post office.

13 Section 25 provides that a disciplinary action may be taken
14 against a broker-dealer who has failed to reasonably supervise
15 an employee.

16 Section 26 provides that a disciplinary action or action
17 denying registration may be based on a person having been
18 denied a right to do business in the securities industry or
19 the revocation of such right by an authority in another state,
20 the federal government, a foreign government, or a self-
21 regulatory organization. The action may also be based on a
22 final order in a criminal, civil, injunctive, or
23 administrative action relating to securities or commodities
24 violations or fraud.

25 Section 27 amends a provision which limits the
26 administrator's discretion to institute a suspension or
27 revocation proceeding on the basis of a fact known to the
28 administrator when the registration became effective. The
29 bill provides that the limitation does not apply to material
30 falsehoods or omissions in applications, willful violations of
31 the securities law, dishonest conduct, insolvency, lack of
32 qualifications, or failure to supervise agents or employees.
33 The bill also lengthens the time for instituting such a
34 proceeding from 30 to 60 days.

35 Section 28 raises the amount of a civil penalty that can be

1 assessed against a person disciplined by the administrator.
2 The penalty is raised from \$250 to \$1,000 per violation, and
3 from \$10,000 to \$100,000 per proceeding.

4 Section 29 provides that the administrator may issue and
5 apply to enforce subpoenas at the request of a securities
6 agency of another state.

7 Section 30 provides that the administrator may cooperate
8 with securities agencies or administrators of different
9 states, countries, the federal government, or regulatory
10 organizations.

11 Section 31 provides that a court may enter an order of
12 rescission, restitution, or disgorgement directed at a person
13 who has engaged in an act constituting a violation of the
14 chapter, or a rule or order adopted or issued pursuant to the
15 chapter.

16 Section 32 provides that a court may take action against a
17 person who fails to file statements or reports under the
18 chapter, or to produce materials under a subpoena. The court
19 order may grant injunctive relief, suspend or revoke a license
20 or registration, order the production of documents, or grant
21 other relief as necessary.

22 Section 33 amends a provision providing that issuers
23 proposing to offer securities through an agent must file
24 consent of process with the administrator. The bill provides
25 that all issuers must file consent of process.

26 Section 34 repeals a section which prohibits securities
27 from being registered if the aggregate offering price of all
28 securities of the issuer which is sold as part of a single
29 issue is in reliance upon an exemption from federal
30 registration requirements and exceeds certain dollar amounts.

31 BACKGROUND STATEMENT

32 SUBMITTED BY THE AGENCY

33 This bill is intended to streamline securities regulation
34 in the state of Iowa, clarify questions of interpretation, and
35 provide better enforcement powers. This bill relates to

1 securities registration exemptions, securities brokerage
2 firms, amends statutory definitions, provides for annual
3 registrations, provides for alternative filing fee
4 arrangements for investment companies, expands the reasons and
5 types of sanctions over licensees, and establishes greater
6 cooperation with other agencies. Commended by and seen as
7 very beneficial to the industry are the elimination of the
8 surety bond requirement where federal insurance exists, and
9 the deletion of a dollar limit on which in-state companies may
10 raise without making a federal filing.

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SENATE FILE 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-559A: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 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 acts-or-practices 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.

JOE J. WELSH
President of the Senate

ROBERT C. ARNOULD
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 520, Seventy-fourth General Assembly.

JOHN F. DWYER
Secretary of the Senate

Approved April 23, 1991

TERRY E. BRANSTAD
Governor

SF 520