

## CHAPTER 502

UNIFORM SECURITIES ACT  
(Blue Sky Law)

[SP]

This chapter, as amended by 2004 Acts, ch 1161, takes effect January 1, 2005; chapter 502, Code 2003 and Code Supplement 2003, governs actions or proceedings pending on January 1, 2005, or that may be instituted based on conduct occurring before January 1, 2005, subject to certain limitations on civil actions to enforce liability; for provisions relating to the applicable limitations period, to continued effectiveness of registrations and associated regulations under chapter 502, Code 2003 and Code Supplement 2003, and the applicability of that chapter to certain offers or sales made prior to January 1, 2006, see 2004 Acts, ch 1161, §64, 68

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## ARTICLE 1

## GENERAL PROVISIONS

**502.101 Short title.**

This chapter may be cited as the “Iowa Uniform Securities Act”.

[C31, 35, §8581-c1; C39, **§8581.01**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §502.1; C77, 79, 81, §502.101]

**502.102 Definitions.**

In this chapter, unless the context otherwise requires:

1. “*Administrator*” means the commissioner of insurance or the deputy appointed pursuant to section 502.601.

2. “*Agent*” means an individual, other than a broker-dealer, who represents a broker-dealer in effecting or attempting to effect purchases or sales of securities or represents an issuer in effecting or attempting to effect purchases or sales of the issuer’s securities. But a partner, officer, or director of a broker-dealer or issuer, or an individual having a similar status or performing similar functions, is an agent only if the individual otherwise comes within the term. The term does not include an individual excluded by rule adopted or order issued under this chapter.

2A. “*Agricultural cooperative association*” means an entity which is structured and operated on a cooperative basis pursuant to 26 U.S.C. § 1381(a) and which meets the definitional requirement of an association as provided in 12 U.S.C. § 1141j(c) or 7 U.S.C. § 291, if the association is organized as any one of the following:

a. A farmers cooperative association as defined in section 10.1.

b. An association of persons organized pursuant to chapter 497 for purposes of conducting an agricultural or dairy business on a cooperative plan, as described in section 497.1.

c. A cooperative association organized pursuant to chapter 498 for purposes of conducting an agricultural, livestock, horticultural, or dairy business on a cooperative plan and acting as a cooperative selling agency, as described in section 498.2.

d. An agricultural association as defined in section 499.2 and organized pursuant to chapter 499.

e. A cooperative organized under chapter 501 which may acquire or otherwise obtain or lease agricultural land in this state as provided in section 501.103.

f. Any other entity which is organized on a cooperative basis under the laws of this state for the purpose of engaging in the activities of an agricultural association as defined in section 499.2.

3. "Bank" means any of the following:

a. A banking institution organized under the laws of the United States.

b. A member bank of the United States federal reserve system.

c. Any other banking institution, whether incorporated or not, doing business under the laws of a state or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to be exercised by national banks under the authority of the office of the comptroller of the currency of the United States pursuant to Pub. L. No. 87-722, § 1, 12 U.S.C. § 92a, and which is supervised and examined by a state or federal agency having supervision over banks, and which is not operated for the purpose of evading this chapter.

d. A receiver, conservator, or other liquidating agent of any institution or firm included in paragraph "a", "b", or "c".

4. "Broker-dealer" means a person engaged in the business of effecting transactions in securities for the account of others or for the person's own account. The term does not include any of the following:

a. An agent.

b. An issuer.

c. A bank or savings institution if its activities as a broker-dealer are limited to those specified in section 3(a)(4)(B)(i) through (vi), section 3(a)(4)(B)(vii) if the offer and sale of private securities offerings are limited to nonconsumer transactions that are not primarily for personal, family, or household purposes, section 3(a)(4)(B)(viii) through (x), or section 3(a)(4)(B)(xi) if limited to unsolicited transactions all as provided in the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(4); in section 3(a)(5)(B), and 3(a)(5)(C) of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(4) and (5); or a bank that satisfies the conditions described in section 3(a)(4)(E) of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(4).

d. An international banking institution.

e. A person excluded by rule adopted or order issued under this chapter.

5. "Depository institution" means any of the following:

a. A bank.

b. A savings institution, trust company, credit union, or similar institution that is organized or chartered under the laws of a state or of the United States, authorized to receive deposits, and supervised and examined by an official or agency of a state or the United States if its deposits or share accounts are insured to the maximum amount authorized by statute by the federal deposit insurance corporation, the national credit union share insurance fund, or a successor authorized by federal law. The term does not include any of the following:

(1) An insurance company or other organization primarily engaged in the business of insurance.

(2) A Morris plan bank.

(3) An industrial loan company that is not an "insured depository institution" as defined in section 3(c)(2) of the Federal Deposit Insurance Act, 12 U.S.C. § 1813(c)(2), or any successor federal statute.

6. "Federal covered investment adviser" means a person registered under the Investment Advisers Act of 1940.

7. "Federal covered security" means a security that is, or upon completion of a transaction

will be, a covered security under section 18(b) of the Securities Act of 1933, 15 U.S.C. § 77r(b), or rules or regulations adopted pursuant to that provision.

8. “Filing” means the receipt under this chapter of a record by the administrator or a designee of the administrator.

9. “Fraud”, “deceit”, and “defraud” are not limited to common law deceit.

10. “Guaranteed” means guaranteed as to payment of all principal and all interest.

11. “Institutional investor” means any of the following, whether acting for itself or for others in a fiduciary capacity:

- a. A depository institution or international banking institution.
  - b. An insurance company.
  - c. A separate account of an insurance company.
  - d. An investment company as defined in the Investment Company Act of 1940.
  - e. A broker-dealer registered under the Securities Exchange Act of 1934.
  - f. An employee pension, profit-sharing, or benefit plan if the plan has total assets in excess of five million dollars or its investment decisions are made by a named fiduciary, as defined in the Employee Retirement Income Security Act of 1974, that is a broker-dealer registered under the Securities Exchange Act of 1934, an investment adviser registered or exempt from registration under the Investment Advisers Act of 1940, an investment adviser registered under this chapter, a depository institution, or an insurance company.
  - g. A plan established and maintained by a state, a political subdivision of a state, or an agency or instrumentality of a state or a political subdivision of a state for the benefit of its employees, if the plan has total assets in excess of five million dollars or its investment decisions are made by a duly designated public official or by a named fiduciary, as defined in the Employee Retirement Income Security Act of 1974, that is a broker-dealer registered under the Securities Exchange Act of 1934, an investment adviser registered or exempt from registration under the Investment Advisers Act of 1940, an investment adviser registered under this chapter, a depository institution, or an insurance company.
  - h. A trust, if it has total assets in excess of five million dollars, its trustee is a depository institution, and its participants are exclusively plans of the types identified in paragraph “f” or “g”, regardless of the size of their assets, except a trust that includes as participants self-directed individual retirement accounts or similar self-directed plans.
  - i. An organization described in section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. § 501(c)(3), corporation, Massachusetts trust or similar business trust, limited liability company, or partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of five million dollars.
  - j. A small business investment company licensed by the small business administration under section 301(c) of the Small Business Investment Act of 1958, 15 U.S.C. § 681(c), with total assets in excess of five million dollars.
  - k. A private business development company as defined in section 202(a)(22) of the Investment Advisers Act of 1940, 15 U.S.C. § 80b-2(a)(22), with total assets in excess of five million dollars.
  - l. A federal covered investment adviser acting for its own account.
  - m. A “qualified institutional buyer” as defined in Rule 144A(a)(1), other than Rule 144A(a)(1)(i)(H), adopted by the securities and exchange commission under the Securities Act of 1933, 17 C.F.R. § 230.144A.
  - n. A “major U.S. institutional investor” as defined in Rule 15a-6(b)(4)(i) adopted by the securities and exchange commission under the Securities Exchange Act of 1934, 17 C.F.R. § 240.15a-6.
  - o. Any other person, other than an individual, of institutional character with total assets in excess of five million dollars not organized for the specific purpose of evading this chapter.
  - p. Any other person specified by rule adopted or order issued under this chapter.
12. “Insurance company” means a company organized as an insurance company whose primary business is writing insurance or reinsuring risks underwritten by insurance companies and which is subject to supervision by the insurance commissioner or a similar official or agency of a state.
13. “Insured” means insured as to payment of all principal and all interest.

13A. “*Interest at the legal rate*” means the interest rate for judgments specified in section 535.3.

14. “*International banking institution*” means an international financial institution of which the United States is a member and whose securities are exempt from registration under the Securities Act of 1933.

15. “*Investment adviser*” means a person that, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing, or selling securities or that, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. The term includes a financial planner or other person that, as an integral component of other financially related services, provides investment advice to others for compensation as part of a business or that holds itself out as providing investment advice to others for compensation. The term does not include any of the following:

- a. An investment adviser representative.
- b. A lawyer, accountant, engineer, or teacher whose performance of investment advice is solely incidental to the practice of the person’s profession.
- c. A broker-dealer or its agents whose performance of investment advice is solely incidental to the conduct of business as a broker-dealer and who does not receive special compensation for the investment advice.
- d. A publisher of a bona fide newspaper, news magazine, or business or financial publication of general and regular circulation.
- e. A federal covered investment adviser.
- f. A bank or savings institution.
- g. Any other person that is excluded by the Investment Advisers Act of 1940 from the definition of investment adviser.
- h. Any other person excluded by rule adopted or order issued under this chapter.

16. “*Investment adviser representative*” means an individual employed by or associated with an investment adviser or federal covered investment adviser and who makes any recommendations or otherwise gives investment advice regarding securities, manages accounts or portfolios of clients, determines which recommendation or advice regarding securities should be given, provides investment advice or holds oneself out as providing investment advice, receives compensation to solicit, offer, or negotiate for the sale of or for selling investment advice, or supervises employees who perform any of the foregoing. The term does not include an individual who does or is any of the following:

- a. Performs only clerical or ministerial acts.
- b. Is an agent whose performance of investment advice is solely incidental to the individual acting as an agent and who does not receive special compensation for investment advisory services.
- c. Is employed by or associated with a federal covered investment adviser, unless the individual has a “*place of business*” in this state as that term is defined by rule adopted by the securities and exchange commission under section 203A of the Investment Advisers Act of 1940, 15 U.S.C. § 80b-3a, and is any of the following:

(1) An “*investment adviser representative*” as that term is defined by rule adopted under section 203A of the Investment Advisers Act of 1940, 15 U.S.C. § 80b-3a.

(2) Not a “*supervised person*” as that term is defined in section 202(a)(25) of the Investment Advisers Act of 1940, 15 U.S.C. § 80b-2(a)(25).

- d. Is excluded by rule adopted or order issued under this chapter.

17. “*Issuer*” means a person that issues or proposes to issue a security, subject to all of the following:

a. The issuer of a voting trust certificate, collateral trust certificate, certificate of deposit for a security, or share in an investment company without a board of directors or individuals performing similar functions is the person performing the acts and assuming the duties of depositor or manager pursuant to the trust or other agreement or instrument under which the security is issued.

b. The issuer of an equipment trust certificate or similar security serving the same purpose is the person by which the property is or will be used or to which the property or equipment

is or will be leased or conditionally sold or that is otherwise contractually responsible for assuring payment of the certificate.

c. The issuer of a fractional undivided interest in an oil, gas, or other mineral lease or in payments out of production under a lease, right, or royalty is the owner of an interest in the lease or in payments out of production under a lease, right, or royalty, whether whole or fractional, that creates fractional interests for the purpose of sale.

d. With respect to a viatical settlement investment contract, “*issuer*” means a person involved in creating, transferring, or selling to an investor any interest in such a contract, including but not limited to fractional or pooled interests, but does not include an agent or a broker-dealer.

18. “*Nonissuer transaction*” or “*nonissuer distribution*” means a transaction or distribution not directly or indirectly for the benefit of the issuer.

19. “*Offer to purchase*” includes an attempt or offer to obtain, or solicitation of an offer to sell, a security or interest in a security for value. The term does not include a tender offer that is subject to section 14(d) of the Securities Exchange Act of 1934, 15 U.S.C. § 78n(d).

20. “*Person*” means an individual; corporation; business trust; estate; trust; partnership; limited liability company; association; cooperative; joint venture; government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

21. “*Place of business*” of a broker-dealer, an investment adviser, or a federal covered investment adviser means any of the following:

a. An office at which the broker-dealer, investment adviser, or federal covered investment adviser regularly provides brokerage or investment advice or solicits, meets with, or otherwise communicates with customers or clients.

b. Any other location that is held out to the general public as a location at which the broker-dealer, investment adviser, or federal covered investment adviser provides brokerage or investment advice or solicits, meets with, or otherwise communicates with customers or clients.

22. “*Predecessor chapter*” means this chapter as it existed on December 31, 2004.

23. “*Price amendment*” means the amendment to a registration statement filed under the Securities Act of 1933 or, if an amendment is not filed, the prospectus or prospectus supplement filed under the Securities Act of 1933 that includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price.

24. “*Principal place of business*” of a broker-dealer or an investment adviser means the executive office of the broker-dealer or investment adviser from which the officers, partners, or managers of the broker-dealer or investment adviser direct, control, and coordinate the activities of the broker-dealer or investment adviser.

25. “*Record*”, except in the phrases “of record”, “official record”, and “public record”, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

26. “*Sale*” includes every contract of sale, contract to sell, or disposition of, a security or interest in a security for value, and “*offer to sell*” includes every attempt or offer to dispose of, or solicitation of an offer to purchase, a security or interest in a security for value. Both terms include all of the following:

a. A security given or delivered with, or as a bonus on account of, a purchase of securities or any other thing constituting part of the subject of the purchase and having been offered and sold for value.

b. A gift of assessable stock involving an offer and sale.

c. A sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer and a sale or offer of a security that gives the holder a present or future right or privilege to convert the security into another security of the same or another issuer, including an offer of the other security.

27. “*Securities and exchange commission*” means the United States securities and exchange commission.

27A. “*Securities and regulated industries bureau*” means the securities and regulated industries bureau of the insurance division of the department of commerce.

28. “*Security*” means a note; stock; treasury stock; security future; 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; fractional undivided interest in oil, gas, or other mineral rights; put, call, straddle, option, or privilege on a security, certificate of deposit, or group or index of securities, including an interest therein or based on the value thereof; put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency; or, in general, an interest or instrument commonly known as a “security”; or a 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. All of the following shall apply to the term:

a. It includes both a certificated and an uncertificated security.

b. It does not include an insurance or endowment policy or annuity contract under which an insurance company promises to pay a fixed or variable sum of money either in a lump sum or periodically for life or other specified period.

c. It does not include any of the following:

(1) An interest in a contributory or noncontributory pension or welfare plan subject to the Employee Retirement Income Security Act of 1974.

(2) A certificate or tax credit issued or transferred pursuant to chapter 15E, division VII.

d. It includes an investment in a common enterprise with the expectation of profits to be derived primarily from the efforts of a person other than the investor and a “*common enterprise*” means an enterprise in which the fortunes of the investor are interwoven with those of either the person offering the investment, a third party, or other investors.

e. It includes as a security an interest in a limited liability company or in a limited liability partnership or any class or series of such interest, including any fractional or other interest in such interest, provided “*security*” does not include an interest in a limited liability company or a limited liability partnership if the person claiming that such an interest is not a security proves that all of the members of the limited liability company or limited liability partnership are actively engaged in the management of the limited liability company or limited liability partnership; provided that the evidence that members vote or have the right to vote, or the right to information concerning the business and affairs of the limited liability company or limited liability partnership, or the right to participate in management, shall not establish, without more, that all members are actively engaged in the management of the limited liability company or limited liability partnership.

f. It includes a viatical settlement investment contract.

29. “*Self-regulatory organization*” means a national securities exchange registered under the Securities Exchange Act of 1934, a national securities association of broker-dealers registered under the Securities Exchange Act of 1934, a clearing agency registered under the Securities Exchange Act of 1934, or the municipal securities rulemaking board established under the Securities Exchange Act of 1934.

30. “*Sign*” means, with present intent to authenticate or adopt a record, to do any of the following:

a. To execute or adopt a tangible symbol.

b. To attach or logically associate with the record an electronic symbol, sound, or process.

31. “*State*” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

31A. “*Viatical settlement investment contract*” means a contract entered into by a viatical settlement purchaser, to which the viator is not a party, to purchase a life insurance policy or

an interest in the death benefits of a life insurance policy, which contract is entered into for the purpose of deriving economic benefit.

[C31, 35, §8581-c3; C39, **§8581.03**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §502.3; C77, 79, 81, §502.102; 81 Acts, ch 163, §1; 82 Acts, ch 1100, §24]

83 Acts, ch 169, §2; 85 Acts, ch 155, §23; 87 Acts, ch 53, §1, 2; 87 Acts, ch 181, §1; 91 Acts, ch 40, §3 – 5; 91 Acts, ch 230, §4, 5; 94 Acts, ch 1031, §6; 96 Acts, ch 1025, §1; 97 Acts, ch 114, §1 – 4; 98 Acts, ch 1106, §1, 2, 24; 99 Acts, ch 134, §1 – 3; 2001 Acts, ch 16, §5, 37; 2001 Acts, ch 55, §31, 38; 2001 Acts, ch 118, §1, 2; 2002 Acts, ch 1111, §2, 3; 2003 Acts, ch 44, §89; 2003 Acts, ch 108, §130; 2004 Acts, ch 1161, §1, 68; 2005 Acts, ch 19, §74; 2005 Acts, ch 135, §115; 2006 Acts, ch 1117, §5, 6

### **502.103 References to federal statutes.**

“*Securities Act of 1933*”, 15 U.S.C. § 77a et seq.; “*Securities Exchange Act of 1934*”, 15 U.S.C. § 78a et seq.; “*Public Utility Holding Company Act of 1935*”, 15 U.S.C. § 79 et seq.; “*Investment Company Act of 1940*”, 15 U.S.C. § 80a-1 et seq.; “*Investment Advisers Act of 1940*”, 15 U.S.C. § 80b-1 et seq.; “*Employee Retirement Income Security Act of 1974*”, 29 U.S.C. § 1001 et seq.; “*National Housing Act*”, 12 U.S.C. § 1701; “*Commodity Exchange Act*”, 7 U.S.C. § 1 et seq.; “*Internal Revenue Code*”, 26 U.S.C. § 1 et seq.; “*Securities Investor Protection Act of 1970*”, 15 U.S.C. § 78aaa et seq.; “*Securities Litigation Uniform Standards Act of 1998*”, 112 Stat. 3227; “*Small Business Investment Act of 1958*”, 15 U.S.C. § 661 et seq.; and “*Electronic Signatures in Global and National Commerce Act*”, 15 U.S.C. § 7001 et seq. mean those federal statutes and the rules and regulations adopted under those federal statutes, as in effect on January 1, 2005.

2004 Acts, ch 1161, §2, 68

### **502.104 References to federal agencies.**

A reference in this chapter to an agency or department of the United States is also a reference to a successor agency or department.

2004 Acts, ch 1161, §3, 68

### **502.105 Electronic records and signatures.**

This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, but does not modify, limit, or supersede § 101(c) of that Act, 15 U.S.C. § 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that Act, 15 U.S.C. § 7003(b). This chapter authorizes the filing of records and signatures, when specified by provisions of this chapter or by a rule adopted or order issued under this chapter, in a manner consistent with section 104(a) of that Act, 15 U.S.C. § 7004(a).

2004 Acts, ch 1161, §4, 68

## **ARTICLE 2**

### **EXEMPTIONS FROM REGISTRATION OF SECURITIES**

#### **502.201 Exempt securities.**

All of the following securities are exempt from the requirements of sections 502.301 through 502.306 and 502.504:

1. *United States government and municipal securities.* A security, including a revenue obligation or a separate security as defined in rule 131, 17 C.F.R. § 230.131, adopted by the securities and exchange commission under the Securities Act of 1933, issued, insured, or guaranteed by the United States; by a state; by a political subdivision of a state; by a public authority, agency, or instrumentality of one or more states; by a political subdivision of one or more states; or by a person controlled or supervised by and acting as an instrumentality of the United States under authority granted by the Congress; or a certificate of deposit for any of the foregoing.

2. *Foreign government securities.* A security issued, insured, or guaranteed by a foreign government with which the United States maintains diplomatic relations, or any of its political subdivisions, if the security is recognized as a valid obligation by the issuer, insurer, or guarantor.

3. *Depository institution and international banking institution securities.* A security issued by and representing or that will represent an interest in or a direct obligation of, or be guaranteed by any of the following:

a. An international banking institution.

b. A banking institution organized under the laws of the United States; a member bank of the United States federal reserve system; or a depository institution, a substantial portion of the business of which consists or will consist of receiving deposits or share accounts that are insured to the maximum amount authorized by statute by the federal deposit insurance corporation, the national credit union share insurance fund, or a successor authorized by federal law or exercising fiduciary powers that are similar to those permitted for national banks under the authority of the comptroller of the currency pursuant to Pub. L. No. 87-722, § 1, 12 U.S.C. § 92a.

c. Any other depository institution, unless by rule or order the administrator proceeds under section 502.204.

4. *Insurance company securities.* A security issued by and representing an interest in, or a debt of, or insured or guaranteed by, an insurance company authorized to do business in this state.

5. *Common carrier and public utility securities.* A security issued or guaranteed by a railroad, other common carrier, public utility, or public utility holding company that is any of the following:

a. Regulated in respect to its rates and charges by the United States or a state.

b. Regulated in respect to the issuance or guarantee of the security by the United States, a state, Canada, or a Canadian province or territory.

c. A public utility holding company registered under the Public Utility Holding Company Act of 1935 or a subsidiary of such a registered holding company within the meaning of that Act.

6. *Certain options and rights.* A federal covered security specified in section 18(b)(1) of the Securities Act of 1933, 15 U.S.C. § 77r(b)(1), or by rule adopted under that provision or a security listed or approved for listing on another securities market specified by rule under this chapter; a put or a call option contract; a warrant; a subscription right on or with respect to such securities; or an option or similar derivative security on a security or an index of securities or foreign currencies issued by a clearing agency registered under the Securities Exchange Act of 1934 and listed or designated for trading on a national securities exchange, a facility of a national securities exchange, or a facility of a national securities association registered under the Securities Exchange Act of 1934 or an offer or sale, of the underlying security in connection with the offer, sale, or exercise of an option or other security that was exempt when the option or other security was written or issued; or an option or a derivative security designated by the securities and exchange commission under section 9(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78i(b).

7. *Nonprofit securities.* A security issued by a person organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, social, athletic, or reformatory purposes, or as a chamber of commerce, and not for pecuniary profit, no part of the net earnings of which inures to the benefit of a private stockholder or other person, or a security of a company that is excluded from the definition of an investment company under section 3(c)(10)(B) of the Investment Company Act of 1940, 15 U.S.C. § 80a-3(c)(10)(B); except that with respect to the offer or sale of a note, bond, debenture, or other evidence of indebtedness issued by such a person, a rule may be adopted under this chapter limiting the availability of this exemption by classifying securities, persons, and transactions, imposing different requirements for different classes, specifying with respect to paragraph "b" the scope of the exemption and the grounds for denial or suspension, and requiring an issuer to do any of the following:

a. File a notice specifying the material terms of the proposed offer or sale and copies of any

proposed sales and advertising literature to be used and provide that the exemption becomes effective if the administrator does not disallow the exemption within the period established by the rule.

b. File a request for exemption authorization for which a rule under this chapter may specify the scope of the exemption, the requirement of an offering statement, the filing of sales and advertising literature, the filing of consent to service of process complying with section 502.611, and grounds for denial or suspension of the exemption.

c. Register under section 502.304.

8. Reserved.

8A. *Cooperative associations.* A stock or similar security, including a patronage refund certificate, issued by any of the following:

a. A cooperative housing corporation described in paragraph 1 of subsection “b” of section 216 of the Internal Revenue Code, if its activities are limited to the ownership, leasing, management, or construction of residential properties for its members, and activities incidental thereto.

b. A mutual or cooperative organization, including a cooperative association organized in good faith under and for any of the purposes enumerated in chapter 497, 498, 499, 501, or 501A, that deals in commodities or supplies goods or services in transactions primarily with and for the benefit of its members, if all of the following apply:

(1) Such stock or similar security is part of a class issuable only to persons who deal in commodities with, or obtain goods or services from, the issuer.

(2) Such stock or similar security is transferable only to the issuer or a successor in interest of the transferor who qualifies for membership in such mutual or cooperative organization.

(3) No dividends other than patronage refunds are payable to holders of such stock or similar security except on a complete or partial liquidation.

8B. *Agricultural cooperative associations.* A security issued by an agricultural cooperative association, provided all of the following conditions are satisfied:

a. A commission or remuneration must not be paid or provided either directly or indirectly for the sale, except as permitted by the administrator by rule or by order issued upon written application showing good cause for allowance of a commission or other remuneration.

b. If the securities to be issued are notes or other evidences of indebtedness and are issued after July 1, 1991, the issuer must file with the administrator a written notice specifying the name of the issuer, the date of the issuer’s organization, the name of a contact person, a copy of the issuer’s current audited financial statement, the types of security or securities to be offered, and the class of persons to whom the offer will be made in accordance with such rules as prescribed by the administrator.

9. *Equipment trust certificate.* An equipment trust certificate with respect to equipment leased or conditionally sold to a person, if any security issued by the person would be exempt under this section or would be a federal covered security under section 18(b)(1) of the Securities Act of 1933, 15 U.S.C. § 77r(b)(1).

9A. *Economic development corporations.* Any security issued by a corporation formed under chapter 496B.

9B. *Agricultural development authority.* Any security issued by the agricultural development authority under chapter 175.

9C. *Membership campgrounds.* Any security representing a membership camping contract which is registered pursuant to section 557B.2 or exempt under section 557B.4.

9D. *Time-shares.* Any security representing a time-share interval as defined in section 557A.2.

9E. *Viatical settlement investment contracts.* A viatical settlement investment contract, or fractional or pooled interest in such contract, provided any of the following conditions are satisfied:

a. The assignment, transfer, sale, devise, or bequest of a death benefit of a life insurance policy or contract is made by the viator to an insurance company as provided under Title XIII, subtitle 1.

b. The assignment, transfer, sale, devise, or bequest of a life insurance policy or contract,

for any value less than the expected death benefit, is made by the viator to a family member or other person who enters into no more than one such agreement in a calendar year.

c. A life insurance policy or contract is assigned to a bank, savings bank, savings and loan association, credit union, or other licensed lending institution as collateral for a loan.

d. Accelerated benefits are exercised as provided in the life insurance policy or contract and consistent with applicable law.

e. The assignment, transfer, sale, devise, or bequest of the death benefit or ownership of a life insurance policy or contract made by the policyholder or contract owner to a viatical settlement provider, if the viatical settlement transaction complies with chapter 508E, including rules adopted pursuant to that chapter.

[C31, 35, §8581-c6; C39, §8581.06; C46, 50, 54, 58, 62, 66, 71, 73, 75, §502.6; C77, 79, 81, §502.201]

97 Acts, ch 114, §5; 2004 Acts, ch 1161, §5, 68; 2006 Acts, ch 1117, §7; 2008 Acts, ch 1123, §1

### **502.202 Exempt transactions.**

The following transactions are exempt from the requirements of sections 502.301 through 502.306 and 502.504:

1. *Isolated nonissuer transactions.* An isolated nonissuer transaction, whether effected by or through a broker-dealer or not.

2. *Nonissuer transactions in specified outstanding securities.* A nonissuer transaction by or through a broker-dealer registered, or exempt from registration, under this chapter, and a resale transaction by a sponsor of a unit investment trust registered under the Investment Company Act of 1940, provided that for either transaction, the security is of a class that has been outstanding in the hands of the public for at least ninety days, if, at the date of the transaction, all of the following apply:

a. The issuer of the security is engaged in business, the issuer is not in the organizational stage or in bankruptcy or receivership, and the issuer is not a blank check, blind pool, or shell company that has no specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person.

b. The security is sold at a price reasonably related to its current market price.

c. The security does not constitute the whole or part of an unsold allotment to, or a subscription or participation by, the broker-dealer as an underwriter of the security or a redistribution.

d. A nationally recognized securities manual or its electronic equivalent designated by rule adopted or order issued under this chapter or a record filed with the securities and exchange commission that is publicly available contains all of the following:

(1) A description of the business and operations of the issuer.

(2) The names of the issuer's executive officers and the names of the issuer's directors, if any.

(3) An audited balance sheet of the issuer as of a date within eighteen months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had an audited balance sheet, and a pro forma balance sheet for the combined organization.

(4) An audited income statement for each of the issuer's two immediately previous fiscal years or for the period of existence of the issuer, whichever is shorter, or, in the case of a reorganization or merger when each party to the reorganization or merger had audited income statements, and a pro forma income statement.

e. Any one of the following requirements is met:

(1) The issuer of the security has a class of equity securities listed on a national securities exchange registered under section 6 of the Securities Exchange Act of 1934 or designated for trading on the national association of securities dealers automated quotation system.

(2) The issuer of the security is a unit investment trust registered under the Investment Company Act of 1940.

(3) The issuer of the security, including its predecessors, has been engaged in continuous business for at least three years.

(4) The issuer of the security has total assets of at least two million dollars based on an audited balance sheet as of a date within eighteen months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had such an audited balance sheet, and a pro forma balance sheet for the combined organization.

3. *Nonissuer transactions in specified foreign transactions.* A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter in a security of a foreign issuer that is a margin security defined in regulations or rules adopted by the board of governors of the United States federal reserve system.

4. *Nonissuer transactions in securities subject to securities exchange act reporting.* A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter in an outstanding security if the guarantor of the security files reports with the securities and exchange commission under the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. § 78m or 78o(d).

5. *Nonissuer transactions in specified fixed income securities.* A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter in a security if any of the following apply:

a. It is rated at the time of the transaction by a nationally recognized statistical rating organization in one of its four highest rating categories.

b. It has a fixed maturity or a fixed interest or dividend, if all of the following apply:

(1) A default has not occurred during the current fiscal year or within the three previous fiscal years or during the existence of the issuer and any predecessor if less than three fiscal years, in the payment of principal, interest, or dividends on the security.

(2) The issuer is engaged in business, is not in the organizational stage or in bankruptcy or receivership, and is not and has not been within the previous twelve months a blank check, blind pool, or shell company that has no specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person.

6. *Unsolicited brokerage transactions.* A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter effecting an unsolicited order or offer to purchase.

7. *Nonissuer transaction by pledgees.* A nonissuer transaction executed by a bona fide pledgee without the purpose of evading this chapter.

8. *Nonissuer transactions with federal covered investment advisers.* A nonissuer transaction by a federal covered investment adviser with investments under management in excess of one hundred million dollars acting in the exercise of discretionary authority in a signed record for the account of others.

9. *Specified exchange transactions.* A transaction in a security, whether or not the security or transaction is otherwise exempt, in exchange for one or more bona fide outstanding securities, claims, or property interests, or partly in such exchange and partly for cash, if the terms and conditions of the issuance and exchange or the delivery and exchange and the fairness of the terms and conditions have been approved after a hearing by a court; by an official or agency of the United States; by a state securities, banking, or insurance agency; or by any other government authority expressly authorized by law to grant such approvals.

10. *Underwriter transactions.* A transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters.

11. *Unit secured transactions.* A transaction in a note, bond, debenture, or other evidence of indebtedness secured by a mortgage or other security agreement if all of the following apply:

a. The note, bond, debenture, or other evidence of indebtedness is offered and sold with the mortgage or other security agreement as a unit.

b. A general solicitation or general advertisement of the transaction is not made.

c. A commission or other remuneration is not paid or given, directly or indirectly, to a person not registered under this chapter as a broker-dealer or as an agent.

12. *Bankruptcy, guardian, or conservator transactions.* A transaction by an executor, administrator of an estate, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator.

13. *Transactions with specified investors.* A sale or offer to sell to any of the following:

a. An institutional investor.

b. A federal covered investment adviser.

c. Any other person exempted by rule adopted or order issued under this chapter.

d. A person or class of persons who are granted this exemption by the administrator. 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.

14. *Limited offering transactions.* A sale or an offer to sell securities by or on behalf of an issuer, if the transaction is part of a single issue in which all of the following apply:

a. Not more than thirty-five purchasers are present in this state during any twelve consecutive months, other than those designated in subsection 13.

b. A general solicitation or general advertising is not made in connection with the offer to sell or sale of the securities.

c. A commission or other remuneration is not paid or given, directly or indirectly, to a person other than a broker-dealer registered under this chapter or an agent registered under this chapter for soliciting a prospective purchaser in this state.

d. The issuer reasonably believes that all the purchasers in this state, other than those designated in subsection 13, are purchasing for investment.

15. *Transactions with existing security holders.* A transaction under an offer to existing security holders of the issuer, including persons that at the date of the transaction are holders of convertible securities, options, or warrants, if 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.

16. *Offerings registered under this chapter and the Securities Act of 1933.* An offer to sell, but not a sale, of a security not exempt from registration under the Securities Act of 1933 if all of the following apply:

a. A registration or offering statement or similar record as required under the Securities Act of 1933 has been filed, but is not effective, or the offer is made in compliance with rule 165 adopted under the Securities Act of 1933, 17 C.F.R. § 230.165.

b. A stop order of which the offeror is aware has not been issued against the offeror by the administrator or the securities and exchange commission, and an audit, inspection, or proceeding that is public and that may culminate in a stop order is not known by the offeror to be pending.

17. *Offerings when registration has been filed, but is not effective under this chapter and exempt from the Securities Act of 1933.* An offer to sell, but not a sale, of a security exempt from registration under the Securities Act of 1933 if all of the following apply:

a. A registration statement has been filed under this chapter, but is not effective.

b. A solicitation of interest is provided in a record to offerees in compliance with a rule adopted by the administrator under this chapter.

c. A stop order of which the offeror is aware has not been issued by the administrator under this chapter and an audit, inspection, or proceeding that may culminate in a stop order is not known by the offeror to be pending.

18. *Control transactions.* A transaction involving the distribution of the securities of an issuer to the security holders of another person in connection with a merger, consolidation, exchange of securities, sale of assets, or other reorganization to which the issuer, or its parent or subsidiary and the other person, or its parent or subsidiary, are parties.

19. *Rescission offers.* A rescission offer, sale, or purchase under section 502.510.

20. *Out-of-state offers or sales.* An offer or sale of a security to a person not a resident of this state and not present in this state if the offer or sale does not constitute a violation of

the laws of the state or foreign jurisdiction in which the offeree or purchaser is present and is not part of an unlawful plan or scheme to evade this chapter.

21. *Employee benefit plans.* Employees' stock purchase, savings, option, profit-sharing, pension, or similar employees' benefit plan, including any securities, plan interests, and guarantees issued under a compensatory benefit plan or compensation contract, contained in a record, established by the issuer, its parents, its majority-owned subsidiaries, or the majority-owned subsidiaries of the issuer's parent for the participation of their employees including offers or sales of such securities to any of the following:

a. Directors; general partners; trustees, if the issuer is a business trust; officers; consultants; and advisers.

b. Family members who acquire such securities from those persons through gifts or domestic relations orders.

c. Former employees, directors, general partners, trustees, officers, consultants, and advisers if those individuals were employed by or providing services to the issuer when the securities were offered.

d. Insurance agents who are exclusive insurance agents of the issuer, or the issuer's subsidiaries or parents, or who derive more than fifty percent of their annual income from those organizations.

22. *Specified dividends and tender offers and judicially recognized reorganizations.* A transaction involving any of the following:

a. A stock dividend or equivalent equity distribution, whether the corporation or other business organization distributing the dividend or equivalent equity distribution is the issuer or not, if nothing of value is given by stockholders or other equity holders for the dividend or equivalent equity distribution other than the surrender of a right to a cash or property dividend if each stockholder or other equity holder may elect to take the dividend or equivalent equity distribution in cash, property, or stock.

b. An act incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims, or property interests, or partly in such exchange and partly for cash.

c. The solicitation of tenders of securities by an offeror in a tender offer in compliance with rule 162 adopted under the Securities Act of 1933, 17 C.F.R. § 230.162.

23. *Nonissuer transactions involving specified foreign issuer securities traded on designated security exchanges.* A nonissuer transaction in an outstanding security by or through a broker-dealer registered or exempt from registration under this chapter, if the issuer is a reporting issuer in a foreign jurisdiction designated by this subsection or by rule adopted or order issued under this chapter; has been subject to continuous reporting requirements in the foreign jurisdiction for not less than one hundred eighty days before the transaction; and the security is listed on the foreign jurisdiction's securities exchange that has been designated by this subsection or by rule adopted or order issued under this chapter, or is a security of the same issuer that is of senior or substantially equal rank to the listed security or is a warrant or right to purchase or subscribe to any of the foregoing. For purposes of this subsection, Canada, together with its provinces and territories, is a designated foreign jurisdiction and the Toronto stock exchange, inc., is a designated securities exchange. After an administrative hearing in compliance with chapter 17A, the administrator, by rule adopted or order issued under this chapter, may revoke the designation of a securities exchange under this subsection, if the administrator finds that revocation is necessary or appropriate in the public interest and for the protection of investors.

[SS15, §1920-u1; C24, 27, §8526; C31, 35, §8581-c4; C39, §8581.04; C46, 50, 54, 58, 62, §502.4; C66, 71, 73, 75, §496B.18, 502.4; C77, 79, §496B.18, 502.202; C81, §502.202]

83 Acts, ch 95, §1, 2; 83 Acts, ch 169, §3; 87 Acts, ch 181, §2; 88 Acts, ch 1020, §1; 91 Acts, ch 40, §6 – 9; 91 Acts, ch 230, §6, 7; 96 Acts, ch 1025, §2, 3; 97 Acts, ch 114, §6; 98 Acts, ch 1119, §2; 99 Acts, ch 134, §4; 99 Acts, ch 166, §1; 2000 Acts, ch 1147, §34; 2003 Acts, ch 44, §90; 2004 Acts, ch 1161, §6, 68; 2008 Acts, ch 1123, §2

**502.203 Additional exemptions and waivers.**

A rule adopted or order issued under this chapter may exempt a security, transaction, or offer; a rule under this chapter may exempt a class of securities, transactions, or offers from any or all of the requirements of sections 502.301 through 502.306 and 502.504; and an order under this chapter may waive, in whole or in part, any or all of the conditions for an exemption or offer under sections 502.201 and 502.202.

[SS15, §1920-u1, -u13; C24, 27, §8526, 8554; C31, 35, §8581-c5; C39, §8581.05; C46, 50, 54, 58, 62, 66, 71, 73, 75, §502.5; C77, 79, 81, §502.203]

83 Acts, ch 169, §4 – 7; 91 Acts, ch 40, §10 – 14; 96 Acts, ch 1025, §4, 5; 2001 Acts, ch 118, §3; 2004 Acts, ch 1161, §7, 68

**502.204 Denial, suspension, revocation, condition, or limitation of exemptions.**

1. *Enforcement-related powers.* Except with respect to a federal covered security or a transaction involving a federal covered security, an order under this chapter may deny, suspend application of, condition, limit, or revoke an exemption created under section 502.201, subsection 3, paragraph “c”, or subsection 7, 8A, or 8B, or section 502.202, or an exemption or waiver created under section 502.203 with respect to a specific security, transaction, or offer. An order under this section may be issued only pursuant to the procedures in section 502.306, subsection 4, or section 502.604, and only prospectively.

2. *Knowledge of order required.* A person does not violate section 502.301, 502.303 through 502.306, 502.504, or 502.510 by an offer to sell, offer to purchase, sale, or purchase effected after the entry of an order issued under this section if the person did not know, and in the exercise of reasonable care could not have known, of the order.

[C31, 35, §8581-c4; C39, §8581.04; C46, 50, 54, 58, 62, 66, 71, 73, 75, §502.4(5); C77, 79, 81, §502.204]

2004 Acts, ch 1161, §8, 68; 2005 Acts, ch 19, §75

**502.205 through 502.207A** Repealed by 2004 Acts, ch 1161, § 63, 68. See § 502.302 – 502.304A, 502.503.

**502.207B** Repealed by 2001 Acts, ch 118, § 58.

**502.208 and 502.209** Repealed by 2004 Acts, ch 1161, § 63, 68. See § 502.305, 502.306.

**502.210** Repealed by 91 Acts, ch 40, § 36.

**502.211 through 502.218** Repealed by 2004 Acts, ch 1161, § 63, 68. See § 502.321B – 502.321I.

## ARTICLE 3

### REGISTRATION OF SECURITIES AND NOTICE FILING OF FEDERAL COVERED SECURITIES

**502.301 Securities registration requirement.**

It is unlawful for a person to offer or sell a security in this state unless one of the following applies:

1. The security is a federal covered security.
2. The security, transaction, or offer is exempted from registration under sections 502.201 through 502.203.

3. The security is registered under this chapter.

[SS15, §1920-u15; C24, 27, §8561, 8563; C31, 35, §8581-c11; C39, §8581.11; C46, 50, 54, 58, 62, 66, 71, 73, 75, §502.11; C77, 79, 81, §502.301]

83 Acts, ch 169, §9; 91 Acts, ch 40, §19; 96 Acts, ch 1025, § 7; 98 Acts, ch 1106, §3, 4, 24; 2004 Acts, ch 1161, §9, 68

### **502.302 Notice filing.**

1. *Required filing of records.* With respect to a federal covered security, as defined in section 18(b)(2) of the Securities Act of 1933, 15 U.S.C. § 77r(b)(2), that is not otherwise exempt under sections 502.201 through 502.203, a rule adopted or order issued under this chapter may require the filing of any or all of the following records:

a. Before the initial offer of a federal covered security in this state, all records that are part of a federal registration statement filed with the securities and exchange commission under the Securities Act of 1933 and a consent to service of process complying with section 502.611 signed by the issuer.

(1) A person who is the issuer of a federal covered security under section 18(b)(2) of the Securities Act of 1933 shall initially make a notice filing and annually renew a notice filing in this state for an indefinite amount or a fixed amount. The fixed amount must be for two hundred fifty thousand dollars.

(2) A notice filer shall pay a filing fee when the notice is filed. If the amount covered by the notice is indefinite, the notice filer shall pay a filing fee of one thousand dollars. If the amount covered by the notice is fixed, the notice filer shall pay a filing fee of two hundred fifty dollars, and all of the following shall apply:

(a) The notice filer shall file a sales report with the administrator or pay an additional filing fee of one thousand two hundred fifty dollars within ninety days after the notice filing's annual renewal date. If the notice filer files a sales report with the administrator, the notice filer shall pay an additional filing fee of one-tenth of one percent of the amount of securities sold in excess of two hundred fifty thousand dollars. The additional filing fee must be paid within ninety days after the notice filing's annual renewal date.

(b) The notice filing covering the additional securities shall be effective retroactively as of the effective date of the notice filing that is being amended.

b. After the initial offer of the federal covered security in this state, all records that are part of an amendment to a federal registration statement filed with the securities and exchange commission under the Securities Act of 1933.

2. *Notice filing effectiveness and renewal.* A notice filing under subsection 1 is effective for one year commencing on the later of the notice filing or the effectiveness of the offering filed with the securities and exchange commission. On or before expiration, the issuer may renew a notice filing by filing a copy of those records filed by the issuer with the securities and exchange commission that are required by rule or order under this chapter to be filed and by paying the renewal fee required by subsection 1, paragraph "a". A previously filed consent to service of process complying with section 502.611 may be incorporated by reference in a renewal. A renewed notice filing becomes effective upon the expiration of the filing being renewed.

3. *Notice filings for federal covered securities under section 18(b)(4)(D).* With respect to a security that is a federal covered security under section 18(b)(4)(D) of the Securities Act of 1933, 15 U.S.C. § 77r(b)(4)(D), a rule under this chapter may require a notice filing by or on behalf of an issuer to include a copy of form D, including the appendix, as promulgated by the securities and exchange commission, and a consent to service of process complying with section 502.611 signed by the issuer not later than fifteen days after the first sale of the federal covered security in this state and the payment of a fee of one hundred dollars; and the payment of a fee of two hundred fifty dollars for any late filing.

4. *Stop orders.* Except with respect to a federal security under section 18(b)(1) of the Securities Act of 1933, 15 U.S.C. § 77r(b)(1), if the administrator finds that there is a failure to comply with a notice or fee requirement of this section, the administrator may issue a stop order suspending the offer and sale of a federal covered security in this state. If the

deficiency is corrected, the stop order is void as of the time of its issuance and no penalty may be imposed by the administrator.

5. *Deposit of fees.* Fees collected under this section shall be deposited as provided in section 505.7.

[SS15, §1920-u15, -u16; C24, 27, §8561, 8563, 8571; C31, 35, §8581-c11, -c14; C39, **§8581.11, 8581.18**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §502.11, 502.18; C77, 79, 81, §502.302; 82 Acts, ch 1003, §2]

83 Acts, ch 169, §10, 18; 91 Acts, ch 40, §20 – 22; 94 Acts, ch 1031, §14; 96 Acts, ch 1025, §8; 97 Acts, ch 114, §10; 98 Acts, ch 1106, §5, 24; 99 Acts, ch 166, §2; 2001 Acts, ch 118, §5; 2004 Acts, ch 1161, §10, 68; 2009 Acts, ch 181, §57

[SP] For future repeal of subsection 5, effective July 1, 2011, see 2009 Acts, ch 179, §146

### **502.303 Securities registration by coordination.**

#### **1. *Registration permitted.***

a. A security for which a registration statement has been filed under the Securities Act of 1933 in connection with the same offering may be registered by coordination under this section.

b. A proposed sale pursuant to the exemption contained in “Regulation A” as adopted under section 3(b) of the Securities Act of 1933 where such registration statement has not become effective or notification of proposed sale has not been qualified may be registered by coordination under this section.

2. *Required records.* A registration statement and accompanying records under this section must contain or be accompanied by all of the following records in addition to the information specified in section 502.305 and a consent to service of process complying with section 502.611:

a. A copy of the latest form of prospectus filed under the Securities Act of 1933.

b. A copy of the articles of incorporation and bylaws or their substantial equivalents currently in effect; a copy of any agreement with or among underwriters; a copy of any indenture or other instrument governing the issuance of the security to be registered; and a specimen, copy, or description of the security that is required by rule adopted or order issued under this chapter.

c. Copies of any other information or any other records filed by the issuer under the Securities Act of 1933 requested by the administrator.

d. An undertaking to forward each amendment to the federal prospectus, other than an amendment that delays the effective date of the registration statement, promptly after it is filed with the securities and exchange commission.

3. *Conditions for effectiveness of registration statement.* A registration statement under this section becomes effective simultaneously with or subsequent to the federal registration statement when all the following conditions are satisfied:

a. A stop order under subsection 4 or section 502.306 or issued by the securities and exchange commission is not in effect and a proceeding is not pending against the issuer under section 502.306.

b. The registration statement has been on file for at least twenty days or a shorter period provided by rule adopted or order issued under this chapter.

4. *Notice of federal registration statement effectiveness.* The registrant shall promptly notify the administrator in a record of the date when the federal registration statement becomes effective and the content of any price amendment and shall promptly file a record containing the price amendment. If the notice is not timely received, the administrator may issue a stop order, without prior notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until in compliance with this section. The administrator shall promptly notify the registrant of an order by telegram, telephone, or electronic means and promptly confirm this notice by a record. If the registrant subsequently complies with the notice requirements of this section, the stop order is void as of the date of its issuance.

5. *Effectiveness of registration statement.* If the federal registration statement becomes effective before each of the conditions in this section is satisfied or is waived by the

administrator, the registration statement is automatically effective under this chapter when all the conditions are satisfied or waived. If the registrant notifies the administrator of the date when the federal registration statement is expected to become effective, the administrator shall promptly notify the registrant by telegram, telephone, or electronic means and promptly confirm this notice by a record, indicating whether all the conditions are satisfied or waived and whether the administrator intends the institution of a proceeding under section 502.306. The notice by the administrator does not preclude the institution of such a proceeding.

[C31, §8581-c11, -c12; C35, §8581-c11, -c12, -f3; C39, §8581.11, 8581.12, 8581.15; C46, 50, 54, 58, 62, 66, 71, 73, 75, §502.11, 502.12, 502.15; C77, 79, 81, §502.303]

83 Acts, ch 169, §11; 91 Acts, ch 40, §23; 97 Acts, ch 114, §11; 98 Acts, ch 1106, §6, 24; 2004 Acts, ch 1161, §11, 68

#### **502.304 Securities registration by qualification.**

1. *Registration permitted.* A security may be registered by qualification under this section.

2. *Required records.* A registration statement under this section must contain the information or records specified in section 502.305, a consent to service of process complying with section 502.611, and, if required by rule adopted under this chapter, all of the following information or records:

a. With respect to the issuer and any significant subsidiary, its name, address, and form of organization; the state or foreign jurisdiction and date of its organization; the general character and location of its business; a description of its physical properties and equipment; and a statement of the general competitive conditions in the industry or business in which it is or will be engaged.

b. With respect to each director and officer of the issuer, and other person having a similar status or performing similar functions, the person's name, address, and principal occupation for the previous five years; the amount of securities of the issuer held by the person as of the thirtieth day before the filing of the registration statement; the amount of the securities covered by the registration statement to which the person has indicated an intention to subscribe; and a description of any material interest of the person in any material transaction with the issuer or a significant subsidiary effected within the previous three years or proposed to be effected.

c. With respect to persons covered by paragraph "b", the aggregate sum of the remuneration paid to those persons during the previous twelve months and estimated to be paid during the next twelve months, directly or indirectly, by the issuer, and all predecessors, parents, subsidiaries, and affiliates of the issuer.

d. With respect to a person owning of record or owning beneficially, if known, ten percent or more of the outstanding shares of any class of equity security of the issuer, the information specified in paragraph "b" other than the person's occupation.

e. With respect to a promoter, if the issuer was organized within the previous three years, the information or records specified in paragraph "b", any amount paid to the promoter within that period or intended to be paid to the promoter, and the consideration for the payment.

f. With respect to a person on whose behalf any part of the offering is to be made in a nonissuer distribution, the person's name and address; the amount of securities of the issuer held by the person as of the date of the filing of the registration statement; a description of any material interest of the person in any material transaction with the issuer or any significant subsidiary effected within the previous three years or proposed to be effected; and a statement of the reasons for making the offering.

g. The capitalization and long-term debt, on both a current and pro forma basis, of the issuer and any significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration, whether in the form of cash, physical assets, services, patents, goodwill, or anything else of value, for which the issuer or any subsidiary has issued its securities within the previous two years or is obligated to issue its securities.

h. The kind and amount of securities to be offered; the proposed offering price or the

method by which it is to be computed; any variation at which a proportion of the offering is to be made to a person or class of persons other than the underwriters, with a specification of the person or class; the basis on which the offering is to be made if otherwise than for cash; the estimated aggregate underwriting and selling discounts or commissions and finders' fees, including separately cash, securities, contracts, or anything else of value to accrue to the underwriters or finders in connection with the offering or, if the selling discounts or commissions are variable, the basis of determining them and their maximum and minimum amounts; the estimated amounts of other selling expenses, including legal, engineering, and accounting charges; the name and address of each underwriter and each recipient of a finder's fee; a copy of any underwriting or selling group agreement under which the distribution is to be made or the proposed form of any such agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities that are to be offered otherwise than through an underwriter.

i. The estimated monetary proceeds to be received by the issuer from the offering; the purposes for which the proceeds are to be used by the issuer; the estimated amount to be used for each purpose; the order or priority in which the proceeds will be used for the purposes stated; the amounts of any funds to be raised from other sources to achieve the purposes stated; the sources of the funds; and, if a part of the proceeds is to be used to acquire property, including goodwill, otherwise than in the ordinary course of business, the names and addresses of the vendors, the purchase price, the names of any persons that have received commissions in connection with the acquisition, and the amounts of the commissions and other expenses in connection with the acquisition, including the cost of borrowing money to finance the acquisition.

j. A description of any stock options or other security options outstanding, or to be created in connection with the offering, and the amount of those options held or to be held by each person required to be named in paragraph "b", "d", "e", "f", or "h" and by any person that holds or will hold ten percent or more in the aggregate of those options.

k. The dates of, parties to, and general effect concisely stated of each managerial or other material contract made or to be made otherwise than in the ordinary course of business to be performed in whole or in part at or after the filing of the registration statement or that was made within the previous two years, and a copy of the contract.

l. A description of any pending litigation, action, or proceeding to which the issuer is a party and that materially affects its business or assets, and any litigation, action, or proceeding known to be contemplated by governmental authorities.

m. A copy of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature intended as of the effective date to be used in connection with the offering and any solicitation of interest used in compliance with section 502.202, subsection 17, paragraph "b".

n. A specimen or copy of the security being registered, unless the security is uncertificated; a copy of the issuer's articles of incorporation and bylaws or their substantial equivalents, in effect; and a copy of any indenture or other instrument covering the security to be registered.

o. A signed or conformed copy of an opinion of counsel concerning the legality of the security being registered, with an English translation if it is in a language other than English, which states whether the security when sold will be validly issued, fully paid, and nonassessable and, if a debt security, a binding obligation of the issuer.

p. A signed or conformed copy of a consent of any accountant, engineer, appraiser, or other person whose profession gives authority for a statement made by the person, if the person is named as having prepared or certified a report or valuation, other than an official record, that is public, which is used in connection with the registration statement.

q. A balance sheet of the issuer as of a date within four months before the filing of the registration statement; a statement of income and a statement of cash flows for each of the three fiscal years preceding the date of the balance sheet and for any period between the close of the immediately previous fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessor's existence if less than three years; and, if any part of the proceeds of the offering is to be applied to the purchase of a business, the financial statements that would be required if that business were the registrant.

r. Any additional information or records required by rule adopted or order issued under this chapter.

2A. *Reports and examinations.* The administrator may by rule or order require as a condition of registration by qualification, and at the expense of the applicant or registrant, that a report by an accountant, engineer, appraiser, or other professional person be filed. The administrator may also designate one or more employees of the securities and regulated industries bureau to make an examination of the business and records of an issuer of securities for which a registration statement has been filed by qualification, at the expense of the applicant or registrant.

3. *Conditions for effectiveness of registration statement.* A registration statement under this section becomes effective thirty days, or any shorter period provided by rule adopted or order issued under this chapter, after the date the registration statement or the last amendment other than a price amendment is filed, if any of the following applies:

- a. A stop order is not in effect and a proceeding is not pending under section 502.306.
- b. The administrator has not issued an order under section 502.306 delaying effectiveness.
- c. The applicant or registrant has not requested that effectiveness be delayed.

4. *Delay of effectiveness of registration statement.* The administrator may delay effectiveness once for not more than ninety days if the administrator determines the registration statement is not complete in all material respects and promptly notifies the applicant or registrant of that determination. The administrator may also delay effectiveness for a further period of not more than thirty days if the administrator determines that the delay is necessary or appropriate.

5. *Prospectus distribution may be required.* A rule adopted or order issued under this chapter may require as a condition of registration under this section that a prospectus containing a specified part of the information or record specified in subsection 2 be sent or given to each person to whom an offer is made, before or concurrently, with the earliest of any of the following:

- a. The first offer made in a record to the person otherwise than by means of a public advertisement, by or for the account of the issuer or another person on whose behalf the offering is being made or by an underwriter or broker-dealer that is offering part of an unsold allotment or subscription taken by the person as a participant in the distribution.
- b. The confirmation of a sale made by or for the account of the person.
- c. Payment pursuant to such a sale.
- d. Delivery of the security pursuant to such a sale.

[SS15, §1920-u15; C24, 27, §8562; C31, 35, §8581-c13; C39, §8581.14; C46, 50, 54, 58, 62, 66, 71, 73, 75, §502.14; C77, 79, 81, §502.304]

83 Acts, ch 169, §12, 13; 91 Acts, ch 40, §24 – 30; 94 Acts, ch 1031, §15; 96 Acts, ch 1025, §9 – 12; 97 Acts, ch 114, §12; 98 Acts, ch 1106, §7 – 12, 24; 99 Acts, ch 166, §3, 4; 2000 Acts, ch 1147, §16; 2001 Acts, ch 16, §6, 37; 2001 Acts, ch 118, §6 – 8; 2002 Acts, ch 1111, §4; 2004 Acts, ch 1161, §12, 68; 2006 Acts, ch 1117, §8

#### **502.304A Expedited registration by filing for small issuers.**

1. *Registration permitted.* A security meeting the conditions set forth in this section may be registered by filing as provided in this section.

2. *Conditions of the issuer.* In order to register under this section, the issuer must meet all of the following conditions:

a. The issuer must be a corporation, limited liability company, or partnership organized under the laws of one of the states or possessions of the United States which engages in or proposes to engage in a business other than petroleum exploration or production mining or other extractive industries.

b. The securities must be offered and sold only on behalf of the issuer, and must not be used by any selling security holder to register securities for resale.

3. *Conditions for effectiveness of registration — required records and fee.* In order to register under this section, all of the following conditions must be satisfied:

a. The offering price for common stock, the exercise price if the securities are options, warrants, or rights for common stock, or the conversion price if the securities are convertible

into common stock must be equal to or greater than one dollar per share. The issuer must not split its common stock, or declare a stock dividend, for two years after effectiveness of the registration, except that in connection with a subsequent registered public offering, the issuer may upon application and consent of the administrator take such action.

b. A commission, fee, or other remuneration shall not be paid or given, directly or indirectly, for the sale of the securities, except for a payment to a broker-dealer or agent registered under this chapter, or except for a payment as permitted by the administrator by rule or by order issued upon written application showing good cause for allowance of a commission, fee, or other remuneration.

c. The issuer or a broker-dealer offering or selling the securities is not or would not be disqualified under rule 505, 17 C.F.R. § 230.505(2)(iii), adopted under the Securities Act of 1933.

d. The aggregate offering price of the offering of securities by the issuer within or outside this state must not exceed one million dollars, less the aggregate offering price for all securities sold within twelve months before the start of, and during the offering of, the securities under rule 504, 17 C.F.R. § 230.504, in reliance on any exemption under section 3(b) of the Securities Act of 1933 or in violation of section 5(a) of that Act; provided, that if rule 504, 17 C.F.R. § 230.504, adopted under the Securities Act of 1933, is amended, the administrator may by rule increase the limit under this paragraph to conform to amendments to federal law, including but not limited to modification in the amount of the aggregate offering price.

e. An offering document meeting the disclosure requirements of rule 502(b)(2), 17 C.F.R. § 230.502(b)(2), adopted under the Securities Act of 1933, must be delivered to each purchaser in the state prior to the sale of the securities, unless the administrator by rule or order provides for disclosure different from that rule.

f. The issuer must file with the administrator an application for registration and the offering document to be used in connection with the offer and sale of securities.

g. The issuer must pay to the administrator a fee of one hundred dollars and is not required to pay the filing fee set forth in section 502.305, subsection 2.

h. The fees collected under this subsection shall be deposited as provided in section 505.7.

4. *Effectiveness of registration.* Unless the administrator issues a stop order denying the effectiveness of the registration, as provided in section 502.306, the registration becomes effective on the fifth business day after the registration has been filed with the administrator, or earlier if the administrator permits a shorter time period between registration and effectiveness.

5. *Agent registration.* In connection with an offering registered under this section, a person may be registered as an agent of the issuer under section 502.402 by the filing of an application by the issuer with the administrator for the registration of the person as an agent of the issuer and the paying of a fee of ten dollars. Notwithstanding any other provision of this chapter, the registration of the agent shall be effective until withdrawn by the issuer or until the securities registered pursuant to the registration statement have all been sold, whichever occurs first. The registration of an agent shall become effective when ordered by the administrator or on the fifth business day after the agent's application has been filed with the administrator, whichever occurs first, and the administrator shall not impose further conditions upon the registration of the agent. However, the administrator may deny, revoke, suspend, or withdraw the registration of the agent at any time as provided in section 502.412. An agent registered solely pursuant to this section is entitled to sell only securities registered under this section.

6. *Inapplicable issuers.* This section is not applicable to any of the following issuers:

a. An investment company, including a mutual fund.

b. An issuer subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934.

c. A direct participation program, unless otherwise permitted by the administrator by rule or order for good cause.

d. A blind pool or other offering for which the specific business or properties cannot

now be described, unless the administrator determines that the blind pool is a community development, seed, or venture capital fund for which the administrator permits a waiver.

7. *Limits on stop orders.* Notwithstanding any other provision of this chapter, the administrator shall not deny effectiveness to or suspend or revoke the effectiveness of a registration under this section on the basis of section 502.306, subsection 1, paragraph “h”.

2004 Acts, ch 1161, §13, 68; 2005 Acts, ch 3, §76; 2009 Acts, ch 181, §58

[SP] For future repeal of subsection 3, paragraph h, effective July 1, 2011, see 2009 Acts, ch 179, §146

### **502.305 Securities registration filings.**

1. *Who may file.* A registration statement may be filed by the issuer, a person on whose behalf the offering is to be made, or a broker-dealer registered under this chapter.

2. *Filing.* Except as provided in subsection 10 and section 502.304A, subsection 3, paragraph “g”, a person who files a registration statement or a notice filing shall pay a filing fee of one-tenth of one percent of the proposed aggregate sales price of the securities to be offered to persons in this state pursuant to the registration statement or notice filing. However, except as provided in subsection 10, section 502.302, subsection 1, paragraph “a”, and section 502.304A, subsection 3, paragraph “g”, the annual filing fee shall not be less than fifty dollars or more than one thousand dollars. The administrator shall retain the filing fee even if the notice filing is withdrawn or the registration is withdrawn, denied, suspended, revoked, or abandoned. The fees collected under this subsection shall be deposited as provided in section 505.7. The administrator may adopt rules requiring a filing to be made electronically. The rules may provide for such electronic filing either directly with the administrator or with a designee of the administrator. The rules may require that the filer pay any reasonable costs charged by the designee of the administrator for processing the filings and that the filer submit any fees paid through the designee.

3. *Status of offering.* A registration statement filed under section 502.303 or 502.304 must specify all of the following:

a. The amount of securities to be offered in this state.

b. The states in which a registration statement or similar record in connection with the offering has been or is to be filed.

c. Any adverse order, judgment, or decree issued in connection with the offering by a state securities regulator, the securities and exchange commission, or a court.

4. *Incorporation by reference.* A record filed under this chapter or its predecessor chapter within five years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the record is currently accurate.

5. *Nonissuer distribution.* In the case of a nonissuer distribution, information or a record shall not be required under subsection 9 or section 502.304, unless it is known to the person filing the registration statement or to the person on whose behalf the distribution is to be made or unless it can be furnished by those persons without unreasonable effort or expense.

6. *Escrow and impoundment.* A rule adopted or order issued under this chapter may require as a condition of registration that a security issued within the previous five years or to be issued to a promoter for a consideration substantially less than the public offering price or to a person for a consideration other than cash be deposited in escrow; and that the proceeds from the sale of the registered security in this state be impounded until the issuer receives a specified amount from the sale of the security either in this state or elsewhere. The conditions of any escrow or impoundment required under this subsection may be established by rule adopted or order issued under this chapter, but the administrator shall not reject a depository institution solely because of its location in another state.

7. *Form of subscription.* A rule adopted or order issued under this chapter may require as a condition of registration that a security registered under this chapter be sold only on a specified form of subscription or sale contract and that a signed or conformed copy of each contract be filed under this chapter or preserved for a period specified by the rule or order, which shall not be longer than five years.

8. *Effective period.* Except while a stop order is in effect under section 502.306, a registration statement is effective for one year after its effective date, or for any longer period designated in an order issued under this chapter during which the security is being offered

or distributed in a nonexempted transaction by or for the account of the issuer or other person on whose behalf the offering is being made or by an underwriter or broker-dealer that is still offering part of an unsold allotment or subscription taken as a participant in the distribution. For the purposes of a nonissuer transaction, all outstanding securities of the same class identified in the registration statement as a security registered under this chapter are considered to be registered while the registration statement is effective. If any securities of the same class are outstanding, a registration statement shall not be withdrawn until one year after its effective date. A registration statement may be withdrawn only with the approval of the administrator.

9. *Periodic reports.* While a registration statement is effective, a rule adopted or order issued under this chapter may require the person that filed the registration statement to file reports, not more often than quarterly, to keep the information or other record in the registration statement reasonably current and to disclose the progress of the offering.

10. *Posteffective amendments.*

a. A registrant who sold securities to persons in this state in excess of the amount of securities registered in this state at the time of the sale may file an amendment to its registration statement to register the additional securities. All of the following requirements shall apply:

(1) If a registrant proposes to sell securities to persons in this state pursuant to a registration statement that is currently effective in this state in an amount that exceeds the amount registered in this state, the registrant must do all of the following:

(a) File an amendment to register the additional securities.

(b) Pay an additional filing fee in the same amount as specified by subsection 2 as though the amendment constitutes a separate issue.

(2) If a registrant sold securities to persons in this state in excess of the amount registered in this state at that time, the registrant must do all of the following:

(a) File an amendment to register the additional securities.

(b) Pay an additional filing fee that is three times the amount specified in subsection 2 as though the amendment constitutes a separate issue.

b. The administrator may order the amendment effective retroactively as of the effective date of the registration statement that is being amended.

98 Acts, ch 1106, §13, 24; 99 Acts, ch 166, §5; 2004 Acts, ch 1161, §14, 68; 2009 Acts, ch 181, §59; 2010 Acts, ch 1121, §3

[SP] For future repeal of 2009 amendment to subsection 2, effective July 1, 2011, see 2009 Acts, ch 179, §146

[T] Subsection 2 amended

### **502.306 Denial, suspension, and revocation of securities registration.**

1. *Stop orders.* The administrator may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, a registration statement if the administrator finds that the order is in the public interest and that any of the following apply:

a. The registration statement as of its effective date or before the effective date in the case of an order denying effectiveness, an amendment under section 502.305, subsection 10, as of its effective date, or a report under section 502.305, subsection 9, is incomplete in a material respect or contains a statement that, in the light of the circumstances under which it was made, was false or misleading with respect to a material fact.

b. This chapter or a rule adopted or order issued under this chapter or a condition imposed under this chapter has been willfully violated, in connection with the offering, by the person filing the registration statement; by the issuer, a partner, officer, or director of the issuer or a person having a similar status or performing a similar function; a promoter of the issuer; or a person directly or indirectly controlling or controlled by the issuer; but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer; or by an underwriter.

c. The security registered or sought to be registered is the subject of a permanent or temporary injunction of a court of competent jurisdiction or an administrative stop order or similar order issued under any federal, foreign, or state law other than this chapter applicable to the offering, but the administrator shall not institute a proceeding against an effective

registration statement under this paragraph more than one year after the date of the order or injunction on which it is based, and the administrator shall not issue an order under this paragraph on the basis of an order or injunction issued under the securities act of another state unless the order or injunction was based on conduct that would constitute, as of the date of the order, a ground for a stop order under this section.

d. The issuer's enterprise or method of business includes or would include activities that are unlawful where performed.

e. With respect to a security sought to be registered under section 502.303, there has been a failure to comply with the undertaking required by section 502.303, subsection 2, paragraph "d".

f. The applicant or registrant has not paid the filing fee, but the administrator shall void the order if the deficiency is corrected.

g. The offering is subject to any of the following:

(1) Will work or tend to work a fraud upon purchasers or would so operate.

(2) Has been or would be made with unreasonable amounts of underwriters' and sellers' discounts, commissions, or other compensation, or promoters' profits or participations, or unreasonable amounts or kinds of options.

h. The financial condition of the issuer affects or would affect the soundness of the securities, except that applications for registration of securities by companies which are in the development stage shall not be denied based solely upon the financial condition of the company. For purposes of this rule, a "development stage company" is defined as a company which has been in existence for five years or less.

i. A person who is an issuer, correspondent, or applicant, as listed on the uniform application to register securities form known as "Form U-1", has abandoned the registration statement. The administrator may enter an order pursuant to this paragraph if a notice of abandonment is sent to the last known address of each person, and the person fails to take corrective action within the time specified by the administrator. The notice of abandonment shall state the reasons for the administrator's action, specify the corrective action required, and specify the time period for submitting a response. However, the time specified shall not be less than fifteen days.

2. *Enforcement of subsection 1, paragraph "g".* To the extent practicable, the administrator by rule adopted or order issued under this chapter shall publish standards that provide notice of conduct that violates subsection 1, paragraph "g".

3. *Institution of stop order.* The administrator shall not institute a stop order proceeding against an effective registration statement on the basis of conduct or a transaction known to the administrator when the registration statement became effective unless the proceeding is instituted within thirty days after the registration statement became effective.

4. *Summary process.* The administrator may summarily revoke, deny, postpone, or suspend the effectiveness of a registration statement pending final determination of an administrative proceeding. Upon the issuance of the order, the administrator shall promptly notify each person specified in subsection 5 that the order has been issued, the reasons for the revocation, denial, postponement, or suspension, and that within fifteen days after the receipt of a request in a record from the person the matter will be scheduled for a hearing. If a hearing is not requested and none is ordered by the administrator, within thirty days after the date of service of the order, the order becomes final. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing for each person subject to the order, may modify or vacate the order or extend the order until final determination.

5. *Procedural requirements for stop order.* A stop order shall not be issued under this section without all of the following:

a. An appropriate notice to the applicant or registrant, the issuer, and the person on whose behalf the securities are to be or have been offered.

b. An opportunity for hearing.

c. Findings of fact and conclusions of law in a record in accordance with chapter 17A.

6. *Modification or vacation of stop order.* The administrator may modify or vacate a stop order issued under this section if the administrator finds that the conditions that caused its

issuance have changed or that it is necessary or appropriate in the public interest or for the protection of investors.

2004 Acts, ch 1161, §15, 68

#### **502.307 Waiver and modification.**

The administrator may waive or modify, in whole or in part, any or all of the requirements of sections 502.302, 502.303, and 502.304, subsection 2, or the requirement of any information or record in a registration statement or in a periodic report filed pursuant to section 502.305, subsection 9.

2004 Acts, ch 1161, §16, 68

## ARTICLE 3A

### TAKEOVER PROVISIONS

#### **502.321A Special definitions.**

For the purposes of this article, unless the context otherwise requires:

1. “*Associate*” means a person acting jointly or in concert with another for the purpose of acquiring, holding or disposing of, or exercising any voting rights attached to the equity securities of a target company.

2. “*Beneficial owner*” includes, but is not limited to, any person who directly or indirectly, through any contract, arrangement, understanding, or relationship, has or shares the power to vote or direct the voting of a security or has or shares the power to dispose of or otherwise direct the disposition of the security. A person is the beneficial owner of securities beneficially owned by any relative or spouse or relative of the spouse residing in the home of the person, any trust or estate in which the person owns ten percent or more of the total beneficial interest or serves as trustee or executor, any corporation or entity in which the person owns ten percent or more of the equity, and any affiliate or associate of the person.

3. “*Beneficial ownership*” includes, but is not limited to, the right, exercisable within sixty days, to acquire securities through the exercise of options, warrants, or rights or the conversion of convertible securities. The securities subject to these options, warrants, rights, or conversion privileges held by a person are outstanding for the purpose of computing the percentage of outstanding securities of the class owned by the person, but are not outstanding for the purpose of computing the percentage of the class owned by any other person.

4. “*Equity security*” means any stock or similar security and includes any of the following:

- a. Any security convertible, with or without consideration, into a stock or similar security.
- b. Any warrant or right to subscribe to or purchase a stock or similar security.

c. Any security carrying a warrant or right to subscribe to or purchase a stock or similar security.

d. Any other security which the administrator deems to be of a similar nature and considers necessary or appropriate, according to rules prescribed by the administrator for the public interest and protection of investors, to be treated as an equity security.

5. “*Offeree*” means the beneficial owner, who is a resident of this state, of equity securities which an offeror offers to acquire in connection with a takeover offer.

6. “*Offeror*” means a person who makes or in any manner participates in making a takeover offer. It does not include a supervised financial institution or broker-dealer loaning funds to an offeror in the ordinary course of its business, or any supervised financial institution, broker-dealer, attorney, accountant, consultant, employee, or other person furnishing information or advice to or performing ministerial duties for an offeror, and who does not otherwise participate in the takeover offer.

7. “*Principal place of business*” means the executive office of a target company from which the officers, partners, or managers of the target company direct, control, and coordinate the activities of the target company.

8. a. “*Takeover offer*” means the offer to acquire any equity securities of a target company

from a resident of this state pursuant to a tender offer or request or invitation for tenders, if after the acquisition of all securities acquired pursuant to the offer any of the following are true:

(1) The offeror would be directly or indirectly a beneficial owner of more than ten percent of any class of the outstanding equity securities of the target company.

(2) The beneficial ownership by the offeror of any class of the outstanding equity securities of the target company would be increased by more than five percent. However, this subparagraph does not apply if after the acquisition of all securities acquired pursuant to the offer, the offeror would not be directly or indirectly a beneficial owner of more than ten percent of any class of the outstanding equity securities of the target company.

b. “Takeover offer” does not include any of the following:

(1) An offer in connection with the acquisition of a security which, together with all other acquisitions by the offeror of securities of the same class of equity securities of the target company, would not result in the offeror having acquired more than two percent of this class of securities during the preceding twelve-month period.

(2) An offer by the target company to acquire its own equity securities if such offer is subject to section 13(e) of the Securities Exchange Act of 1934.

(3) An offer in which the target company is an insurance company or insurance holding company subject to regulation by the commissioner of insurance, a financial institution subject to regulation by the superintendent of banking or the superintendent of savings and loan associations, or a public utility subject to regulation by the utilities division of the department of commerce.

9. “Target company” means an issuer of publicly traded equity securities that has at least twenty percent of its equity securities beneficially held by residents of this state and has substantial assets in this state. For the purposes of this chapter, an equity security is publicly traded if a trading market exists for the security. A trading market exists if the security is traded on a national securities exchange, whether or not registered pursuant to the Securities Exchange Act of 1934, or on the over-the-counter market.

2004 Acts, ch 1161, §17, 68

#### **502.321B Registration requirements — hearing.**

1. *Takeover filing required.* It is unlawful for a person to make a takeover offer or to acquire any equity securities pursuant to the offer unless the offer is valid under this article. A takeover offer is effective when the offeror files with the administrator a registration statement containing the information prescribed in subsection 6. Not later than the date of filing of the registration statement, the offeror shall deliver a copy of the registration statement by certified mail to the target company at its principal place of business and publicly disclose the material terms of the proposed offer. Public disclosure shall require, at a minimum, that a copy of the registration statement be supplied to all broker-dealers maintaining an office in this state currently quoting the security.

2. *Registration statement filing.* The registration statement shall be filed on forms prescribed by the administrator, and shall be accompanied by a consent by the offeror to service of process and filing fee specified in section 502.321G, and contain all of the following information:

a. All information specified in subsection 6.

b. Two copies of all solicitation materials intended to be used in the takeover offer, and in the form proposed to be published, sent, or delivered to offerees.

c. Additional information as prescribed by the administrator by rule, pursuant to chapter 17A, prior to the making of the offer.

3. *Registration not approval.* Registration shall not be considered approval by the administrator, and any representation to the contrary is unlawful.

4. *Suspension authorized.* Within three calendar days of the date of filing of the registration statement, the administrator may, by order, summarily suspend the effectiveness of the takeover offer if the administrator determines that the registration does not contain all of the information specified in subsection 6 or that the takeover offer materials provided to offerees do not provide full disclosure to offerees of all material information concerning the

takeover offer. The suspension shall remain in effect only until the determination following a hearing held pursuant to subsection 5.

5. *Hearing procedures.* A hearing shall be scheduled by the administrator for each suspension provided under this section. The hearing shall be held within ten calendar days of the date of the suspension. The administrator's determination following the hearing shall be made within three calendar days after the hearing has been completed, but not more than sixteen days after the date of the suspension. However, the administrator may prescribe different time periods than those specified in this subsection by rule or order.

If, based upon the record of the hearing, the administrator finds that the registration statement fails to provide for full and fair disclosure of all material information concerning the offer, or that the takeover is in violation of any of the provisions of this article, the administrator shall permanently suspend the effectiveness of the takeover offer. The administrator may provide an opportunity for the offeror to correct disclosure and other deficiencies identified by the administrator and to reinstate the takeover offer by filing a new or amended registration statement pursuant to this section.

6. *Required information.* The form required to be filed by subsection 2, paragraph "a", shall contain all of the following information:

a. The identity and background of all persons on whose behalf the acquisition of any equity security of the target company has been or is to be effected.

b. The source and amount of funds or other consideration used or to be used in acquiring any equity security including, if applicable, a statement describing any securities which are being offered in exchange for the equity securities of the target company. If any part of the acquisition price is or will be represented by borrowed funds or other consideration, the information shall also include a description of the material terms of any financing arrangements and the names of the parties from whom the funds were or are to be borrowed.

c. If the offeror is other than a natural person, information concerning its organization and operations, including all of the following:

(1) The year, form, and jurisdiction of its organization.

(2) A description of each class of equity security and long-term debt.

(3) A description of the business conducted by the offeror and its subsidiaries and any material changes in the offeror or subsidiaries during the past three years.

(4) A description of the location and character of the principal properties of the offeror and its subsidiaries.

(5) A description of any pending and material legal or administrative proceedings in which the offeror or any of its affiliates is a party.

(6) The names of all directors and executive officers of the offeror and their material business activities and affiliations during the past five years.

(7) The financial statements of the offeror in a form and for periods of time as the administrator may prescribe by rule pursuant to section 17A.4, subsection 1.

d. If the offeror is a natural person, information concerning the offeror's identity and background, including business activities and affiliations during the past five years and a description of any pending and material legal or administrative proceedings in which the offeror is a party.

e. If the purpose of the acquisition is to gain control of the target company, the material terms of any plans or proposals which the offeror has, upon gaining control, to do any of the following:

(1) Liquidate the target company.

(2) Sell its assets.

(3) Effect its merger or consolidation.

(4) Change the location of its principal place of business or of a material portion of its business activities.

(5) Change its management or policies of employment.

(6) Materially alter its relationship with suppliers or customers or the community in which it operates.

(7) Make any other major changes in its business, corporate structure, management, or personnel.

(8) Other information which would materially affect the shareholders' evaluation of the acquisition.

f. The number of shares or units of any equity security of the target company owned beneficially by the offeror and any affiliate or associate of the offeror, together with the name and address of each affiliate or associate.

g. The material terms of any contract, arrangement, or understanding with any other person with respect to the equity securities of the target company by which the offeror has or will acquire any interest in additional equity securities of the target company, or is or will be obligated to transfer any interest in the equity securities to another.

h. Information required to be included in a tender offer statement pursuant to section 14(d) of the Securities Exchange Act of 1934 and the rules and regulations of the securities and exchange commission issued pursuant to the Act.

2004 Acts, ch 1161, §18, 68

#### **502.321C Filing of solicitation materials.**

Copies of all advertisements, circulars, letters, or other materials disseminated by the offeror or the target company, soliciting or requesting the acceptance or rejection of a takeover offer, shall be filed with the administrator and sent to the target company or offeror not later than the time the solicitation or request materials are first published, sent, or given to the offerees. The administrator may prohibit the use of any materials deemed false or misleading.

2004 Acts, ch 1161, §19, 68

#### **502.321D Fraudulent, deceptive, or manipulative acts and practices prohibited.**

An offeror, target company, affiliate or associate of an offeror or target company, or broker-dealer acting on behalf of an offeror or target company shall not engage in a fraudulent, deceptive, or manipulative act or practice in connection with a takeover offer. For purposes of this section, a fraudulent, deceptive, or manipulative act or practice includes, but is not limited to, any of the following:

1. The publication or use in connection with a takeover offer of a false statement of a material fact, or the omission of a material fact which renders the statements made misleading.

2. The purchase of any of the equity securities of an officer, director, or beneficial owner of five percent or more of the equity securities of the target company by the offeror or the target company for a consideration greater than that to be paid to other shareholders, unless the terms of the purchase are disclosed in a registration statement filed pursuant to section 502.321B.

3. The refusal by a target company to permit an offeror who is a shareholder of record to examine or copy its list of shareholders, pursuant to the applicable corporation statutes, for the purpose of making a takeover offer.

4. The refusal by a target company to mail any solicitation materials published by the offeror to its security holders with reasonable promptness after receipt from the offeror of the materials, together with the reasonable expenses of postage and handling.

5. The solicitation of any offeree for acceptance or rejection of a takeover offer, or acquisition of any equity security pursuant to a takeover offer, when the offer is suspended under section 502.321B, provided, however, that the target company may communicate during a suspension with its equity security holders to the extent required to respond to the takeover offer made pursuant to the Securities Exchange Act of 1934.

2004 Acts, ch 1161, §20, 68

#### **502.321E Limitations on offers and offerors.**

1. *Same terms required.* A takeover offer shall contain substantially the same terms for shareholders residing within and outside this state.

2. *Offeree withdrawal of securities.* An offeror shall provide that any equity securities of a target company deposited or tendered pursuant to a takeover offer may be withdrawn by or on behalf of an offeree within seven days after the date the offer has become effective and

after sixty days from the date the offer has become effective, or as otherwise determined by the administrator pursuant to a rule or order issued for the protection of the shareholders.

3. *Pro rata acceptance.* If an offeror makes a takeover offer for less than all the outstanding equity securities of any class and, within ten days after the offer has become effective and copies of the offer, or notice of any increase in the consideration offered, are first published or sent or given to equity security holders, the number of securities deposited or tendered pursuant to the offer is greater than the number of securities that the offeror has offered to accept and pay for, the securities shall be accepted pro rata, disregarding fractions, according to the number of securities deposited or tendered for each offeree.

4. *Increased consideration.* If an offeror varies the terms of a takeover offer before the offer's expiration date by increasing the consideration offered to equity security holders, the offeror shall pay the increased consideration for all equity securities accepted, whether the securities have been accepted by the offeror before or after the variation in the terms of the offer.

5. *Proceedings — stop offers or acquisitions.* An offeror shall not make a takeover offer or acquire any equity securities in this state pursuant to a takeover offer during the period of time that an administrator's proceeding alleging a violation of this chapter is pending against the offeror.

6. *Proceedings — halt moving of target company assets.* An offeror shall not acquire, remove, or exercise control, directly or indirectly, over any target company assets located in this state pursuant to a takeover offer during the period of time that an administrator's proceeding alleging a violation of this chapter is pending against the offeror.

7. *Acquisitions subsequent to takeover purchases.* An offeror shall not acquire from a resident of this state an equity security of any class of a target company at any time within two years following the last purchase of securities pursuant to a takeover offer with respect to that class, including, but not limited to, acquisitions made by purchase, exchange, merger, consolidation, partial or complete liquidation, redemption, reverse stock split, recapitalization, reorganization, or any other similar transaction, unless the holders of the equity securities are afforded, at the time of the acquisition, a reasonable opportunity to dispose of the securities to the offeror upon substantially equivalent terms as those provided in the earlier takeover offer.

2004 Acts, ch 1161, §21, 68

#### **502.321F Administration — rules and orders.**

1. *Exemption authority.* The administrator may by rule or order exempt from any provision of this article the following:

a. A proposed takeover offer or a category or type of takeover offer which the administrator determines does not have the purpose or effect of changing or influencing the control of a target company.

b. A proposed takeover offer for which the administrator determines that compliance with the sections is not necessary for the protection of the offerees.

c. A person from the requirement of filing statements.

2. *Conflicts with chapter 17A.* In the event of a conflict between the provisions of chapter 17A and the provisions of this article, the provisions of this article shall prevail.

2004 Acts, ch 1161, §22, 68

#### **502.321G Fees.**

The administrator shall charge a nonrefundable filing fee of two hundred fifty dollars for a registration statement filed by an offeror. The fee shall be deposited as provided in section 505.7.

2004 Acts, ch 1161, §23, 68; 2009 Acts, ch 181, §60

[SP] For future repeal of 2009 amendment to this section, effective July 1, 2011, see 2009 Acts, ch 179, §146

#### **502.321H Nonapplication of corporate takeover law.**

If the target company is a public utility, public utility holding company, national banking association, bank holding company, or savings and loan association which is subject to

regulation by a federal agency and the takeover of such company is subject to approval by the federal agency, this article does not apply.

2004 Acts, ch 1161, §24, 68

#### **502.321I Application of securities law.**

All of the provisions of this chapter which are not in conflict with this article apply to any takeover offer involving a target company.

2004 Acts, ch 1161, §25, 68

### ARTICLE 4

#### BROKER-DEALERS, AGENTS, INVESTMENT ADVISERS, INVESTMENT ADVISER REPRESENTATIVES, AND FEDERAL COVERED INVESTMENT ADVISERS

#### **502.401 Broker-dealer registration requirement and exemptions.**

1. *Registration requirement.* It is unlawful for a person to transact business in this state as a broker-dealer unless the person is registered under this chapter as a broker-dealer or is exempt from registration as a broker-dealer under subsection 2 or 4.

2. *Exemptions from registration.* The following persons are exempt from the registration requirement of subsection 1:

a. A broker-dealer without a place of business in this state if its only transactions effected in this state are with any of the following:

(1) The issuer of the securities involved in the transactions.

(2) A broker-dealer registered as a broker-dealer under this chapter or not required to be registered as a broker-dealer under this chapter.

(3) An institutional investor.

(4) A nonaffiliated federal covered investment adviser with investments under management in excess of one hundred million dollars acting for the account of others pursuant to discretionary authority in a signed record.

(5) A bona fide preexisting customer whose principal place of residence is not in this state and the broker-dealer is registered as a broker-dealer under the Securities Exchange Act of 1934 or not required to be registered under the Securities Exchange Act of 1934 and is registered under the securities Act of the state in which the customer maintains a principal place of residence.

(6) A bona fide preexisting customer whose principal place of residence is in this state but was not present in this state when the customer relationship was established, if all of the following apply:

(a) The broker-dealer is registered under the Securities Exchange Act of 1934 or not required to be registered under the Securities Exchange Act of 1934 and is registered under the securities laws of the state in which the customer relationship was established and where the customer had maintained a principal place of residence.

(b) Within forty-five days after the customer's first transaction in this state, the broker-dealer files an application for registration as a broker-dealer in this state and a further transaction is not effected more than seventy-five days after the date on which the application is filed, or, if earlier, the date on which the administrator notifies the broker-dealer that the administrator has denied the application for registration or has stayed the pendency of the application for good cause.

(7) Not more than three customers in this state during the previous twelve months, in addition to those customers specified in this paragraph "a", if the broker-dealer is registered under the Securities Exchange Act of 1934 or not required to be registered under the Securities Exchange Act of 1934 and is registered under the securities Act of the state in which the broker-dealer has its principal place of business.

(8) Any other person exempted by rule adopted or order issued under this chapter.

b. A person that deals solely in United States government securities and is supervised as a dealer in government securities by the board of governors of the federal reserve system, the comptroller of the currency, the federal deposit insurance corporation, or the office of thrift supervision.

3. *Limits on employment or association.* It is unlawful for a broker-dealer, or for an issuer engaged in offering, offering to purchase, purchasing, or selling securities in this state, directly or indirectly, to employ or associate with an individual to engage in an activity related to securities transactions in this state if the registration of the individual is suspended or revoked or the individual is barred from employment or association with a broker-dealer, an issuer, an investment adviser, or a federal covered investment adviser by an order of the administrator under this chapter, the securities and exchange commission, or a self-regulatory organization. A broker-dealer or issuer does not violate this subsection if the broker-dealer or issuer did not know, and in the exercise of reasonable care could not have known, of the suspension, revocation, or bar. Upon request from a broker-dealer or issuer and for good cause, an order under this chapter may modify or waive, in whole or in part, the application of the prohibitions of this subsection to the broker-dealer or issuer.

4. *Foreign transactions.* A rule adopted or order issued under this chapter may permit any of the following:

a. A broker-dealer that is registered in Canada or other foreign jurisdiction and that does not have a place of business in this state to effect transactions in securities with or for, or attempt to effect the purchase or sale of any securities by, any of the following:

(1) An individual from Canada or other foreign jurisdiction who is temporarily present in this state and with whom the broker-dealer had a bona fide customer relationship before the individual entered the United States.

(2) An individual from Canada or other foreign jurisdiction who is present in this state and whose transactions are in a self-directed tax advantaged retirement plan of which the individual is the holder or contributor in that foreign jurisdiction.

(3) An individual who is present in this state, with whom the broker-dealer customer relationship arose while the individual was temporarily or permanently residing in Canada or the other foreign jurisdiction.

b. An agent who represents a broker-dealer that is exempt under this subsection to effect transactions in securities or attempt to effect the purchase or sale of securities in this state as permitted for a broker-dealer described in paragraph "a".

[C31, 35, §8581-c17; C39, §8581.21; C46, 50, 54, 58, 62, 66, 71, 73, 75, §502.21; C77, 79, 81, §502.401]

2004 Acts, ch 1161, §26, 68

#### **502.402 Agent registration requirement and exemptions.**

1. *Registration requirement.* It is unlawful for an individual to transact business in this state as an agent unless the individual is registered under this chapter as an agent or is exempt from registration as an agent under subsection 2.

2. *Exemptions from registration.* The following individuals are exempt from the registration requirement of subsection 1:

a. An individual who represents a broker-dealer in effecting transactions in this state limited to those described in section 15(h)(2) of the Securities Exchange Act of 1934, 15 U.S.C. § 78(h)(2).

b. An individual who represents a broker-dealer that is exempt under section 502.401, subsection 2 or 4.

c. An individual who represents an issuer with respect to an offer or sale of the issuer's own securities or those of the issuer's parent or any of the issuer's subsidiaries, and who is not compensated in connection with the individual's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities.

d. An individual who represents an issuer and who effects transactions in the issuer's securities exempted by section 502.202, other than section 502.202, subsection 11 or 14.

e. An individual who represents an issuer that effects transactions solely in federal covered securities of the issuer, but an individual who effects transactions in a federal

covered security under section 18(b)(3) or 18(b)(4)(D) of the Securities Act of 1933, 15 U.S.C. § 77r(b)(3) or 77r(b)(4)(D), is not exempt if the individual is compensated in connection with the agent's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities.

f. An individual who represents a broker-dealer registered in this state under section 502.401, subsection 1, or exempt from registration under section 502.401, subsection 2, in the offer and sale of securities for an account of a nonaffiliated federal covered investment adviser with investments under management in excess of one hundred million dollars acting for the account of others pursuant to discretionary authority in a signed record.

g. An individual who represents an issuer in connection with the purchase of the issuer's own securities.

h. An individual who represents an issuer and who restricts participation to performing clerical or ministerial acts.

i. Any other individual exempted by rule adopted or order issued under this chapter.

3. *Registration effective only while employed or associated.* The registration of an agent is effective only while the agent is employed by or associated with a broker-dealer registered under this chapter or an issuer that is offering, selling, or purchasing its securities in this state.

4. *Limit on employment or association.* It is unlawful for a broker-dealer, or an issuer engaged in offering, selling, or purchasing securities in this state, to employ or associate with an agent who transacts business in this state on behalf of broker-dealers or issuers unless the agent is registered under subsection 1 or exempt from registration under subsection 2.

5. *Limit on affiliations.* An individual shall not act as an agent for more than one broker-dealer or one issuer at a time, unless the broker-dealer or the issuer for which the agent acts is affiliated by direct or indirect common control or is authorized by rule or order under this chapter.

[C77, 79, 81, §502.402]

2004 Acts, ch 1161, §27, 68; 2008 Acts, ch 1123, §3

#### **502.403 Investment adviser registration requirement and exemptions.**

1. *Registration requirement.* It is unlawful for a person to transact business in this state as an investment adviser unless the person is registered under this chapter as an investment adviser or is exempt from registration as an investment adviser under subsection 2.

2. *Exemptions from registration.* All of the following persons are exempt from the registration requirement of subsection 1:

a. A person without a place of business in this state that is registered under the securities Act of the state in which the person has its principal place of business if its only clients in this state are any of the following:

(1) Federal covered investment advisers, investment advisers registered under this chapter, or broker-dealers registered under this chapter.

(2) Institutional investors.

(3) Bona fide preexisting clients whose principal places of residence are not in this state if the investment adviser is registered under the securities Act of the state in which the clients maintain principal places of residence.

(4) Any other client exempted by rule adopted or order issued under this chapter.

b. A person without a place of business in this state if the person has had, during the preceding twelve months, not more than five clients that are resident in this state in addition to those specified under paragraph "a".

c. Any other person exempted by rule adopted or order issued under this chapter.

3. *Limits on employment or association.* It is unlawful for an investment adviser, directly or indirectly, to employ or associate with an individual to engage in an activity related to investment advice in this state if the registration of the individual is suspended or revoked or the individual is barred from employment or association with an investment adviser, federal covered investment adviser, or broker-dealer by an order under this chapter, the securities and exchange commission, or a self-regulatory organization, unless the investment adviser did not know, and in the exercise of reasonable care could not have

known, of the suspension, revocation, or bar. Upon request from the investment adviser and for good cause, the administrator, by order, may waive, in whole or in part, the application of the prohibitions of this subsection to the investment adviser.

4. *Investment adviser representative registration required.* It is unlawful for an investment adviser to employ or associate with an individual required to be registered under this chapter as an investment adviser representative who transacts business in this state on behalf of the investment adviser unless the individual is registered under section 502.404, subsection 1, or is exempt from registration under section 502.404, subsection 2.

[C77, 79, 81, §502.403]

2004 Acts, ch 1161, §28, 68

#### **502.404 Investment adviser representative registration requirement and exemptions.**

1. *Registration requirement.* It is unlawful for an individual to transact business in this state as an investment adviser representative unless the individual is registered under this chapter as an investment adviser representative or is exempt from registration as an investment adviser representative under subsection 2.

2. *Exemptions from registration.* All of the following individuals are exempt from the registration requirement of subsection 1:

a. An individual who is employed by or associated with an investment adviser that is exempt from registration under section 502.403, subsection 2, or a federal covered investment adviser that is excluded from the notice filing requirements of section 502.405.

b. Any other individual exempted by rule adopted or order issued under this chapter.

3. *Registration effective only while employed or associated.* The registration of an investment adviser representative is not effective while the investment adviser representative is not employed by or associated with an investment adviser registered under this chapter or a federal covered investment adviser that has made or is required to make a notice filing under section 502.405.

4. *Limit on affiliations.* An individual may transact business as an investment adviser representative for more than one investment adviser or federal covered investment adviser unless a rule adopted or order issued under this chapter prohibits or limits an individual from acting as an investment adviser representative for more than one investment adviser or federal covered investment adviser.

5. *Limits on employment or association.* It is unlawful for an individual acting as an investment adviser representative, directly or indirectly, to conduct business in this state on behalf of an investment adviser or a federal covered investment adviser if the registration of the individual as an investment adviser representative is suspended or revoked or the individual is barred from employment or association with an investment adviser or a federal covered investment adviser by an order under this chapter, the securities and exchange commission, or a self-regulatory organization. Upon request from a federal covered investment adviser and for good cause, the administrator, by order issued, may waive, in whole or in part, the application of the requirements of this subsection to the investment adviser representative.

6. *Referral fees.* An investment adviser registered under this chapter, a federal covered investment adviser that has filed a notice under section 502.405, or a broker-dealer registered under this chapter is not required to employ or associate with an individual as an investment adviser representative if the only compensation paid to the individual for a referral of investment advisory clients is paid to an investment adviser registered under this chapter, a federal covered investment adviser who has filed a notice under section 502.405, or a broker-dealer registered under this chapter with whom the individual is employed or associated as an investment adviser representative.

[C77, 79, 81, §502.404]

83 Acts, ch 169, §14; 97 Acts, ch 23, §60; 2004 Acts, ch 1161, §29, 68; 2006 Acts, ch 1030, §61; 2007 Acts, ch 126, §87

#### **502.405 Federal covered investment adviser notice filing requirement.**

1. *Notice filing requirement.* Except with respect to a federal covered investment adviser

described in subsection 2, it is unlawful for a federal covered investment adviser to transact business in this state as a federal covered investment adviser unless the federal covered investment adviser complies with subsection 3.

2. *Notice filing requirement not required.* The following federal covered investment advisers are not required to comply with subsection 3:

a. A federal covered investment adviser without a place of business in this state if its only clients in this state are any of the following:

(1) Federal covered investment advisers, investment advisers registered under this chapter, and broker-dealers registered under this chapter.

(2) Institutional investors.

(3) Bona fide preexisting clients whose principal places of residence are not in this state.

(4) Other clients specified by rule adopted or order issued under this chapter.

b. A federal covered investment adviser without a place of business in this state if the person has had, during the preceding twelve months, not more than five clients that are resident in this state in addition to those specified under paragraph "a".

c. Any other person excluded by rule adopted or order issued under this chapter.

3. *Notice filing procedure.* A person acting as a federal covered investment adviser, not excluded under subsection 2, shall file a notice, a consent to service of process complying with section 502.611, and such records as have been filed with the securities and exchange commission under the Investment Advisers Act of 1940 required by rule adopted or order issued under this chapter and pay the fees specified in section 502.410, subsection 5.

4. *Effectiveness of filing.* The notice under subsection 3 becomes effective upon its filing. [SS15, §1920-u19; C24, 27, §8577; C31, 35, §8581-c21; C39, **§8581.26**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §502.26; C77, 79, 81, §502.405]

2004 Acts, ch 1161, §30, 68

#### **502.406 Registration by broker-dealer, agent, investment adviser, and investment adviser representative.**

1. *Application for initial registration.* A person shall register as a broker-dealer, agent, investment adviser, or investment adviser representative by filing an application and a consent to service of process complying with section 502.611, and paying the fee specified in section 502.410 and any reasonable fees charged by the designee of the administrator for processing the filing. The application must contain all of the following:

a. The information or record required for the filing of a uniform application.

b. Upon request by the administrator, any other financial or other information or record that the administrator determines is appropriate.

2. *Amendment.* If the information or record contained in an application filed under subsection 1 is or becomes inaccurate or incomplete in a material respect, the registrant shall promptly file a correcting amendment.

3. *Effectiveness of registration.* If an order is not in effect and a proceeding is not pending under section 502.412, registration becomes effective at noon on the forty-fifth day after a completed application is filed, unless the registration is denied. A rule adopted or order issued under this chapter may set an earlier effective date or may defer the effective date until noon on the forty-fifth day after the filing of any amendment completing the application.

4. *Registration renewal.* A registration is effective until midnight on December 31 of the year for which the application for registration is filed. Unless an order is in effect under section 502.412, a registration may be automatically renewed each year by filing such records as are required by rule adopted or order issued under this chapter, by paying the fee specified in section 502.410, and by paying costs charged by the designee of the administrator for processing the filings.

5. *Additional conditions or waivers.* A rule adopted or order issued under this chapter may impose such other conditions, not inconsistent with the National Securities Markets Improvement Act of 1996. An order issued under this chapter may waive, in whole or in part,

specific requirements in connection with registration as are in the public interest and for the protection of investors.

[C24, 27, §8580; C31, 35, §8581-c24; C39, §8581.29; C46, 50, 54, 58, 62, 66, 71, 73, 75, §502.29; C77, 79, 81, §502.406]

97 Acts, ch 114, §13; 98 Acts, ch 1106, §14, 24; 2004 Acts, ch 1161, §31, 68

**502.407 Succession and change in registration of broker-dealer or investment adviser.**

1. *Succession.* A broker-dealer or investment adviser may succeed to the current registration of another broker-dealer or investment adviser or a notice filing of a federal covered investment adviser, and a federal covered investment adviser may succeed to the current registration of an investment adviser or notice filing of another federal covered investment adviser, by filing as a successor an application for registration pursuant to section 502.401 or 502.403 or a notice pursuant to section 502.405 for the unexpired portion of the current registration or notice filing.

2. *Organizational change.* A broker-dealer or investment adviser that changes its form of organization or state of incorporation or organization may continue its registration by filing an amendment to its registration if the change does not involve a material change in its financial condition or management. The amendment becomes effective when filed or on a date designated by the registrant in its filing. The new organization is a successor to the original registrant for the purposes of this chapter. If there is a material change in financial condition or management, the broker-dealer or investment adviser shall file a new application for registration. A predecessor registered under this chapter shall stop conducting its securities business other than winding down transactions and shall file for withdrawal of broker-dealer or investment adviser registration within forty-five days after filing its amendment to effect succession.

3. *Name change.* A broker-dealer or investment adviser that changes its name may continue its registration by filing an amendment to its registration. The amendment becomes effective when filed or on a date designated by the registrant.

4. *Change of control.* A change of control of a broker-dealer or investment adviser may be made in accordance with a rule adopted or order issued under this chapter.

[SS15, §1920-u21; C24, 27, §8579; C31, 35, §8581-c23; C39, §8581.28; C46, 50, 54, 58, 62, 66, 71, 73, 75, §502.28; C77, 79, 81, §502.407]

87 Acts, ch 53, §11; 2004 Acts, ch 1161, §32, 68

**502.408 Termination of employment or association of agent and investment adviser representative and transfer of employment or association.**

1. *Notice of termination.* If an agent registered under this chapter terminates employment by or association with a broker-dealer or issuer, or if an investment adviser representative registered under this chapter terminates employment by or association with an investment adviser or federal covered investment adviser, or if either registrant terminates activities that require registration as an agent or investment adviser representative, the broker-dealer, issuer, investment adviser, or federal covered investment adviser shall promptly file a notice of termination. If the registrant learns that the broker-dealer, issuer, investment adviser, or federal covered investment adviser has not filed the notice, the registrant may do so.

2. *Transfer of employment or association.* If an agent registered under this chapter terminates employment by or association with a broker-dealer registered under this chapter and begins employment by or association with another broker-dealer registered under this chapter, or if an investment adviser representative registered under this chapter terminates employment by or association with an investment adviser registered under this chapter or a federal covered investment adviser that has filed a notice under section 502.405 and begins employment by or association with another investment adviser registered under this chapter or a federal covered investment adviser that has filed a notice under section 502.405, then upon the filing by or on behalf of the registrant, within thirty days after the termination, of an application for registration that complies with the requirement of section 502.406,

subsection 1, and payment of the filing fee required under section 502.410, the registration of the agent or investment adviser representative is one of the following:

a. Immediately effective as of the date of the completed filing, if the agent's central registration depository record or successor record or the investment adviser representative's investment adviser registration depository record or successor record does not contain a new or amended disciplinary disclosure within the previous twelve months.

b. Temporarily effective as of the date of the completed filing, if the agent's central registration depository record or successor record or the investment adviser representative's investment adviser registration depository record or successor record contains a new or amended disciplinary disclosure within the preceding twelve months.

3. *Withdrawal of temporary registration.* The administrator may withdraw a temporary registration if there are or were grounds for discipline as specified in section 502.412 and the administrator does so within thirty days after the filing of the application. If the administrator does not withdraw the temporary registration within the thirty-day period, registration becomes automatically effective on the thirty-first day after filing.

4. *Power to prevent registration.* The administrator may prevent the effectiveness of a transfer of an agent or investment adviser representative under subsection 2, paragraph "a" or "b", based on the public interest and the protection of investors.

5. *Termination of registration or application for registration.* If the administrator determines that a registrant or applicant for registration is no longer in existence or has ceased to act as a broker-dealer, agent, investment adviser, or investment adviser representative, or is the subject of an adjudication of incapacity or is subject to the control of a committee, conservator, or guardian, or cannot reasonably be located, a rule adopted or order issued under this chapter may require that the registration be canceled or terminated or the application denied. The administrator may reinstate a canceled or terminated registration, with or without hearing, and may make the registration retroactive.

98 Acts, ch 1106, §15, 24; 2004 Acts, ch 1161, §33, 68

**502.409 Withdrawal of registration of broker-dealer, agent, investment adviser, and investment adviser representative — cessation of business — abandoned filings.**

1. *Withdrawal of registration.* Withdrawal of registration by a broker-dealer, agent, investment adviser, or investment adviser representative becomes effective sixty days after the filing of the application to withdraw or within any shorter period as provided by rule adopted or order issued under this chapter unless a revocation or suspension proceeding is pending when the application is filed. If a proceeding is pending, withdrawal becomes effective when and upon such conditions as required by rule adopted or order issued under this chapter. The administrator may institute a disciplinary action under section 502.412, including an action to revoke, suspend, condition, or limit the registration of a registrant, censure, impose a bar, or impose a civil penalty, within one year after the withdrawal became effective automatically and issue a disciplinary order as of the last date on which registration was effective if a proceeding is not pending.

2. *Ceasing to do business and abandoned filings.* If the administrator finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, agent, investment adviser, or investment adviser representative, or is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian, or cannot be located after search, the administrator may by order revoke the registration or application. If the administrator finds that the applicant for registration or registrant has abandoned the application or registration, the administrator may enter an order of abandonment, and limit or eliminate further consideration of the application or registration, as provided by the administrator. The administrator may enter an order under this subsection if notice is sent to the applicant or registrant, and either the administrator does not receive a response by the applicant or registrant within forty-five days from the date that the notice was delivered, or action is not taken by the applicant or registrant within the time specified by the administrator in the notice, whichever is later.

2004 Acts, ch 1161, §34, 68; 2009 Acts, ch 145, §2

**502.410 Filing fees.**

1. *Broker-dealers.* A person shall pay a fee of two hundred dollars when initially filing an application for registration as a broker-dealer and a fee of two hundred dollars when filing a renewal of registration as a broker-dealer. If the filing results in a denial or withdrawal, the administrator shall retain the fee.

2. *Agents.* The fee for an individual is forty dollars when filing an application for registration as an agent, a fee of forty dollars when filing a renewal of registration as an agent, and a fee of forty dollars when filing for a change of registration as an agent. Of each forty-dollar fee collected, ten dollars is appropriated to the securities investor education and financial literacy training fund established under section 502.601, subsection 5. If the filing results in a denial or withdrawal, the administrator shall retain the fee.

3. *Investment advisers.* A person shall pay a fee of one hundred dollars when filing an application for registration as an investment adviser and a fee of one hundred dollars when filing a renewal of registration as an investment adviser. If the filing results in a denial or withdrawal, the administrator shall retain the fee.

4. *Investment adviser representatives.*

a. The fee for an individual is thirty dollars when filing an application for registration as an investment adviser representative, a fee of thirty dollars when filing a renewal of registration as an investment adviser representative, and a fee of thirty dollars when filing a change of registration as an investment adviser representative. If the filing results in a denial or withdrawal, the administrator shall retain the fee.

b. However, an investment adviser representative is not required to pay a filing fee if the investment adviser is a sole proprietorship or the substantial equivalent and the investment adviser representative is the same individual as the investment adviser.

5. *Federal covered investment advisers.* A federal covered investment adviser required to file a notice under section 502.405 shall pay an initial fee of one hundred dollars and an annual notice fee of one hundred dollars.

6. *Payment.* A person required to pay a filing or notice fee under this section may transmit the fee through or to a designee as a rule or order provides under this chapter.

7. *Deposit of fees.* Except as otherwise provided in subsection 2, fees collected under this section shall be deposited as provided in section 505.7.

2004 Acts, ch 1161, §35, 68; 2008 Acts, ch 1123, §4; 2009 Acts, ch 181, §61

[SP] For future repeal of subsection 7, effective July 1, 2011, see 2009 Acts, ch 179, §146

**502.411 Postregistration requirements.**

1. *Financial requirements.* Subject to section 15(h) of the Securities Exchange Act of 1934, 15 U.S.C. § 78o(h), or section 222 of the Investment Advisers Act of 1940, 15 U.S.C. § 80b-22, a rule adopted or order issued under this chapter may establish minimum financial requirements for broker-dealers registered or required to be registered under this chapter and investment advisers registered or required to be registered under this chapter.

2. *Financial reports.* Subject to section 15(h) of the Securities Exchange Act of 1934, 15 U.S.C. § 78o(h), or section 222(b) of the Investment Advisers Act of 1940, 15 U.S.C. § 80b-22, a broker-dealer registered or required to be registered under this chapter and an investment adviser registered or required to be registered under this chapter shall file such financial reports as are required by a rule adopted or order issued under this chapter. If the information contained in a record filed under this subsection is or becomes inaccurate or incomplete in a material respect, the registrant shall promptly file a correcting amendment. The administrator may, by rule, assess a reasonable charge for the late filing of a financial report under this subsection.

3. *Recordkeeping.* Subject to section 15(h) of the Securities Exchange Act of 1934, 15 U.S.C. § 78o(h), or section 222 of the Investment Advisers Act of 1940, 15 U.S.C. § 80b-22, all of the following apply:

a. A broker-dealer registered or required to be registered under this chapter and an investment adviser registered or required to be registered under this chapter shall make and maintain the accounts, correspondence, memoranda, papers, books, and other records required by rule adopted or order issued under this chapter.

b. Broker-dealer records required to be maintained under paragraph “a” may be maintained in any form of data storage acceptable under section 17(a) of the Securities Exchange Act of 1934, 15 U.S.C. § 78q(a), if they are readily accessible to the administrator.

c. Investment adviser records required to be maintained under paragraph “a” may be maintained in any form of data storage required by rule adopted or order issued under this chapter.

4. *Audits or inspections.* The records of a broker-dealer registered or required to be registered under this chapter and of an investment adviser registered or required to be registered under this chapter are subject to such reasonable periodic, special, or other audits or inspections by a representative of the administrator, within or without this state, as the administrator considers necessary or appropriate in the public interest and for the protection of investors. An audit or inspection may be made at any time and without prior notice. The administrator may copy, and remove for audit or inspection copies of, all records the administrator reasonably considers necessary or appropriate to conduct the audit or inspection. The administrator may assess a reasonable charge for conducting an audit or inspection under this subsection.

5. *Custody and discretionary authority bond or insurance.* Subject to section 15(h) of the Securities Exchange Act of 1934, 15 U.S.C. § 78o(h), or section 222 of the Investment Advisers Act of 1940, 15 U.S.C. § 80b-22, a rule adopted or order issued under this chapter may require a broker-dealer or investment adviser that has custody of or discretionary authority over funds or securities of a customer or client to obtain insurance or post a bond or other satisfactory form of security in an amount the administrator shall prescribe. The administrator may determine the requirements of the insurance, bond, or other satisfactory form of security. Insurance or a bond or other satisfactory form of security shall not be required of a broker-dealer registered under this chapter whose net capital exceeds, or of an investment adviser registered under this chapter whose minimum financial requirements exceed, the amounts required by rule or order under this chapter. The insurance, bond, or other satisfactory form of security must permit an action by a person to enforce any liability on the insurance, bond, or other satisfactory form of security if instituted within the time limitations in section 502.509, subsection 10, paragraph “b”.

6. *Requirements for custody.* Subject to section 15(h) of the Securities Exchange Act of 1934, 15 U.S.C. § 78o(h), or section 222 of the Investment Advisers Act of 1940, 15 U.S.C. § 80b-22, an agent shall not have custody of funds or securities of a customer except under the supervision of a broker-dealer and an investment adviser representative shall not have custody of funds or securities of a client except under the supervision of an investment adviser or a federal covered investment adviser. A rule adopted or order issued under this chapter may prohibit, limit, or impose conditions on a broker-dealer regarding custody of funds or securities of a customer and on an investment adviser regarding custody of securities or funds of a client.

7. *Investment adviser brochure rule.* With respect to an investment adviser registered or required to be registered under this chapter, a rule adopted or order issued under this chapter may require that information or other records be furnished or disseminated to clients or prospective clients in this state as necessary or appropriate in the public interest and for the protection of investors and advisory clients.

8. *Continuing education.* A rule adopted or order issued under this chapter may require an individual registered under section 502.402 or 502.404 to participate in a continuing education program approved by the securities and exchange commission and administered by a self-regulatory organization or, in the absence of such a program, a rule adopted or order issued under this chapter may require continuing education for an individual registered under section 502.404.

2004 Acts, ch 1161, §36, 68

#### **502.412 Denial, revocation, suspension, withdrawal, restriction, condition, or limitation of registration.**

1. *Disciplinary conditions — applicants.* If the administrator finds that the order is in the public interest and subsection 4 authorizes the action, an order issued under this

chapter may deny an application, or may condition or limit registration of an applicant to be a broker-dealer, agent, investment adviser, or investment adviser representative, and, if the applicant is a broker-dealer or investment adviser, of a partner, officer, director, or person having a similar status or performing similar functions, or a person directly or indirectly in control, of the broker-dealer or investment adviser.

2. *Disciplinary conditions — registrants.* If the administrator finds that the order is in the public interest and subsection 4 authorizes the action, an order issued under this chapter may revoke, suspend, condition, or limit the registration of a registrant and, if the registrant is a broker-dealer or investment adviser, of a partner, officer, director, or person having a similar status or performing similar functions, or a person directly or indirectly in control, of the broker-dealer or investment adviser. However, the administrator shall not do any of the following:

a. Institute a revocation or suspension proceeding under this subsection based solely on an order issued under a law of another state that is reported to the administrator or a designee of the administrator more than one year after the date of the order on which it is based.

b. Under subsection 4, paragraph “e”, subparagraph (1) or (2), issue an order on the basis of an order issued under the securities Act of another state unless the other order was based on conduct for which subsection 4 would authorize the action had the conduct occurred in this state.

3. *Disciplinary penalties — registrants.* If the administrator finds that the order is in the public interest and subsection 4, paragraphs “a” through “f”, “h”, “i”, “j”, “l”, or “m”, authorizes the action, an order under this chapter may censure, impose a bar, or impose a civil penalty in an amount not to exceed a maximum of five thousand dollars for a single violation or five hundred thousand dollars for more than one violation, on a registrant, and, if the registrant is a broker-dealer or investment adviser, a partner, officer, director, or person having a similar status or performing similar functions, or a person directly or indirectly in control, of the broker-dealer or investment adviser.

4. *Grounds for discipline.* A person may be disciplined under subsections 1 through 3 if any of the following applies:

a. The person has filed an application for registration in this state under this chapter or chapter 502, Code 2003 and Code Supplement 2003, within the previous ten years, which, as of the effective date of registration or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained a statement that, in light of the circumstances under which it was made, was false or misleading with respect to a material fact.

b. The person willfully violated or willfully failed to comply with this chapter or chapter 502, Code 2003 and Code Supplement 2003, or a rule adopted or order issued under this chapter or chapter 502, Code 2003 and Code Supplement 2003, within the previous ten years.

c. The person has been convicted of a felony or within the previous ten years has been convicted of a misdemeanor involving a security, a commodity future or option contract, or an aspect of a business involving securities, commodities, investments, franchises, insurance, banking, or finance.

d. The person is enjoined or restrained by a court of competent jurisdiction in an action instituted by the administrator under this chapter or chapter 502, Code 2003 and Code Supplement 2003, a state, the securities and exchange commission, or the United States from engaging in or continuing an act, practice, or course of business involving an aspect of a business involving securities, commodities, investments, franchises, insurance, banking, or finance.

e. The person is the subject of an order, issued after notice and opportunity for hearing, by any of the following:

(1) The securities or other financial services regulator of a state or the securities and exchange commission or other federal agency denying, revoking, barring, or suspending registration as a broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative.

(2) The securities regulator of a state or the securities and exchange commission against

a broker-dealer, agent, investment adviser, investment adviser representative, or federal covered investment adviser.

(3) The securities and exchange commission or a self-regulatory organization suspending or expelling the registrant from membership in the self-regulatory organization.

(4) A court adjudicating a United States postal service fraud order.

(5) The insurance regulator of a state denying, suspending, or revoking registration as an insurance agent or insurance producer.

(6) A depository institution regulator or financial services regulator suspending or barring the person from the depository institution or other financial services business.

f. The person is the subject of an adjudication or determination, after notice and opportunity for hearing, by the securities and exchange commission, the commodity futures trading commission, the federal trade commission, a federal depository institution regulator, or a depository institution, insurance, or other financial services regulator of a state that the person willfully 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, the securities or commodities law of a state, or a federal or state law under which a business involving investments, franchises, insurance, banking, or finance is regulated.

g. The person is insolvent, either because the person's liabilities exceed the person's assets or because the person cannot meet the person's obligations as they mature, but the administrator shall not enter an order against an applicant or registrant under this paragraph without a finding of insolvency as to the applicant or registrant.

h. The person refuses to allow or otherwise impedes the administrator from conducting an audit or inspection under section 502.411, subsection 4, or refuses access to a registrant's office to conduct an audit or inspection under section 502.411, subsection 4.

i. The person has failed to reasonably supervise an agent, investment adviser representative, or other individual, if the agent, investment adviser representative, or other individual was subject to the person's supervision and committed a violation of this chapter or chapter 502, Code 2003 and Code Supplement 2003, or a rule adopted or order issued under this chapter or chapter 502, Code 2003 and Code Supplement 2003, within the previous ten years.

j. The person has not paid the proper filing fee within thirty days after having been notified by the administrator of a deficiency, but the administrator shall vacate an order under this paragraph when the deficiency is corrected.

k. The person after notice and opportunity for a hearing has been found within the previous ten years to have done any of the following:

(1) By a court of competent jurisdiction to have willfully violated the laws of a foreign jurisdiction under which the business of securities, commodities, investment, franchises, insurance, banking, or finance is regulated.

(2) To have been the subject of an order of a securities regulator of a foreign jurisdiction denying, revoking, or suspending the right to engage in the business of securities as a broker-dealer, agent, investment adviser, investment adviser representative, or similar person.

(3) To have been suspended or expelled from membership by or participation in a securities exchange or securities association operating under the securities laws of a foreign jurisdiction.

l. The person is the subject of a cease and desist order issued by the securities and exchange commission or issued under the securities, commodities, investment, franchise, banking, finance, or insurance laws of a state.

m. The person has engaged in dishonest or unethical practices in the securities, commodities, investment, franchise, banking, finance, or insurance business within the previous ten years.

n. The person is not qualified on the basis of factors such as training, experience, and knowledge of the securities business. However, in the case of an application by an agent for a broker-dealer that is a member of a self-regulatory organization or by an individual for registration as an investment adviser representative, a denial order shall not be based

on this paragraph if the individual has successfully completed all examinations required by subsection 5. The administrator may require an applicant for registration under section 502.402 or 502.404 who has not been registered in a state within the two years preceding the filing of an application in this state to successfully complete an examination.

5. *Examinations.* A rule adopted or order issued under this chapter may require that an examination, including an examination developed or approved by an organization of securities regulators, be successfully completed by a class of individuals or all individuals. An order issued under this chapter may waive, in whole or in part, an examination as to an individual and a rule adopted under this chapter may waive, in whole or in part, an examination as to a class of individuals if the administrator determines that the examination is not necessary or appropriate in the public interest and for the protection of investors.

6. *Summary process.* The administrator may suspend or deny an application summarily; restrict, condition, limit, or suspend a registration; or censure, bar, or impose a civil penalty on a registrant before final determination of an administrative proceeding. Upon the issuance of an order, the administrator shall promptly notify each person subject to the order that the order has been issued, the reasons for the action, and that within fifteen days after the receipt of a request in a record from the person the matter will be scheduled for a hearing. If a hearing is not requested and none is ordered by the administrator within thirty days after the date of service of the order, the order becomes final by operation of law. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend the order until final determination. Section 17A.18A is inapplicable to a summary order issued under this subsection.

7. *Procedural requirements.* An order issued shall not be issued under this section, except under subsection 6, without all of the following:

- a. Appropriate notice to the applicant or registrant.
- b. Opportunity for hearing.
- c. Findings of fact and conclusions of law in a record in accordance with chapter 17A.

8. *Control person liability.* A person that controls, directly or indirectly, a person not in compliance with this section may be disciplined by order of the administrator under subsections 1 through 3 to the same extent as the noncomplying person, unless the controlling person did not know, and in the exercise of reasonable care could not have known, of the existence of conduct that is a ground for discipline under this section.

9. *Limit on investigation or proceeding.* The administrator shall not institute a proceeding under subsection 1, 2, or 3 based solely on material facts actually known by the administrator unless an investigation or the proceeding is instituted within one year after the administrator actually acquires knowledge of the material facts.

2004 Acts, ch 1161, §37, 68; 2005 Acts, ch 3, §77; 2006 Acts, ch 1117, §9, 10

## ARTICLE 5

### FRAUD AND LIABILITIES

#### **502.501 General fraud.**

It is unlawful for a person, in connection with the offer, sale, or purchase of a security, directly or indirectly:

1. To employ a device, scheme, or artifice to defraud;
2. To make an untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
3. To engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

[C77, 79, 81, §502.501]

87 Acts, ch 53, §12; 97 Acts, ch 114, §14; 98 Acts, ch 1106, §16, 24; 2004 Acts, ch 1161, §38, 68

**502.501A Prohibited transactions of broker-dealers and agents.**

A broker-dealer or agent shall not effect a transaction in, or induce or attempt to induce the purchase or sale of, any security in this state by means of any manipulative, deceptive, or other fraudulent scheme, device, or contrivance, fictitious quotation, or in violation of this chapter. A broker-dealer or agent shall not recommend to a customer the purchase, sale, or exchange of a security without reasonable grounds to believe that the transaction or recommendation is suitable for the customer based upon reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and other relevant information known by the broker-dealer.

2004 Acts, ch 1161, §39, 68

**502.502 Prohibited conduct in providing investment advice.**

1. *Fraud in providing investment advice.* It is unlawful for a person that advises others for compensation, either directly or indirectly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing, or selling securities or that, for compensation and as part of a regular business, issues or promulgates analyses or reports relating to securities to do any of the following:

- a. Employ a device, scheme, or artifice to defraud another person.
- b. Engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

2. *Rules defining fraud.* A rule adopted under this chapter may define an act, practice, or course of business of an investment adviser or an investment adviser representative, other than a supervised person of a federal covered investment adviser, as fraudulent, deceptive, or manipulative, and prescribe means reasonably designed to prevent investment advisers and investment adviser representatives, other than supervised persons of a federal covered investment adviser, from engaging in acts, practices, and courses of business defined as fraudulent, deceptive, or manipulative.

3. *Rules specifying contents of advisory contract.* A rule adopted under this chapter may specify the contents of an investment advisory contract entered into, extended, or renewed by an investment adviser.

[C31, 35, §8581-c18; C39, §8581.23; C46, 50, 54, 58, 62, 66, 71, 73, 75, §502.23; C77, 79, 81, §502.502]

96 Acts, ch 1025, §13; 2004 Acts, ch 1161, §40, 68

**502.502A** Repealed by 2004 Acts, ch 1161, § 63, 68. See § 502.509.

**502.503 Evidentiary burden.**

1. *Civil.* In a civil action or administrative proceeding under this chapter, a person claiming an exemption, exception, preemption, or exclusion has the burden to prove the applicability of the claim.

2. *Criminal.* In a criminal proceeding under this chapter, a person claiming an exemption, exception, preemption, or exclusion has the burden of going forward with evidence of the claim.

[C77, 79, 81, §502.503]

98 Acts, ch 1106, §18, 19, 24; 99 Acts, ch 166, §6; 2004 Acts, ch 1161, §41, 68

**502.504 Filing of sales and advertising literature.**

1. *Filing requirement.* Except as otherwise provided in subsection 2, a rule adopted or order issued under this chapter may require the filing of a prospectus, pamphlet, circular, form letter, advertisement, sales literature, or other advertising record relating to a security or investment advice, addressed or intended for distribution to prospective investors, including clients or prospective clients of a person registered or required to be registered as an investment adviser under this chapter.

2. *Excluded communications.* This section does not apply to sales and advertising literature specified in subsection 1 which relates to a federal covered security, a federal

covered investment adviser, or a security or transaction exempted by section 502.201, 502.202, or 502.203 except as required pursuant to section 502.201, subsection 7.

2A. *Authority to prohibit false advertising.* The administrator may by rule or order prohibit the publication, circulation, or use of any advertising deemed false or misleading.

[C77, 79, 81, §502.504]

99 Acts, ch 166, §7; 2004 Acts, ch 1161, §42, 68

#### **502.505 Misleading filings.**

It is unlawful for a person to make or cause to be made, in a record that is used in an action or proceeding or filed under this chapter, a statement that, at the time and in the light of the circumstances under which it is made, is false or misleading in a material respect, or, in connection with the statement, to omit to state a material fact necessary to make the statement made, in the light of the circumstances under which it was made, not false or misleading.

[C77, 79, 81, §502.505]

2004 Acts, ch 1161, §43, 68

#### **502.506 Misrepresentations concerning registration or exemption — official endorsements prohibited.**

1. *Certain representations not allowed.* The filing of an application for registration, a registration statement, a notice filing under this chapter, the registration of a person, the notice filing by a person, or the registration of a security under this chapter does not constitute a finding by the administrator that a record filed under this chapter is true, complete, and not misleading. The filing or registration or the availability of an exemption, exception, preemption, or exclusion for a security or a transaction does not mean that the administrator has passed upon the merits or qualifications of, or recommended or given approval to, a person, security, or transaction. It is unlawful to make, or cause to be made, to a purchaser, customer, client, or prospective customer or client a representation inconsistent with this section.

1A. *Official endorsement prohibited.* A state official or employee of the state shall not use such person's name in an official capacity in connection with the endorsement or recommendation of the organization or the promotion of any issuer or in the sale to the public of its securities, and no one shall use the stationery of the state or of any official thereof in connection with any such transaction.

[C77, 79, 81, §502.506]

2004 Acts, ch 1161, §44, 68

#### **502.506A Misstatements in publicity prohibited.**

It is unlawful for any person to make or cause to be made, in any public report or press release, or in other information which is either made generally available to the public or used in opposition to a tender offer, any statement of a material fact relating to a target company or made in connection with a takeover offer which is, at the time and in the light of the circumstances under which it is made, false or misleading, if it is reasonably foreseeable that such statement will induce other persons to buy, sell, or hold securities of the target company.

2004 Acts, ch 1161, §45, 68

#### **502.507 Qualified immunity.**

A broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative is not liable to another broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative for defamation relating to a statement that is contained in a record required by the administrator, or designee of the administrator, the securities and exchange commission, or a self-regulatory organization, unless the person knew, or should have known at the time that the statement was made, that it was false in a material respect or the person acted in reckless disregard of the statement's truth or falsity.

[C77, 79, 81, §502.507]

2004 Acts, ch 1161, §46, 68

**502.508 Criminal penalties.****1. Criminal penalties.**

a. Except as provided in paragraph “b”, a person who willfully violates any provision of this chapter, or any rule adopted or order issued under this chapter, is guilty of a class “D” felony.

b. A person who willfully violates section 502.501 or section 502.502, subsection 1, resulting in a loss of more than ten thousand dollars is guilty of a class “C” felony.

2. *Criminal reference not required.* The attorney general or the proper county attorney, with or without a reference from the administrator, may institute criminal proceedings under this chapter.

3. *No limitation on other criminal enforcement.* This chapter does not limit the power of this state to punish a person for conduct that constitutes a crime under other laws of this state.

2004 Acts, ch 1161, §47, 68; 2005 Acts, ch 19, §76

**502.509 Civil liability.**

1. *Securities Litigation Uniform Standards Act.* Enforcement of civil liability under this section is subject to the Securities Litigation Uniform Standards Act of 1998.

2. *Liability of seller to purchaser.* A person is liable to the purchaser if the person sells a security in violation of section 502.301 or, by means of an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading, the purchaser not knowing the untruth or omission and the seller not sustaining the burden of proof that the seller did not know and, in the exercise of reasonable care, could not have known of the untruth or omission. An action under this subsection is governed by the following:

a. The purchaser may maintain an action to recover the consideration paid for the security, less the amount of any income received on the security, and interest at the legal rate from the date of the purchase, costs, and reasonable attorney fees determined by the court, upon the tender of the security, or for actual damages as provided in paragraph “c”.

b. The tender referred to in paragraph “a” may be made any time before entry of judgment. Tender requires only notice in a record of ownership of the security and willingness to exchange the security for the amount specified. A purchaser that no longer owns the security may recover actual damages as provided in paragraph “c”.

c. Actual damages in an action arising under this subsection are the amount that would be recoverable upon a tender less the value of the security when the purchaser disposed of it, and interest at the legal rate from the date of the purchase, costs, and reasonable attorney fees determined by the court.

3. *Liability of purchaser to seller.* A person is liable to the seller if the person buys a security by means of an untrue statement of a material fact or omission to state a material fact necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading, the seller not knowing of the untruth or omission, and the purchaser not sustaining the burden of proof that the purchaser did not know, and in the exercise of reasonable care, could not have known of the untruth or omission. An action under this subsection is governed by all of the following:

a. The seller may maintain an action to recover the security, and any income received on the security, costs, and reasonable attorney fees determined by the court, upon the tender of the purchase price, or for actual damages as provided in paragraph “c”.

b. The tender referred to in paragraph “a” may be made any time before entry of judgment. Tender requires only notice in a record of the present ability to pay the amount tendered and willingness to take delivery of the security for the amount specified. If the purchaser no longer owns the security, the seller may recover actual damages as provided in paragraph “c”.

c. Actual damages in an action arising under this subsection are the difference between the price at which the security was sold and the value the security would have had at the time of the sale in the absence of the purchaser’s conduct causing liability, and interest at the legal rate from the date of the sale of the security, costs, and reasonable attorney fees determined by the court.

4. *Liability of unregistered broker-dealer and agent.* A person acting as a broker-dealer or agent that sells or buys a security in violation of section 502.401, subsection 1, section 502.402, subsection 1, or section 502.506 is liable to the customer. The customer, if a purchaser, may maintain an action for recovery of actual damages as specified in subsection 2, paragraphs “a” through “c”, or, if a seller, for a remedy as specified in subsection 3, paragraphs “a” through “c”.

5. *Liability of unregistered investment adviser and investment adviser representative.* A person acting as an investment adviser or investment adviser representative that provides investment advice for compensation in violation of section 502.403, subsection 1, section 502.404, subsection 1, or section 502.506 is liable to the client. The client may maintain an action to recover the consideration paid for the advice, interest at the legal rate from the date of payment, costs, and reasonable attorney fees determined by the court and taxed as court costs.

6. *Liability for investment advice.* A person that receives directly or indirectly any consideration for providing investment advice to another person and that employs a device, scheme, or artifice to defraud the other person or engages in an act, practice, or course of business that operates or would operate as a fraud or deceit on the other person is liable to the other person. An action under this subsection is governed by all of the following:

a. The person defrauded may maintain an action to recover the consideration paid for the advice and the amount of any actual damages caused by the fraudulent conduct, interest at the legal rate from the date of the fraudulent conduct, costs, and reasonable attorney fees determined by the court, less the amount of any income received as a result of the fraudulent conduct.

b. This subsection does not apply to a broker-dealer or its agents if the investment advice provided is solely incidental to transacting business as a broker-dealer and no special compensation is received for the investment advice.

7. *Joint and several liability.* The following persons are liable jointly and severally with and to the same extent as persons liable under subsections 2 through 6:

a. A person that directly or indirectly controls a person liable under subsections 2 through 6, unless the controlling person sustains the burden of proof that the person did not know, and in the exercise of reasonable care could not have known, of the existence of conduct by reason of which the liability is alleged to exist.

b. An individual who is a managing partner, executive officer, or director of a person liable under subsections 2 through 6, including an individual having a similar status or performing similar functions, unless the individual sustains the burden of proof that the individual did not know and, in the exercise of reasonable care could not have known, of the existence of conduct by reason of which the liability is alleged to exist.

c. An individual who is an employee of or associated with a person liable under subsections 2 through 6 or a person, whether an employee of such person or otherwise, who materially aids in the act or transaction constituting the violation, and who materially aids the conduct giving rise to the liability, unless the individual sustains the burden of proof that the individual did not know and, in the exercise of reasonable care could not have known, of the existence of conduct by reason of which the liability is alleged to exist.

d. A person that is a broker-dealer, agent, investment adviser, or investment adviser representative that materially aids the conduct giving rise to the liability under subsections 2 through 6, unless the person sustains the burden of proof that the person did not know and, in the exercise of reasonable care could not have known, of the existence of conduct by reason of which liability is alleged to exist.

8. *Right of contribution.* A person liable under this section has a right of contribution as in cases of contract against any other person liable under this section for the same conduct.

9. *Survival of cause of action.* A cause of action under this section survives the death of an individual who might have been a plaintiff or defendant.

10. *Statute of limitations.* A person shall not obtain relief under any of the following:

a. Under subsection 2 for violation of section 502.301, or under subsection 4 or 5, unless the action is instituted within one year after the violation occurred.

b. Under subsection 2, other than for violation of section 502.301, or under subsection 3

or 6, unless the action is instituted within the earlier of two years after discovery of the facts constituting the violation or five years after the violation.

11. *No enforcement of violative contract.* A person that has made, or has engaged in the performance of, a contract in violation of this chapter or a rule adopted or order issued under this chapter, or that has acquired a purported right under the contract with knowledge of conduct by reason of which its making or performance was in violation of this chapter, shall not base an action on the contract.

12. *No contractual waiver.* A condition, stipulation, or provision binding a person purchasing or selling a security or receiving investment advice to waive compliance with this chapter or a rule adopted or order issued under this chapter is void.

13. *Survival of other rights or remedies.* The rights and remedies provided by this chapter are in addition to any other rights or remedies that may exist, but this chapter does not create a cause of action not specified in this section or section 502.411, subsection 5.

13A. *Informational filing with the administrator.* A copy of any suit or arbitration action filed under this section shall be served upon the administrator within twenty days of the filing in the form and manner prescribed by the administrator by rule or order, provided that all of the following apply:

a. The failure to comply with this provision shall not invalidate the action which is the subject of the suit.

b. The suit or arbitration action has not been filed in a record with the central registration depository or the investment adviser registration depository.

13B. *Liability for takeover violations.* Any person who violates section 502.321B shall be liable to the person selling the security to such violator, which seller may sue either at law or in equity to recover the security, costs, and reasonable attorney fees, plus any income or distributions, in cash or in kind, received by the purchaser thereon, upon tender of the consideration received, or for damages if the purchaser no longer owns the security. Damages shall be the excess of the value of the security when the purchaser disposed of it, plus interest at the legal rate from the date of disposition, over the consideration paid for the security. Tender requires only notice of willingness to pay the amount specified in exchange for the security. Any notice may be given by service as in civil actions or by certified mail to the last known address of the person liable.

In addition to other remedies provided in this chapter, in a proceeding alleging a violation of article 3A, the court may provide that all shares acquired from a resident of this state in violation of any provision of this chapter or rule or order issued pursuant to this chapter be denied voting rights for one year after acquisition, that the shares be nontransferable on the books of the target company, or that during this one-year period the target company have the option to call the shares for redemption either at the price at which the shares were acquired or at book value per share as of the last day of the fiscal quarter ended prior to the date of the call for redemption, which redemption shall occur on the date set in the call notice but not later than sixty days after the call notice is given.

2004 Acts, ch 1161, §48, 68

#### **502.510 Recision offers.**

A purchaser, seller, or recipient of investment advice may not maintain an action under section 502.509 if all of the following apply:

1. The purchaser, seller, or recipient of investment advice receives in a record, before the action is instituted, any of the following:

a. An offer stating the respect in which liability under section 502.509 may have arisen and fairly advising the purchaser, seller, or recipient of investment advice of that person's rights in connection with the offer, and any financial or other information necessary to correct all material misrepresentations or omissions in the information that was required by this chapter to be furnished to that person at the time of the purchase, sale, or investment advice.

b. If the basis for relief under this section may have been a violation of section 502.509, subsection 2, an offer to repurchase the security for cash, payable on delivery of the security, equal to the consideration paid, and interest at the legal rate from the date of the purchase, less the amount of any income received on the security; or, if the purchaser no longer owns

the security, an offer to pay the purchaser upon acceptance of the offer damages in an amount that would be recoverable upon a tender, less the value of the security when the purchaser disposed of it, and interest at the legal rate from the date of the purchase in cash equal to the damages computed in the manner provided in this subsection.

c. If the basis for relief under this section may have been a violation of section 502.509, subsection 3, an offer to tender the security, on payment by the seller of an amount equal to the purchase price paid, less income received on the security by the purchaser and interest at the legal rate from the date of the sale; or if the purchaser no longer owns the security, an offer to pay the seller upon acceptance of the offer, in cash, damages in the amount of the difference between the price at which the security was purchased and the value the security would have had at the time of the purchase in the absence of the purchaser's conduct that may have caused liability and interest at the legal rate of interest from the date of the sale.

d. If the basis for relief under this section may have been a violation of section 502.509, subsection 4; and if the customer is a purchaser, an offer to pay as specified in paragraph "b"; or, if the customer is a seller, an offer to tender or to pay as specified in paragraph "c".

e. If the basis for relief under this section may have been a violation of section 502.509, subsection 5, an offer to reimburse in cash the consideration paid for the advice and interest at the legal rate from the date of payment.

f. If the basis for relief under this section may have been a violation of section 502.509, subsection 6, an offer to reimburse in cash the consideration paid for the advice, the amount of any actual damages that may have been caused by the conduct, and interest at the legal rate from the date of the violation causing the loss.

2. The offer under subsection 1 states that it must be accepted by the purchaser, seller, or recipient of investment advice within thirty days after the date of its receipt by the purchaser, seller, or recipient of investment advice or any shorter period, of not less than three days, that the administrator, by order, specifies.

3. The offeror has the present ability to pay the amount offered or to tender the security under subsection 1.

4. The offer under subsection 1 is delivered to the purchaser, seller, or recipient of investment advice, or sent in a manner that ensures receipt by the purchaser, seller, or recipient of investment advice.

5. The purchaser, seller, or recipient of investment advice that accepts the offer under subsection 1 in a record within the period specified under subsection 2 is paid in accordance with the terms of the offer.

6. If the basis for relief under this section alleges a violation of section 502.509 which employed a device, scheme, or artifice to defraud, made an untrue statement of a material fact necessary in order to make the statement made, in light of the circumstances under which it was made, not misleading, or engaged in an act, practice, or course of business that operated or would operate as a fraud or deceit on another person, the offer is filed with the administrator ten business days before the offering and conforms in form and content with a rule prescribed by the administrator.

2004 Acts, ch 1161, §49, 68; 2006 Acts, ch 1117, §11

## ARTICLE 6

### ADMINISTRATION AND JUDICIAL REVIEW

#### **502.601 Administration.**

1. *Administration.* This chapter shall be administered by the commissioner of insurance of this state. The administrator shall appoint a deputy administrator who shall be exempt from the merit system provisions of chapter 8A, subchapter IV. The deputy administrator is the principal operations officer of the securities and regulated industries bureau of the insurance division of the department of commerce. The deputy administrator is responsible to the administrator for the routine administration of this chapter and the management of

the securities and regulated industries bureau. In the absence of the administrator, whether because of vacancy in the office, by reason of absence, physical disability, or other cause, the deputy administrator shall be the acting administrator and shall, for that period, have and exercise the authority conferred upon the administrator. The administrator may by order delegate to the deputy administrator any or all of the functions assigned to the administrator under this chapter. The administrator shall employ officers, attorneys, accountants, and other employees as needed for the administration of this chapter.

2. *Unlawful use of records or information.* It is unlawful for the administrator or an officer, employee, or designee of the administrator to use for personal benefit or the benefit of others records or other information obtained by or filed with the administrator that are not public under section 502.607, subsection 2. This chapter does not authorize the administrator or an officer, employee, or designee of the administrator to disclose the record or information, except in accordance with section 502.602, section 502.607, subsection 3, or section 502.608.

3. *No privilege or exemption created or diminished.* This chapter does not create or diminish a privilege or exemption that exists at common law, by statute or rule, or otherwise.

4. *Investor education and financial literacy.* The administrator may develop and implement investor education and financial literacy initiatives to inform the public about investing in securities, with particular emphasis on the prevention and detection of securities fraud. In developing and implementing these initiatives, the administrator may collaborate with public and nonprofit organizations with an interest in investor education and financial literacy. The administrator may accept a grant or donation from a person who is not affiliated with the securities industry or from a nonprofit organization, regardless of whether the organization is affiliated with the securities industry, to develop and implement investor education and financial literacy initiatives. This subsection does not authorize the administrator to require participation or monetary contributions of a registrant in an investor education or financial literacy program.

5. *The securities investor education and financial literacy training fund.* A securities investor education and financial literacy training fund is created in the state treasury under the control of the administrator to provide moneys for the purposes specified in subsection 4. All moneys received by the state by reason of civil penalties pursuant to this chapter and the moneys appropriated to the fund pursuant to section 502.410, subsection 2, shall be deposited in the securities investor education and financial literacy training fund. Notwithstanding section 12C.7, interest or earnings on moneys deposited into the fund shall be credited to the fund. Notwithstanding section 8.33, unencumbered or unobligated moneys remaining in the fund shall not revert but shall be available for expenditure for the following fiscal year. However, if, on June 30, unencumbered or unobligated moneys remaining in the fund exceed five hundred thousand dollars, moneys in excess of that amount shall revert to the general fund of the state in the same manner as provided in section 8.33.

[SS15, §1920-u, -u10; C24, 27, §8525, 8550; C31, 35, §8581-c2; C39, §8581.02; C46, 50, 54, 58, 62, 66, 71, 73, 75, §502.2; C77, 79, 81, §502.601]

83 Acts, ch 169, §15; 91 Acts, ch 258, §55; 2003 Acts, ch 145, §268; 2004 Acts, ch 1161, §50, 68; 2005 Acts, ch 3, §78; 2006 Acts, ch 1117, §12; 2008 Acts, ch 1123, §5, 6

## **502.602 Investigations and subpoenas.**

1. *Authority to investigate.* The administrator may do any of the following:

a. Conduct public or private investigations within or outside of this state which the administrator considers necessary or appropriate to determine whether a person has violated, is violating, or is about to violate this chapter or a rule adopted or order issued under this chapter, or to aid in the enforcement of this chapter or in the adoption of rules and forms under this chapter.

b. Require or permit a person to testify, file a statement, or produce a record, under oath or otherwise as the administrator determines, as to all the facts and circumstances concerning a matter to be investigated or about which an action or proceeding is to be instituted.

c. Notwithstanding section 502.607, subsection 2, publish a record concerning an action, proceeding, or an investigation under, or a violation of, this chapter or a rule adopted or order

issued under this chapter if the administrator determines it is necessary or appropriate in the public interest and for the protection of investors.

2. *Administrator powers to investigate.* For the purpose of an investigation under this chapter, the administrator or the administrator's designated officer may administer oaths and affirmations, subpoena witnesses, seek compulsion of attendance, take evidence, require the filing of statements, and require the production of any records that the administrator considers relevant or material to the investigation, all of which may be enforced pursuant to chapter 17A.

3. *Procedure and remedies for noncompliance.* If a person does not appear or refuses to testify, file a statement, or produce records, or otherwise does not obey a subpoena as required by the administrator under this chapter, the administrator may apply to the Polk county district court or the district court for the county in which the person resides or is located or a court of another state to enforce compliance. The court may do any of the following:

- a. Hold the person in contempt.
- b. Order the person to appear before the administrator.
- c. Order the person to testify about the matter under investigation or in question.
- d. Order the production of records.
- e. Grant injunctive relief, including restricting or prohibiting the offer or sale of securities or the providing of investment advice.
- f. Impose a civil penalty of an amount not to exceed a maximum of five thousand dollars for a single violation or five hundred thousand dollars for more than one violation.
- g. Grant any other necessary or appropriate relief.

4. *Application for relief.* This section does not preclude a person from applying to district court or a court of another state for relief from a request to appear, testify, file a statement, produce records, or obey a subpoena.

5. *Use immunity procedure.* An individual is not excused from attending, testifying, filing a statement, producing a record or other evidence, or obeying a subpoena of the administrator under this chapter or in an action or proceeding instituted by the administrator under this chapter on the ground that the required testimony, statement, record, or other evidence, directly or indirectly, may tend to incriminate the individual or subject the individual to a criminal fine, penalty, or forfeiture. If the individual refuses to testify, file a statement, or produce a record or other evidence on the basis of the individual's privilege against self-incrimination, the administrator may apply to the district court to compel the testimony, the filing of the statement, the production of the record, or the giving of other evidence. The testimony, record, or other evidence compelled under such an order shall not be used, directly or indirectly, against the individual in a criminal case, except in a prosecution for perjury or contempt or otherwise failing to comply with the order.

6. *Assistance to securities regulator of another jurisdiction.* At the request of the securities regulator of another state or a foreign jurisdiction, the administrator may provide assistance if the requesting regulator states that it is conducting an investigation to determine whether a person has violated, is violating, or is about to violate a law or rule of the other state or foreign jurisdiction relating to securities matters that the requesting regulator administers or enforces. The administrator may provide the assistance by using the authority to investigate and the powers conferred by this section as the administrator determines is necessary or appropriate. The assistance may be provided without regard to whether the conduct described in the request would also constitute a violation of this chapter or other law of this state if occurring in this state. In deciding whether to provide the assistance, the administrator may consider whether the requesting regulator is permitted and has agreed to provide assistance reciprocally within its state or foreign jurisdiction to the administrator on securities matters when requested, whether compliance with the request would violate or prejudice the public policy of this state, and the availability of resources and employees of the administrator to carry out the request for assistance.

[SS15, §1590-u2; C24, 27, §8527; C31, 35, §8581-c8; C39, §8581.07(4); C46, 50, 54, 58, 62, 66, 71, 73, 75, §502.7(2, d); C77, 79, 81, §502.602]

97 Acts, ch 114, §15; 98 Acts, ch 1106, §20, 24; 2004 Acts, ch 1161, §51, 68; 2007 Acts, ch 137, §3; 2009 Acts, ch 133, §167

**502.603 Civil enforcement.**

1. *Civil action instituted by administrator.* If the administrator believes that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this chapter or a rule adopted or order issued under this chapter or that a person has, is, or is about to engage in an act, practice, or course of business that materially aids a violation of this chapter or a rule adopted or order issued under this chapter, the administrator may maintain an action in the county in which the person against whom the action is being brought resides, has a principal place of business, or is doing business, or in the county where the transaction or any substantial portion of the transaction which is the subject of the action occurred, or in the county in which one or more of the victims of the transaction which is the subject of the action resides, to enjoin the act, practice, or course of business and to enforce compliance with this chapter or a rule adopted or order issued under this chapter.

2. *Relief available.* In an action under this section and on a proper showing, the court may do any of the following:

a. Issue a permanent or temporary injunction, restraining order, or declaratory judgment.

b. Order other appropriate or ancillary relief, which may include any of the following:

(1) Ordering an asset freeze, accounting, writ of attachment, writ of general or specific execution, and appointment of a receiver or conservator, that may be the administrator, for the defendant or the defendant's assets.

(2) Ordering the administrator to take charge and control of a defendant's property, including investment accounts and accounts in a depository institution, rents, and profits; to collect debts; and to acquire and dispose of property.

(3) Imposing a civil penalty not to exceed a maximum of five thousand dollars for a single violation or five hundred thousand dollars for more than one violation; an order of rescission, restitution, or disgorgement directed to a person that has engaged in an act, practice, or course of business constituting a violation of this chapter or the predecessor chapter or a rule adopted or order issued under this chapter or the predecessor chapter.

(4) Ordering the payment of prejudgment and postjudgment interest.

c. Order such other relief as the court considers appropriate.

3. *No bond required.* The administrator shall not be required to post a bond in an action or proceeding under this chapter.

[C31, 35, §8581-c17; C39, §8581.21; C46, 50, 54, 58, 62, 66, 71, 73, 75, §502.21(1 – 4); C77, 79, 81, §502.603]

83 Acts, ch 169, §16; 91 Acts, ch 40, §31; 94 Acts, ch 1031, §16; 2001 Acts, ch 118, §9; 2004 Acts, ch 1161, §52, 68; 2007 Acts, ch 137, §4

**502.603A** Repealed by 2004 Acts, ch 1161, § 63, 68. See § 502.608.

**502.604 Administrative enforcement.**

1. *Issuance of an order or notice.* If the administrator determines that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this chapter or a rule adopted or order issued under this chapter or that a person has materially aided, is materially aiding, or is about to materially aid an act, practice, or course of business constituting a violation of this chapter or a rule adopted or order issued under this chapter, the administrator may do any of the following:

a. Issue an order directing the person to cease and desist from engaging in the act, practice, or course of business or to take other action necessary or appropriate to comply with this chapter.

b. Issue an order denying, suspending, revoking, or conditioning the exemptions for a broker-dealer under section 502.401, subsection 2, paragraph "a", subparagraph (4) or (6), or an investment adviser under section 502.403, subsection 2, paragraph "a", subparagraph (3).

c. Issue an order under section 502.204.

2. *Summary process.* An order under subsection 1 is effective on the date of issuance. Upon issuance of the order, the administrator shall promptly serve each person subject to the

order with a copy of the order and a notice that the order has been entered. The order must include a statement of any civil penalty or costs of investigation the administrator will seek, a statement of the reasons for the order, and notice that, within thirty days after receipt of a request in a record from the person, the matter will be scheduled for a hearing. If a person subject to the order does not request a hearing and none is ordered by the administrator within thirty days after the date of service of the order, the order, including the imposition of a civil penalty or requirement for payment of costs of investigation sought in the order, becomes final as to that person by operation of law. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend it until final determination.

3. *Procedure for final order.* If a hearing is requested or ordered pursuant to subsection 2, a hearing must be held pursuant to chapter 17A. A final order shall not be issued unless the administrator makes findings of fact and conclusions of law in a record in accordance with chapter 17A. The final order may make final, vacate, or modify the order issued under subsection 1.

4. *Civil penalty.* In a final order under subsection 3, the administrator may impose a civil penalty up to an amount not to exceed a maximum of five thousand dollars for a single violation or five hundred thousand dollars for more than one violation.

5. *Costs.* In a final order, the administrator may charge the actual cost of an investigation or proceeding for a violation of this chapter or a rule adopted or order issued under this chapter.

6. *Filing of certified final order with court — effect of filing.* If a petition for judicial review of a final order is not filed in accordance with section 502.609, the administrator may file a certified copy of the final order with the clerk of a court of competent jurisdiction. The order so filed has the same effect as a judgment of the court and may be recorded, enforced, or satisfied in the same manner as a judgment of the court.

7. *Enforcement by court — further civil penalty.* If a person does not comply with an order under this section, the administrator may petition the Polk county district court or the district court for the county in which the person resides or is located to enforce the order. The court shall not require the administrator to post a bond in an action or proceeding under this section. If the court finds, after service and opportunity for hearing, that the person was not in compliance with the order, the court may adjudge the person in civil contempt of the order. The court may impose a further civil penalty against the person for contempt in an amount not less than three thousand dollars but not greater than ten thousand dollars for each violation and may grant any other relief the court determines is just and proper in the circumstances.

[C31, 35, §8581-c17; C39, §8581.21; C46, 50, 54, 58, 62, 66, 71, 73, 75, §502.21(5); C77, 79, 81, §502.604]

91 Acts, ch 40, §33; 96 Acts, ch 1025, §14; 99 Acts, ch 166, §8; 2000 Acts, ch 1147, §17; 2001 Acts, ch 118, §10, 11; 2004 Acts, ch 1161, §53, 68; 2007 Acts, ch 137, §5

#### **502.604A Limited law enforcement authority.**

The administrator or the administrator's designee, when carrying out the provisions of section 502.603 or 502.604, may develop, share, and receive information related to any law enforcement purpose, including any criminal investigation. The administrator or designee shall not have the authority to issue criminal subpoenas or make arrests. The administrator or designee shall not be considered a peace officer, including as provided in chapter 801.

91 Acts, ch 40, §34; 94 Acts, ch 1031, §17; 2004 Acts, ch 1161, §54, 68

**502.604B** Repealed by 2004 Acts, ch 1161, § 63, 68. See § 502.604A.

#### **502.605 Rules, forms, orders, interpretative opinions, and hearings.**

1. *Issuance and adoption of forms, orders, and rules.* Pursuant to chapter 17A, the administrator may do any of the following:

a. Issue forms and orders and, after notice and comment, may adopt and amend rules necessary or appropriate to carry out this chapter and may repeal rules, including rules

and forms governing registration statements, applications, notice filings, reports, and other records.

b. Define terms, whether or not used in this chapter, but those definitions shall not be inconsistent with this chapter.

c. Classify securities, persons, and transactions and adopt different requirements for different classes.

2. *Findings and cooperation.* Under this chapter, a rule or form shall not be adopted or amended, or an order issued or amended, unless the administrator finds that the rule, form, order, or amendment is necessary or appropriate in the public interest or for the protection of investors and is consistent with the purposes intended by this chapter. In adopting, amending, and repealing rules and forms, section 502.608 applies in order to achieve uniformity among the states and coordination with federal laws in the form and content of registration statements, applications, reports, and other records, including the adoption of uniform rules, forms, and procedures.

3. *Financial statements.* Subject to section 15(h) of the Securities Exchange Act and section 222 of the Investment Advisers Act of 1940, the administrator may require that a financial statement filed under this chapter be prepared in accordance with generally accepted accounting principles in the United States and comply with other requirements specified by rule adopted or order issued under this chapter. A rule adopted or order issued under this chapter may establish any of the following:

a. Subject to section 15(h) of the Securities Exchange Act and section 222 of the Investment Advisers Act of 1940, the form and content of financial statements required under this chapter.

b. Whether unconsolidated financial statements must be filed.

c. Whether required financial statements must be audited by an independent certified public accountant.

4. *Interpretative opinions.* The administrator may provide interpretative opinions or issue determinations that the administrator will not institute a proceeding or an action under this chapter against a specified person for engaging in a specified act, practice, or course of business if the determination is consistent with this chapter. A rule adopted or order issued under this chapter may establish a reasonable charge for interpretative opinions or determinations that the administrator will not institute an action or a proceeding under this chapter.

5. *Effect of compliance.* A penalty under this chapter shall not be imposed for, and liability does not arise from, conduct that is engaged in or omitted in good faith believing it conforms to a rule, form, or order of the administrator under this chapter.

6. *Presumption for public hearings.* A hearing in an administrative proceeding under this chapter must be conducted in public unless the administrator for good cause consistent with this chapter determines that the hearing will not be so conducted.

[SS15, §1920-u19, -u20, -u21; C24, 27, §8577 – 8579; C31, 35, §8581-c21, -c22, -c23; C39, §8581.26 – 8581.28; C46, 50, 54, 58, 62, 66, 71, 73, 75, §502.26 – 502.28; C77, 79, 81, §502.605] 2000 Acts, ch 1147, §18; 2001 Acts, ch 118, §13, 14; 2004 Acts, ch 1161, §55, 68

### **502.606 Administrative files and opinions.**

1. *Public register of filings.* The administrator shall maintain, or designate a person to maintain, a register of applications for registration of securities; registration statements; notice filings; applications for registration of broker-dealers, agents, investment advisers, and investment adviser representatives; notice filings by federal covered investment advisers that are or have been effective under this chapter or the predecessor chapter; notices of claims of exemption from registration or notice filing requirements contained in a record; orders issued under this chapter or the predecessor chapter; and interpretative opinions or no action determinations issued under this chapter.

2. *Public availability.* The administrator shall make all rules, forms, interpretative opinions, and orders available to the public.

3. *Copies of public records.* The administrator shall furnish a copy of a record that is a public record or a certification that the public record does not exist to a person that so

requests. A rule adopted under this chapter may establish a reasonable charge for furnishing the record or certification. A copy of the record certified or a certificate by the administrator of a record's nonexistence is prima facie evidence of a record or its nonexistence.

[SS15, §1920-u17; C24, 27, §8575; C31, 35, §8581-c19; C39, §8581.24; C46, 50, 54, 58, 62, 66, 71, 73, 75, §502.24; C77, 79, 81, §502.606]

2004 Acts, ch 1161, §56, 68

#### **502.607 Public records — confidentiality.**

1. *Presumption of public records.* Except as otherwise provided in subsection 2, records obtained by the administrator or filed under this chapter, including a record contained in or filed with a registration statement, application, notice filing, or report, are public records and are available for public examination.

2. *Nonpublic records.* Notwithstanding chapter 22, the following records are not public records and are not available for public examination under subsection 1:

a. A record obtained by the administrator in connection with an audit or inspection under section 502.411, subsection 4, or an investigation under section 502.602.

b. A part of a record filed in connection with a registration statement under sections 502.301 and 502.303 through 502.305 or a record under section 502.411, subsection 4, that contains trade secrets or confidential information if the person filing the registration statement or report has asserted a claim of confidentiality or privilege that is authorized by law.

c. A record that is not required to be provided to the administrator or filed under this chapter and is provided to the administrator only on the condition that the record will not be subject to public examination or disclosure.

d. A nonpublic record received from a person specified in section 502.608, subsection 1.

e. Any social security number, residential address unless used as a business address, and residential telephone number unless used as a business telephone number, contained in a record that is filed.

f. A record obtained by the administrator through a designee that the administrator determines by rule or order has been appropriately expunged from its own records by that designee, if the administrator finds that such expungement is in the public interest and does not impair investor protection.

3. *Administrator discretion to disclose.* If disclosure is for the purpose of a civil, administrative, or criminal investigation, action, or proceeding or to a person specified in section 502.608, subsection 1, the administrator may disclose a record obtained in connection with an audit or inspection under section 502.411, subsection 4, or a record obtained in connection with an investigation under section 502.602.

[C35, §8581-f6; C39, §8581.22; C46, 50, 54, 58, 62, §502.22; C66, 71, 73, 75, §502.2, 502.22; C77, 79, 81, §502.607]

97 Acts, ch 114, §16; 2004 Acts, ch 1161, §57, 68

#### **502.608 Uniformity and cooperation with other agencies.**

1. *Objective of uniformity.* The administrator shall, in its discretion, cooperate, coordinate, consult, and, subject to section 502.607, share records and information with the securities regulator of another state, Canada, a Canadian province or territory, a foreign jurisdiction, the securities and exchange commission, the United States department of justice, the commodity futures trading commission, the federal trade commission, the securities investor protection corporation, a self-regulatory organization, a national or international organization of securities regulators, a federal or state banking and insurance regulator, and a governmental law enforcement agency to effectuate greater uniformity in securities matters among the federal government, self-regulatory organizations, states, and foreign governments.

2. *Policies to consider.* In cooperating, coordinating, consulting, and sharing records and information under this section and in acting by rule, order, or waiver under this chapter, the administrator shall, in its discretion, take into consideration in carrying out the public interest, all of the following general policies:

- a. Maximizing effectiveness of regulation for the protection of investors.
- b. Maximizing uniformity in federal and state regulatory standards.
- c. Minimizing burdens on the business of capital formation, without adversely affecting essentials of investor protection.

3. *Subjects for cooperation.* The cooperation, coordination, consultation, and sharing of records and information authorized by this section includes all of the following:

- a. Establishing or employing one or more designees as a central depository for registration and notice filings under this chapter and for records required or allowed to be maintained under this chapter.
- b. Developing and maintaining uniform forms.
- c. Conducting a joint examination or investigation.
- d. Holding a joint administrative hearing.
- e. Instituting and prosecuting a joint civil or administrative proceeding.
- f. Sharing and exchanging personnel.
- g. Coordinating registrations under sections 502.301 and 502.401 through 502.404 and exemptions under section 502.203.
- h. Sharing and exchanging records, subject to section 502.607.
- i. Formulating rules, statements of policy, guidelines, forms, and interpretative opinions and releases.
- j. Formulating common systems and procedures.
- k. Notifying the public of proposed rules, forms, statements of policy, and guidelines.
- l. Attending conferences and other meetings among securities regulators, which may include representatives of governmental and private sector organizations involved in capital formation, deemed necessary or appropriate to promote or achieve uniformity.

m. Developing and maintaining a uniform exemption from registration for small issuers, and taking other steps to reduce the burden of raising investment capital by small businesses. [C31, 35, §8581-c11, -c26; C39, §8581.11, 8581.31; C46, 50, 54, 58, 62, 66, 71, 73, 75, §502.11, 502.31; C77, 79, 81, §502.608]

83 Acts, ch 169, §17; 97 Acts, ch 114, §17; 98 Acts, ch 1106, §21, 24; 2002 Acts, ch 1111, §5; 2004 Acts, ch 1161, §58, 68

#### **502.609 Judicial review of orders.**

A final order issued by the administrator under this chapter is subject to judicial review in accordance with chapter 17A.

[SS15, §1920-u5; C24, 27, §8534, 8535; C31, 35, §8581-c9; C39, §8581.09; C46, 50, 54, 58, 62, 66, 71, 73, 75, §502.9; C77, 79, 81, §502.609]

91 Acts, ch 40, §35; 97 Acts, ch 114, §18; 2000 Acts, ch 1147, §19; 2004 Acts, ch 1161, §59, 68

#### **502.610 Jurisdiction.**

1. *Sales and offers to sell.* Sections 502.301, 502.302, 502.401, subsection 1, 502.402, subsection 1, 502.403, subsection 1, 502.404, subsection 1, 502.501, 502.506, 502.509, and 502.510 do not apply to a person that sells or offers to sell a security unless the offer to sell or the sale is made in this state or the offer to purchase or the purchase is made and accepted in this state.

2. *Purchases and offers to purchase.* Sections 502.401, subsection 1, 502.402, subsection 1, 502.403, subsection 1, 502.404, subsection 1, 502.501, 502.506, 502.509, and 502.510 do not apply to a person that purchases or offers to purchase a security unless the offer to purchase or the purchase is made in this state or the offer to sell or the sale is made and accepted in this state.

3. *Offers in this state.* For the purpose of this section, an offer to sell or to purchase a security is made in this state, whether or not either party is then present in this state, if any of the following apply to the offer:

- a. The offer originates from within this state.
- b. The offer is directed by the offeror to a place in this state and received at the place to which it is directed.

4. *Acceptances in this state.* For the purpose of this section, an offer to purchase or to sell is accepted in this state, whether or not either party is then present in this state, if all of the following apply to the acceptance:

a. The acceptance is communicated to the offeror in this state and the offeree reasonably believes the offeror to be present in this state and the acceptance is received at the place in this state to which it is directed.

b. The acceptance has not previously been communicated to the offeror, orally or in a record, outside this state.

5. *Publications, radio, television, or electronic communications.* An offer to sell or to purchase is not made in this state when a publisher circulates or there is circulated on the publisher's behalf in this state a bona fide newspaper or other publication of general, regular, and paid circulation that is not published in this state, or that is published in this state but has had more than two-thirds of its circulation outside this state during the previous twelve months or when a radio or television program or other electronic communication originating outside this state is received in this state. A radio or television program, or other electronic communication, is considered as having originated in this state if either the broadcast studio or the originating source of transmission is located in this state, unless any of the following apply:

a. The program or communication is syndicated and distributed from outside this state for redistribution to the general public in this state.

b. The program or communication is supplied by a radio, television, or other electronic network with the electronic signal originating from outside this state for redistribution to the general public in this state.

c. The program or communication is an electronic communication that originates outside this state and is captured for redistribution to the general public in this state by a community antenna or cable, radio, cable television, or other electronic system.

d. The program or communication consists of an electronic communication that originates in this state, but which is not intended for distribution to the general public in this state.

6. *Investment advice and misrepresentations.* Sections 502.403, subsection 1, 502.404, subsection 1, 502.405, subsection 1, 502.502, 502.505, and 502.506 apply to a person if the person engages in an act, practice, or course of business instrumental in effecting prohibited or actionable conduct in this state, whether or not either party is then present in this state.

[C77, 79, 81, §502.610]

98 Acts, ch 1106, §22, 24; 2004 Acts, ch 1161, §60, 68

### **502.611 Service of process.**

1. *Signed consent to service of process.* A consent to service of process required by this chapter must be signed and filed in the form required by a rule or order under this chapter. A consent appointing the administrator the person's agent for service of process in a noncriminal action or proceeding against the person, or the person's successor or personal representative under this chapter or a rule adopted or order issued under this chapter after the consent is filed, has the same force and validity as if the service were made personally on the person filing the consent. A person that has filed a consent complying with this subsection in connection with a previous application for registration or notice filing need not file an additional consent.

2. *Conduct constituting appointment of agent for service.* If a person, including a nonresident of this state, engages in an act, practice, or course of business prohibited or made actionable by this chapter or a rule adopted or order issued under this chapter and the person has not filed a consent to service of process under subsection 1, the act, practice, or course of business constitutes the appointment of the administrator as the person's agent for service of process in a noncriminal action or proceeding against the person or the person's successor or personal representative.

3. *Procedure for service of process.* Service under subsection 1 or 2 may be made by providing a copy of the process to the office of the administrator, but it is not effective unless all of the following apply:

a. The plaintiff, which may be the administrator, promptly sends notice of the service and

a copy of the process, return receipt requested, to the defendant or respondent at the address set forth in the consent to service of process or, if a consent to service of process has not been filed, at the last known address, or takes other reasonable steps to give notice.

b. The plaintiff files an affidavit of compliance with this subsection in the action or proceeding on or before the return day of the process, if any, or within the time that the court, or the administrator in a proceeding before the administrator, allows.

4. *Service in administrative proceedings or civil actions by administrator.* Service pursuant to subsection 3 may be used in a proceeding before the administrator or by the administrator in a civil action in which the administrator is the moving party.

5. *Opportunity to defend.* If process is served under subsection 3, the court, or the administrator in a proceeding before the administrator, shall order continuances as are necessary or appropriate to afford the defendant or respondent reasonable opportunity to defend.

[C77, 79, 81, §502.611]

90 Acts, ch 1196, §5; 2004 Acts, ch 1161, §61, 68

#### **502.612 Severability clause.**

If any provision of this chapter or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

2004 Acts, ch 1161, §62, 68

## ARTICLE 7

### JOINT INVESTMENT TRUSTS

#### **502.701 Public joint investment trusts.**

1. A joint investment trust organized pursuant to chapter 28E for the purposes of joint investment of public funds is subject to the jurisdiction and authority of the administrator, including all requirements of this chapter, except the registration provisions of sections 502.301 and 502.321I.

2. The administrator may make examinations within or without the state, of the business and records of each joint investment trust, at the times and in the scope as the administrator determines. The administrator shall have the authority to contract for outside professional services in the conduct of examinations. The examinations may be made without prior notice to the joint investment trust or the trust's investment advisor. The administrator may copy all records the administrator feels are necessary to conduct the examination. The expense reasonably attributable to the examination shall be paid by the joint investment trusts whose business is examined. For the purpose of avoiding unnecessary duplication of examinations, the administrator may cooperate with other regulatory authorities.

92 Acts, ch 1156, §41; 2005 Acts, ch 19, §124, 126