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HOUSE FILE 2377  
BY SCHRADER

SMALL BUSINESS AND COMMERCE  
*to Bill 419 (p. 473)*

Passed House, Date 3/1/90 (p. 184) Passed Senate, Date \_\_\_\_\_  
Vote: Ayes 89 Nays 0 Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

**A BILL FOR**

1 An Act adopting the model state commodity Code as recommended by  
2 the North American securities administrators association,  
3 regulating the commodities markets and participants,  
4 authorizing the securities bureau of the insurance division to  
5 administer the chapter, requiring licensing of commodity  
6 broker-dealers and sales representatives, authorizing civil  
7 remedies, sanctions, penalties, and imposing criminal  
8 penalties.

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

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*HF 2377*

1 Section 1. NEW SECTION. 502A.1 DEFINITIONS.

2 For purposes of this chapter, unless the context otherwise  
3 requires:

4 1. "Administrator" means the administrator of the  
5 securities bureau of the insurance division of the department  
6 of commerce.

7 2. "Board of trade" means a person or group of persons  
8 engaged in buying or selling any commodity or receiving the  
9 same for sale on consignment, whether the person or group of  
10 persons is characterized as a board of trade, exchange, or  
11 other form of marketplace.

12 3. "CFTC rule" means a regulation or order of the  
13 commodity futures trading commission in effect on the  
14 effective date of this Act, and all subsequent amendments,  
15 additions or other revisions to the regulation or order,  
16 unless the administrator, within ten days following the  
17 effective date of the amendment, addition, or revision,  
18 disallows the application to this chapter in whole or in part  
19 by rule or order.

20 4. "Commodity" means, except as otherwise specified by the  
21 administrator by rule or order: an agricultural, grain, or  
22 livestock product or by-product; a metal or mineral, including  
23 a precious metal; a gem or gemstone, whether characterized as  
24 precious, semiprecious or otherwise; a fuel, whether liquid,  
25 gaseous or otherwise; a foreign currency; and all other goods,  
26 articles, products, or items of any kind.

27 The term commodity does not include any of the following:

28 a. A numismatic coin whose fair market value is at least  
29 fifteen percent higher than the value of the metal it  
30 contains.

31 b. Real property or any timber, agricultural, or livestock  
32 product grown or raised on real property and offered or sold  
33 by the owner or lessee of such real property.

34 c. Any work of art offered or sold by art dealers, at  
35 public auction, or offered or sold through a private sale by

1 the owner of the work of art.

2 5. "Commodity contract" means an account, agreement, or  
3 contract for the purchase or sale, primarily for speculation  
4 or investment purposes and not for use or consumption by the  
5 offeree or purchaser, of one or more commodities, whether for  
6 immediate or subsequent delivery or whether delivery is  
7 intended by the parties, and whether characterized as a cash  
8 contract, deferred shipment or deferred delivery contract,  
9 forward contract, futures contract, installment or margin  
10 contract, leverage contract, or otherwise. A commodity  
11 contract offered or sold, in the absence of evidence to the  
12 contrary, shall be presumed to be offered or sold for  
13 speculation or investment purposes. A commodity contract does  
14 not include a contract or agreement which requires, and under  
15 which the purchaser receives, within twenty-eight days from  
16 the payment in good funds of any portion of the purchase  
17 price, physical delivery of the total amount of each commodity  
18 to be purchased under the contract or agreement.

19 6. "Commodity Exchange Act" means the federal Commodity  
20 Exchange Act, as amended to the effective date of this Act,  
21 codified at 7 U.S.C. § 1, et seq., and all subsequent  
22 amendments, additions, or other revisions to the Act, unless  
23 the administrator, within ten days following the effective  
24 date of the amendment, addition, or revision, disallows its  
25 application to this chapter in whole or in part by rule or  
26 order.

27 7. "Commodity futures trading commission" or "CFTC" means  
28 the independent regulatory agency established by the United  
29 States congress to administer the Commodity Exchange Act.

30 8. "Commodity merchant" means any of the following as  
31 defined or described in the Commodity Exchange Act or by CFTC  
32 rule:

- 33 a. A futures commission merchant.
- 34 b. A commodity pool operator.
- 35 c. A commodity trading adviser.

- 1 d. An introducing broker.
- 2 e. A leverage transaction merchant.
- 3 f. An associated person of any of the persons listed in  
4 paragraphs "a" through "e".
- 5 g. A floor broker.
- 6 h. Any other person, other than a futures association,  
7 required to register with the commodity futures trading  
8 commission.
- 9 9. "Commodity option" means an account, agreement, or  
10 contract giving a party to the account, agreement, or contract  
11 the right but not the obligation to purchase or sell one or  
12 more commodities or one or more commodity contracts, whether  
13 characterized as an option, privilege, indemnity, bid, offer,  
14 put, call, advance guaranty, decline guaranty or otherwise,  
15 but shall not include an option traded on a national  
16 securities exchange registered with the United States  
17 securities and exchange commission.
- 18 10. "Financial institution" means a bank, savings  
19 institution, or trust company organized under, or supervised  
20 pursuant to, the laws of the United States or of any state.
- 21 11. "Offer" includes every offer to sell, offer to  
22 purchase, or offer to enter into a commodity contract or  
23 commodity option.
- 24 12. "Person" means a person as defined in section 4.1, but  
25 does not include a contract market designated by the  
26 commodities futures trading commission or any clearinghouse of  
27 the CFTC or a national securities exchange registered with the  
28 securities and exchange commission, or any employee, officer,  
29 or director of a contract market, clearinghouse, or exchange  
30 acting solely in that capacity.
- 31 13. "Precious metal" means one or more of the following in  
32 either coin, bullion, or other form:
- 33 a. Silver.
- 34 b. Gold.
- 35 c. Platinum.

1 d. Palladium.

2 e. Copper.

3 f. Such other items as the administrator may specify by  
4 rule or order.

5 14. "Sale" or "sell" includes every sale, contract of  
6 sale, contract to sell, or disposition, for value.

7 Sec. 2. NEW SECTION. 502A.2 UNLAWFUL COMMODITY  
8 TRANSACTIONS.

9 Except as otherwise provided in section 502A.3 or 502A.4, a  
10 person shall not sell or purchase, or offer to sell or  
11 purchase, a commodity under a commodity contract, or under a  
12 commodity option, or offer to enter into, or enter into as  
13 seller or purchaser, a commodity contract or commodity option.

14 Sec. 3. NEW SECTION. 502A.3 EXEMPT PERSON TRANSACTIONS.

15 The prohibitions in section 502A.2 do not apply to a  
16 transaction offered by and in which any of the following  
17 persons, or any employee, officer, or director of a listed  
18 person acting solely in that capacity, is the purchaser or  
19 seller:

20 1. A person registered with the commodity futures trading  
21 commission as a futures commission merchant or as a leverage  
22 transaction merchant whose activities require such  
23 registration.

24 2. A person registered with the securities and exchange  
25 commission as a broker-dealer whose activities require such  
26 registration.

27 3. A person affiliated with, and whose obligations and  
28 liabilities under the transaction are guaranteed by, a person  
29 referred to in subsection 1 or 2.

30 4. A person who is a member of a contract market  
31 designated by the commodity futures trading commission, or any  
32 CFTC clearinghouse.

33 5. A financial institution.

34 6. A person registered under the laws of this state as a  
35 securities broker-dealer whose activities require such

1 registration.

54252 7. A person registered as a commodity broker-dealer or  
3 commodity sales representative in accordance with the  
4 provisions of subchapter 3.

5 This exemption provided by this section does not apply to  
6 any transaction or activity which is prohibited by the  
7 Commodity Exchange Act or CFTC rule.

8 Sec. 4. NEW SECTION. 502A.4 EXEMPT TRANSACTIONS.

9 1. Section 502A.2 does not apply to any of the following:

10 a. An account, agreement, or transaction within the  
11 exclusive jurisdiction of the commodity futures trading  
12 commission as granted under the Commodity Exchange Act.

13 b. A commodity contract for the purchase of one or more  
14 precious metals which requires, and under which the purchaser  
15 receives, within twenty-eight days from the payment in good  
16 funds of any portion of the purchase price, physical delivery  
17 of the quantity of the precious metals purchased by the  
18 payment. For purposes of this paragraph, physical delivery  
19 shall be deemed to have occurred if both of the following  
20 conditions are satisfied:

21 (1) Within twenty-eight days, the required quantity of  
22 precious metals purchased by the payment is delivered, whether  
23 in specifically segregated or fungible bulk form, into the  
24 possession of a depository, other than the seller, which is  
25 any of the following:

26 (a) A financial institution.

27 (b) A depository the warehouse receipts of which are  
28 recognized for delivery purposes for any commodity on a  
29 contract market designated by the commodity futures trading  
30 commission.

31 (c) A storage facility licensed or regulated by the United  
32 States or any agency of the United States.

33 (d) A depository designated by the administrator.

34 (2) The depository or a qualified seller issues and the  
35 purchaser receives, a certificate, document of title,

1 confirmation, or other instrument evidencing that the required  
2 quantity of precious metals has been delivered to the  
3 depository and is being and will continue to be held by the  
4 depository on the purchaser's behalf, free and clear of all  
5 liens and encumbrances, other than liens of the purchaser, tax  
6 liens, liens agreed to by the purchaser, or liens of the  
7 depository for fees and expenses, which have previously been  
8 disclosed to the purchaser.

9 c. A commodity contract solely between persons engaged in  
10 producing, processing, using commercially or handling as  
11 merchants, the commodity which is the subject of the contract,  
12 or any by-product of the commodity.

13 d. A commodity contract under which the offeree or the  
14 purchaser is a person under section 502A.3, an insurance  
15 company, an investment company as defined in the federal  
16 Investment Company Act of 1940, or an employee pension and  
17 profitsharing or benefit plan other than a self-employed  
18 individual retirement plan, or individual retirement account.

19 2. For the purposes of subsection 1, paragraph "b", a  
20 qualified seller is a person who satisfies all of the  
21 following conditions:

22 a. Is a seller of precious metals and has a tangible net  
23 worth of at least five million dollars, or has an affiliate  
24 who has unconditionally guaranteed the obligations and  
25 liabilities of the seller and the affiliate has a tangible net  
26 worth of at least five million dollars.

27 b. Has stored precious metals with one or more  
28 depositories on behalf of customers for at least the previous  
29 three years.

30 c. Prior to any offer, files with the administrator a  
31 sworn notice of intent to act as a qualified seller under  
32 subsection 1, paragraph "b", and annually files a new notice.  
33 A notice of intent to act as a qualified seller must contain  
34 all of the following:

35 (1) The seller's name and address, names of its directors,

1 officers, controlling shareholders, partners, principals, and  
2 other controlling persons.

3 (2) The address of its principal place of business, state  
4 and date of incorporation or organization, and the name and  
5 address of seller's registered agent in this state.

6 (3) A statement that the seller, or a person affiliated  
7 with the seller who has guaranteed the obligations and  
8 liabilities of the seller, has a tangible net worth of at  
9 least five million dollars.

10 (4) Depository information including all of the following:

11 (a) The name and address of the depository or depositories  
12 that the seller intends to use.

13 (b) The name and address of each and every depository  
14 where the seller has stored precious metals on behalf of  
15 customers for the previous three years.

16 (c) Independent verification from each and every  
17 depository named in subparagraph subdivision (b) that the  
18 seller has in fact stored precious metals on behalf of the  
19 seller's customers for the previous three years and a  
20 statement of total deposits made during this period.

21 (5) Financial statements for the seller, or the person  
22 affiliated with the seller who has guaranteed the obligations  
23 and liabilities of the seller, for the past three years,  
24 audited by an independent certified public accountant,  
25 together with the accountant's reports.

26 (6) A statement describing the details of all civil,  
27 criminal, or administrative proceedings currently pending or  
28 adversely resolved against the seller or its directors,  
29 officers, controlling shareholders, partners, principals, or  
30 other controlling persons during the past ten years including  
31 all of the following in subparagraph subdivisions (a) through  
32 (d), or if not applicable, subparagraph subdivision (e):

33 (a) Civil litigation and administrative proceedings  
34 involving securities or commodities violations, or fraud.

35 (b) Criminal proceedings.



1 (c) Denials, suspensions, or revocations of securities or  
2 commodities, licenses, or registrations.

3 (d) Suspensions or expulsions from membership in, or  
4 associations with, self-regulatory organizations registered  
5 under the Securities Exchange Act of 1934, or the Commodities  
6 Exchange Act.

7 (e) A statement that there were no such proceedings.

8 d. Notifies the administrator within fifteen days of any  
9 material changes in the information provided in the notice of  
10 intent.

11 e. Annually furnishes to each purchaser for whom the  
12 seller is then storing precious metals, and to the  
13 administrator, a report by an independent certified public  
14 accountant of the accountant's examination of the seller's  
15 precious metals storage program.

16 3. The administrator may, upon request by the seller,  
17 waive any of the exemption requirements in subsection 2,  
18 conditionally or unconditionally.

19 4. The administrator may, by order, deny, suspend, revoke,  
20 or place limitations on the authority to engage in business as  
21 a qualified seller under subsection 1, paragraph "b" if the  
22 administrator finds that the order is in the public interest  
23 and that the person, the person's officers, directors,  
24 partners, agents, servants or employees, a person occupying a  
25 similar status or performing similar functions, a person who  
26 directly or indirectly controls or is controlled by the  
27 seller, or any of them, the seller's affiliates or  
28 subsidiaries meets any of the following conditions:

29 a. Has filed a notice of intention under subsection 3 with  
30 the administrator or the designee of the administrator which  
31 was incomplete in any material respect or contained any  
32 statement which was, in light of the circumstances under which  
33 it was made, false or misleading with respect to any material  
34 fact.

35 b. Has, within the last ten years, pled guilty or nolo

1 contendre to, or been convicted of any crime indicating a lack  
2 of fitness to engage in the investment commodity business.

3 c. Has been permanently or temporarily enjoined by any  
4 court of competent jurisdiction from engaging in, or  
5 continuing, any conduct or practice which injunction indicates  
6 a lack of fitness to engage in the investment commodities  
7 business.

8 d. Is the subject of an order of the administrator  
9 denying, suspending, or revoking the person's license as a  
10 securities broker-dealer, sales representative, or investment  
11 adviser.

12 e. Is the subject of any of the following orders which are  
13 currently effective and which were issued within the last five  
14 years:

15 (1) An order by the securities agency or administrator of  
16 another state, Canadian province or territory, the securities  
17 and exchange commission, or the commodity futures trading  
18 commission, entered after notice and opportunity for hearing,  
19 denying, suspending, or revoking the person's registration as  
20 a futures commission merchant, commodity trading adviser,  
21 commodity pool operator, securities broker-dealer, sales  
22 representative, or investment adviser, or the substantial  
23 equivalent of those terms.

24 (2) Suspension or expulsion from membership in, or  
25 association with, a self-regulatory organization registered  
26 under the federal Securities Exchange Act of 1934 or the  
27 Commodity Exchange Act.

28 (3) A United States postal service fraud order.

29 (4) A cease and desist order entered after notice and  
30 opportunity of hearing by the administrator or the securities  
31 agency or administrator of any other state, Canadian province  
32 or territory, the United States securities and exchange  
33 commission, or the commodity futures trading commission.

34 (5) An order entered by the commodity futures trading  
35 commission denying, suspending, or revoking registration under

1 the Commodity Exchange Act.

2 f. Has engaged in an unethical or dishonest act or  
3 practice in the investment commodities or securities business.

4 g. Has failed reasonably to supervise sales  
5 representatives or employees.

6 5. If the public interest or the protection of investors  
7 so requires, the administrator may, by order, summarily deny  
8 or suspend the exemption for a qualified seller. Upon the  
9 entry of the order, the administrator shall promptly notify  
10 the person claiming such status that an order has been entered  
11 and the reasons for the order and that within thirty days  
12 after the receipt of a written request the matter will be set  
13 for hearing. Section 502A.20 applies with respect to all  
14 subsequent proceedings.

15 6. If the administrator finds that any applicant or  
16 qualified seller is no longer in existence or has ceased to do  
17 business or is subject to an adjudication of mental  
18 incompetence or to the control of a committee, conservator, or  
19 guardian, or cannot be located after reasonable search, the  
20 administrator may, by order deny, or revoke the exemption for  
21 a qualified seller.

22 7. The administrator may issue rules or orders prescribing  
23 the terms and conditions of all transactions and contracts  
24 covered by this chapter which are not within the exclusive  
25 jurisdiction of the commodity futures trading commission as  
26 granted by the Commodity Exchange Act, exempting and  
27 conditionally or unconditionally and otherwise implementing  
28 this chapter for the protection of purchasers and sellers of  
29 commodities.

30 Sec. 5. NEW SECTION. 502A.5 UNLAWFUL COMMODITY  
31 ACTIVITIES.

32 1. A person shall not engage in a trade or business or  
33 otherwise act as a commodity merchant unless the person is  
34 either of the following:

35 a. Registered or temporarily licensed with the commodity

1 futures trading commission for each activity constituting the  
2 person as a commodity merchant and the registration or  
3 temporary license has not expired, been suspended, or revoked.

4 b. Exempt from such registration by virtue of the  
5 Commodity Exchange Act or of a CFTC rule.

6 2. A board of trade shall not trade, or provide a place  
7 for the trading of, any commodity contract or commodity option  
8 required to be traded on or subject to the rules of a contract  
9 market designated by the commodity futures trading commission  
10 unless the board of trade has been so designated for the  
11 commodity contract or commodity option and the designation has  
12 not been vacated, suspended, or revoked.

13 Sec. 6. NEW SECTION. 502A.6 FRAUDULENT CONDUCT.

14 A person, shall not directly or indirectly do any of the  
15 following in or in connection with the purchase or sale of,  
16 the offer to sell, the offer to purchase, the offer to enter  
17 into, or the entry into of, a commodity contract or commodity  
18 option subject to sections 502A.2, 502A.3, 502A.4, subsection  
19 1, paragraph "b", or 502A.4, subsection 1, paragraph "d":

20 1. Cheat or defraud, or attempt to cheat or defraud,  
21 another person or employee any device, scheme, or artifice to  
22 defraud another person.

23 2. Make a false report, enter a false record, or make an  
24 untrue statement of a material fact or omit to state a  
25 material fact necessary in order to make the statements made,  
26 in the light of the circumstances under which they were made,  
27 not misleading.

28 3. Engage in a transaction, act, practice, or course of  
29 business, including, without limitation, any form of  
30 advertising or solicitation, which operates or would operate  
31 as a fraud or deceit upon any person.

32 4. Misappropriate or convert the funds, security, or  
33 property of another person.

34 Sec. 7. NEW SECTION. 502A.7 LIABILITY OF PRINCIPALS,  
35 CONTROLLING PERSONS, AND OTHERS.

1 1. The act, omission, or failure of an official, agent, or  
2 other person acting for an individual, association,  
3 partnership, corporation, or trust within the scope of the  
4 person's employment or office shall be deemed the act,  
5 omission, or failure of the individual, association,  
6 partnership, corporation, or trust, as well as of the person.

7 2. A person who directly or indirectly controls another  
8 person liable under this chapter, a partner, officer, or  
9 director of the other person, a person occupying a similar  
10 status or performing similar functions, and an employee of  
11 such other person who materially aids in the violation, is  
12 liable jointly and severally with and to the same extent as  
13 the other person, unless the person who is liable by virtue of  
14 this provision sustains the burden of proof that the person  
15 did not know, and in exercise of reasonable care could not  
16 have known, of the existence of the facts by reason of which  
17 the liability is alleged to exist.

18 Sec. 8. NEW SECTION. 502A.8 SECURITIES LAWS UNAFFECTED.

19 This chapter does not impair, derogate, or otherwise affect  
20 the authority or powers of the administrator under chapter 502  
21 or the application of any provision of chapter 502 to a person  
22 or transaction subject to that chapter.

23 Sec. 9. NEW SECTION. 502A.9 PURPOSE.

24 This chapter may be construed and implemented to effectuate  
25 its general purpose to protect investors, to prevent and  
26 prosecute illegal and fraudulent schemes involving commodity  
27 contracts and to maximize coordination with federal and other  
28 states' laws and the administration and enforcement of those  
29 laws. This chapter is not intended to create any rights or  
30 remedies upon which actions may be brought by private persons  
31 against persons who violate this chapter.

32 Sec. 10. NEW SECTION. 502A.11 INVESTIGATIONS.

33 1. The administrator may make investigations, within or  
34 without this state, as the administrator finds necessary or  
35 appropriate to do either or both of the following:

1 a. Determine whether any person has violated, or is about  
2 to violate this chapter or any rule or order of the  
3 administrator.

4 b. Aid in enforcement of this chapter.

5 2. The administrator may publish information concerning a  
6 violation of this chapter or any rule or order of the  
7 administrator.

8 3. For purposes of an investigation or proceeding under  
9 this chapter, the administrator or any officer or employee  
10 designated by rule or order, may administer oaths and  
11 affirmations, subpoena witnesses, compel their attendance,  
12 take evidence, and require the production of any books,  
13 papers, correspondence, memoranda, agreements, or other  
14 documents or records which the administrator finds to be  
15 relevant or material to the inquiry.

16 4. a. If a person does not give testimony or produce the  
17 documents required by the administrator or a designated  
18 employee pursuant to an administrative subpoena, the  
19 administrator or designated employee may apply for a court  
20 order compelling compliance with the subpoena or the giving of  
21 the required testimony.

22 b. The request for order of compliance may be addressed to  
23 either of the following:

24 (1) The Polk county district trial court or the district  
25 court where service may be obtained on the person refusing to  
26 testify or produce, if the person is within this state.

27 (2) The appropriate court of the state having jurisdiction  
28 over the person refusing to testify or produce, if the person  
29 is outside this state.

542530 Sec. 11. NEW SECTION. 502A.12 ENFORCEMENT OF CHAPTER.

31 1. If the administrator believes, whether or not based  
32 upon an investigation conducted under section 502A.11, that a  
33 person has engaged or is about to engage in an act or practice  
34 constituting a violation of this chapter or a rule or order  
35 issued under this chapter, the administrator may do any or all

1 of the following:

2 a. Issue a cease and desist order.

3 b. Issue an order imposing a civil penalty in amount which  
4 may not exceed ten thousand dollars for a single violation or  
5 one hundred thousand dollars for multiple violations in a  
6 single proceeding or a series of related proceedings.

7 c. Initiate any of the actions specified in subsection 2.

8 d. Take disciplinary action against a licensed person as  
9 specified in section 502A.38.

10 2. The administrator may institute any or all of the  
11 following actions in the appropriate courts of this state, or  
12 in the appropriate courts of another state, in addition to any  
13 legal or equitable remedies otherwise available:

14 a. A declaratory judgment.

15 b. An action for a prohibitory or mandatory injunction to  
16 enjoin the violation and to ensure compliance with this  
17 chapter or a rule or order of the administrator.

18 c. An action for disgorgement.

19 d. An action for appointment of a receiver or conservator  
20 for the defendant of the defendant's assets.

21 e. An action to enjoin permanently a person from acting as  
22 a commodity broker-dealer or a commodity sales representative,  
23 as defined in section 502A.31.

24 Sec. 12. NEW SECTION. 502A.13 POWER OF COURT TO GRANT  
25 RELIEF.

26 1. a. Upon a proper showing by the administrator that a  
27 person has violated, or is about to violate, this chapter or a  
28 rule or order of the administrator, a court of competent  
29 jurisdiction may grant appropriate legal or equitable  
30 remedies.

31 b. Upon showing of violation of this chapter or a rule or  
32 order of the administrator, the court, in addition to  
33 traditional legal and equitable remedies, including temporary  
34 restraining orders, permanent or temporary prohibitory or  
35 mandatory injunctions, and writs of prohibition or mandamus,

1 may grant any or all of the following special remedies:

2 (1) Imposition of a civil penalty in amount which may not  
3 exceed ten thousand dollars for any single violation or one  
4 hundred thousand dollars for multiple violations in a single  
5 proceeding or a series of related proceedings.

6 (2) Disgorgement.

7 (3) Declaratory judgment.

8 (4) Restitution to investors wishing restitution.

9 (5) Appointment of a receiver or conservator for the  
10 defendant or the defendant's assets.

11 (6) An injunction permanently enjoining the defendant or  
12 defendants from acting as a commodity broker-dealer or a  
13 commodity sales representative, as defined in section 502A.31.

14 c. Appropriate remedies when the defendant is shown only  
15 about to violate this chapter or a rule or order of the  
16 administrator shall be limited to any or all of the following:

17 (1) A temporary restraining order.

18 (2) A temporary or permanent injunction.

19 (3) A writ of prohibition or mandamus.

20 (4) An order appointing a receiver or conservator for the  
21 defendant or the defendant's assets.

22 2. The court shall not require the administrator to post a  
23 bond in any official action under this chapter.

24 3. a. Upon a proper showing by the administrator or  
25 securities or commodity agency of another state that a person,  
26 other than a government or governmental agency or  
27 instrumentality, has violated, or is about to violate, the  
28 commodity code of that state or a rule or order of the  
29 administrator or securities or commodity agency of that state,  
30 the district court may grant appropriate legal and equitable  
31 remedies.

32 b. Upon showing of a violation of the securities or  
33 commodity act of the foreign state or a rule or order of the  
34 administrator or securities or commodity agency of the foreign  
35 state, the court, in addition to traditional legal or



1 equitable remedies including temporary restraining orders,  
2 permanent or temporary prohibitory or mandatory injunctions  
3 and writs of prohibition or mandamus, may grant either or both  
4 of the following special remedies:

5 (1) Disgorgement.

6 (2) Appointment of a receiver, conservator, or ancillary  
7 receiver or conservator for the defendant or the defendant's  
8 assets located in this state.

9 c. Appropriate remedies when the defendant is shown only  
10 about to violate the securities or commodity act of the  
11 foreign state or a rule or order of the administrator or  
12 securities or commodity agency of the foreign state shall be  
13 limited to any or all of the following:

14 (1) A temporary restraining order.

15 (2) A temporary or permanent injunction.

16 (3) A writ of prohibition or mandamus.

17 (4) An order appointing a receiver, conservator, or  
18 ancillary receiver or conservator for the defendant or the  
19 defendant's assets located in this state.

20 Sec. 13. NEW SECTION. 502A.14 CRIMINAL PENALTIES.

21 1. A person who willfully violates either of the following  
22 shall, upon conviction, be fined not more than twenty thousand  
23 dollars or be imprisoned not more than ten years, or both, for  
24 each violation.

25 a. This chapter.

26 b. A rule or order of the administrator under this  
27 chapter.

28 2. A person convicted of violating a rule or order under  
29 this chapter may be fined, but may not be imprisoned, if the  
30 person proves the person had no knowledge of the rule or  
31 order.

32 3. The administrator may refer such evidence as is  
33 available concerning violations of this chapter or any rule or  
34 order of the administrator to the attorney general, who may,  
35 with or without such a reference from the administrator,

1 institute the appropriate criminal proceedings under this  
2 chapter.

3 Sec. 14. NEW SECTION. 502A.15 ADMINISTRATION OF CHAPTER.

4 1. This chapter shall be administered by the administrator  
5 of the securities bureau, of the insurance division of the  
6 department of commerce.

7 2. The administrator or any employees of the administrator  
8 shall not use any information which is filed with or obtained  
9 by the administrator which is not public information for  
10 personal gain or benefit, and the administrator or any  
11 employees of the administrator shall not conduct any  
12 securities or commodity dealings based upon any such  
13 information, even though public, if there has not been a  
14 sufficient period of time for the securities or commodity  
15 markets to assimilate such information.

16 3. a. Except as provided in paragraph "b", all  
17 information collected, assembled, or maintained by the  
18 administrator is public information and is available for the  
19 examination of the public as provided by chapter 22.

20 b. The following are exceptions to paragraph "a" which are  
21 confidential:

22 (1) Information obtained in private investigations  
23 pursuant to section 502A.11.

24 (2) Information made confidential by chapter 22.

25 (3) Information obtained from federal agencies which can  
26 not be disclosed under federal law.

27 c. The administrator in the administrator's discretion may  
28 disclose any information made confidential under paragraph "b"  
29 to persons identified in section 502A.16, subsection 1.

30 d. This chapter does not create or derogate any privilege  
31 which exists at common law, by statute or otherwise when  
32 documentary or other evidence is sought under subpoena  
33 directed to the administrator or any employee of the  
34 administrator.

35 Sec. 15. NEW SECTION. 502A.16 COOPERATION WITH OTHER

## 1 AGENCIES.

2 1. To encourage uniform application and interpretation of  
3 this chapter and securities regulation and enforcement in  
4 general, the administrator and the employees of the  
5 administrator may cooperate, including bearing the expense of  
6 the cooperation, with the securities agencies or administrator  
7 of another jurisdiction, Canadian province or territory or  
8 such other agencies administering this chapter, the commodity  
9 futures trading commission, the United States securities and  
10 exchange commission, any self-regulatory organization  
11 established under the Commodity Exchange Act or the federal  
12 Securities Exchange Act of 1934, any national or international  
13 organization of commodities or securities officials or  
14 agencies, and any governmental law enforcement agency.

15 2. The cooperation authorized by subsection 1 shall  
16 include, but need not be limited to, any or all of the  
17 following:

- 18 a. Making joint examinations or investigations.
- 19 b. Holding joint administrative hearings.
- 20 c. Filing and prosecuting joint litigation.
- 21 d. Sharing and exchanging personnel.
- 22 e. Sharing and exchanging information and documents.
- 23 f. Formulating and adopting mutual regulations, statements  
24 of policy, guidelines, proposed statutory changes, and  
25 releases.
- 26 g. Issuing and enforcing subpoenas at the request of the  
27 agency administering this chapter in another jurisdiction, the  
28 securities agency of another jurisdiction, the commodity  
29 futures trading commission or the United States securities and  
30 exchange commission if the information sought would also be  
31 subject to lawful subpoena for conduct occurring in this  
32 state.

33 Sec. 16. NEW SECTION. 502A.17 GENERAL AUTHORITY TO ADOPT  
34 RULES, FORMS, AND ORDERS.

35 1. In addition to specific authority granted elsewhere in

1 this chapter, the administrator may adopt rules and forms,  
2 pursuant to chapter 17A, and issue orders as are necessary to  
3 administer this chapter. Rules or forms to be adopted shall  
4 include, but need not be limited to, the following:

5 a. Rules defining any terms, whether or not used in this  
6 chapter, insofar as the definitions are not inconsistent with  
7 the provisions of this chapter.

8 b. For the purpose of rules or forms, the administrator  
9 may classify commodities and commodity contracts, persons, and  
10 matters within the administrator's jurisdiction.

11 2. Unless specifically provided in this chapter, a rule,  
12 form, or order shall not be adopted or issued unless the  
13 administrator finds that the action is both of the following:

14 a. Necessary or appropriate in the public interest or for  
15 the protection of investors.

16 b. Consistent with the purposes fairly intended by the  
17 policy of this chapter.

18 3. All rules and forms of the administrator shall be  
19 published as provided in chapter 17A.

20 4. A provision of this chapter imposing any liability  
21 shall not apply to an act done or omitted in good faith in  
22 conformity with a rule or form adopted or order issued by the  
23 administrator, notwithstanding that the rule, order, or form  
24 may later be amended, or rescinded, or be determined by  
25 judicial or other authority to be invalid for any reason.

26 Sec. 17. NEW SECTION. 502A.18 CONSENT TO SERVICE OF  
27 PROCESS.

28 When a person, including a nonresident of this state,  
29 engages in conduct prohibited or made actionable by this  
30 chapter or any rule or order of the administrator, the conduct  
31 shall constitute the appointment of the administrator as the  
32 person's attorney to receive service of any lawful process in  
33 a noncriminal proceeding against the person, a successor, or  
34 personal representative, which grows out of that conduct and  
35 which is brought under this chapter or any rule or order of

1 the administrator with the same force and validity as if  
2 served personally.

3 Sec. 18. NEW SECTION. 502A.19 CHAPTER SCOPE.

4 1. Sections 502A.2, 502A.5, and 502A.6 apply to a person  
5 who sells or offers to sell when either of the following  
6 occur:

7 a. An offer to sell is made in this state.

8 b. An offer to buy is made and accepted in this state.

9 2. Sections 502A.2, 502A.5, and 502A.6 apply to a person  
10 who buys or offers to buy when either of the following occur:

11 a. An offer to buy is made in this state.

12 b. An offer to sell is made and accepted in this state.

13 3. For the purpose of this section, an offer to sell or to  
14 buy is made in this state, whether or not either party is then  
15 present in this state, when either of the following occurs:

16 a. The offer originates from this state.

17 b. The offer is directed by the offeror to this state and  
18 received at the place to which it is directed, or at any post  
19 office in this state in the case of a mailed offer.

20 4. For the purpose of this section, an offer to buy or to  
21 sell is accepted in this state when the acceptance satisfies  
22 both of the following conditions:

23 a. The acceptance is communicated to the offeror in this  
24 state.

25 b. The acceptance has not previously been communicated to  
26 the offeror, orally or in writing, outside this state; and  
27 acceptance is communicated to the offeror in this state,  
28 whether or not either party is then present in this state,  
29 when the offeree directs it to the offeror in this state,  
30 reasonably believing the offeror to be in this state and it is  
31 received at the place to which it is directed, or at any post  
32 office in this state in the case of a mailed acceptance.

33 5. An offer to sell or to buy is not made in this state  
34 when either of the following occurs:

35 a. The publisher circulates or there is circulated on the

1 publisher's behalf in this state any bona fide newspaper or  
2 other publication of general, regular, and paid circulation  
3 which is not published in this state, or which is published in  
4 this state but has had more than two-thirds of its circulation  
5 outside this state during the past twelve months.

6 b. A radio or television program originating outside this  
7 state is received in this state.

8 Sec. 19. NEW SECTION. 502A.20 EFFECT OF PENDING JUDICIAL  
9 REVIEW.

10 The filing of a petition for judicial review pursuant to  
11 chapter 17A does not, unless specifically ordered by the  
12 court, operate as a stay of the administrator's order, and the  
13 administrator may enforce or ask the court to enforce the  
14 order pending the outcome of the review proceedings.

15 Sec. 20. NEW SECTION. 502A.21 PLEADING EXEMPTIONS.

16 It is not necessary for the state to plead the absence of  
17 an exemption under this chapter in a complaint, information,  
18 or indictment, or a writ or proceeding brought under this  
19 chapter. The burden of proof of a claimed exemption is upon  
20 the party claiming the exemption.

21 Sec. 21. NEW SECTION. 502A.22 AFFIRMATIVE DEFENSE.

22 It is an affirmative defense in a complaint, information,  
23 indictment, writ, or proceeding brought under this chapter  
24 alleging a violation of section 502A.2 based solely on the  
25 failure in an individual case to make physical delivery within  
26 the applicable time period under section 502A.1, subsection 5,  
27 or section 502A.4, subsection 1, paragraph "b" if both of the  
28 following apply:

29 1. Failure to make physical delivery was due solely to  
30 factors beyond the control of the seller, the seller's  
31 officers, directors, partners, agents, servants, or employees,  
32 every person occupying a similar status or performing similar  
33 functions, every person who directly or indirectly controls or  
34 is controlled by the seller, or any of them, the seller's  
35 affiliates, subsidiaries, or successors.

1        2. Physical delivery was completed within a reasonable  
2 time under the applicable circumstances.

3        Sec. 22. NEW SECTION. 502A.31 DEFINITIONS AND APPLICA-  
4 TION.

5        As used in this chapter, unless the context otherwise  
6 requires:

7        1. "Commodity broker-dealer" means a person engaged in the  
8 business of effecting transactions in commodity contracts or  
9 commodity options, as defined in section 502A.1, for the  
10 account of others or for the person's own account.

11       2. "Commodity sales representative" means a person  
12 authorized to act and acting for a commodity broker-dealer in  
13 effecting or attempting to effect a transaction in a commodity  
14 contract or a commodity option.

15       3. The application for licensing must contain the informa-  
16 tion as the administrator determines, by rule, is necessary or  
17 appropriate to facilitate the administration of this chapter.

18       Sec. 23. NEW SECTION. 502A.32 FEES.

19       An applicant for licensing shall pay an initial  
20 registration fee as follows:

21       a. Commodity broker-dealer, one hundred dollars, and for  
22 each branch office, fifty dollars.

23       b. Commodity sales representative, twenty-five dollars.

24       2. Except in a year in which a licensing fee is paid, an  
25 applicant shall pay an annual fee as follows:

26       a. Commodity broker-dealer, seventy-five dollars, and for  
27 each branch office in this state, thirty dollars.

28       b. Commodity sales representative, fifteen dollars.

29       3. For purposes of this section, a branch office shall  
30 mean each office of a commodity broker-dealer in this state,  
31 other than the principal office in this state of the commodity  
32 broker-dealer, from which one or more commodity sales  
33 representatives transact business.

34       4. If an application is denied or withdrawn or the license  
35 is terminated by revocation, cancellation, or withdrawal, the

1 administrator shall retain the fee paid.

2 Sec. 24. NEW SECTION. 502A.33 EXAMINATIONS.

3 1. The administrator may, by rule or order, impose an  
4 examination requirement upon either or both of the following:

5 a. An applicant applying for licensing under this  
6 subchapter.

7 b. A class of applicants.

8 2. A required examination may be administered by the  
9 administrator or by the designee of the administrator.

10 Examinations may be oral, written, or both, and may differ for  
11 each class of applicants.

12 3. The administrator may, by order, waive any examination  
13 requirement imposed pursuant to subsection 1 as to an  
14 applicant, if the administrator determines that the  
15 examination is not necessary for the protection of investors.

16 Sec. 25. NEW SECTION. 502A.34 LICENSING.

17 1. Unless a proceeding under section 502A.38 has been  
18 instituted, the license of a commodity broker-dealer or  
19 commodity sales representative becomes effective thirty days  
20 after an application for licensing and the last of any  
21 additional information requested by the administrator or the  
22 administrator's designee has been filed, provided that all  
23 examination requirements imposed pursuant to section 502A.33  
24 have been satisfied. The administrator may, by order,  
25 authorize an earlier effective date of licensing.

26 2. The license of a commodity broker-dealer or commodity  
27 sales representative expires on December 31 of the year for  
28 which issued or at such other time as the administrator may by  
29 rule prescribe.

30 3. The license of a commodity sales representative is only  
31 effective with respect to transactions effected as an employee  
32 or otherwise on behalf of the commodity broker-dealer for whom  
33 the commodity sales representative is licensed.

34 4. A person shall not at any one time act as a commodity  
35 sales representative for more than one commodity broker-



1 dealer, except in the following circumstances:

2 a. Where the commodity broker-dealers for whom the  
3 commodity sales representative will act are affiliated by  
4 direct or indirect common control, a commodity sales  
5 representative may represent each of those organizations.

6 b. Where the administrator, by rule or order, authorizes  
7 multiple licenses as consistent with a public interest and  
8 protection of investors.

9 5. When a commodity sales representative begins or  
10 terminates association with a commodity broker-dealer, or  
11 begins or terminates activities which make that person a  
12 commodity sales representative, the commodity sales  
13 representative and the former commodity broker-dealer on whose  
14 behalf the commodity sales representative was acting shall  
15 notify promptly the administrator or the administrator's  
16 designee.

17 6. If the administrator determines, by rule, that one or  
18 more classifications of licenses as a commodity broker-dealer  
19 or commodity sales representative, which are subject to  
20 limitations and conditions on the nature of the activities  
21 which may be conducted by those persons, are consistent with  
22 the public interest and the protection of investors, the  
23 administrator may authorize the licensing of persons subject  
24 to specific limitations and conditions.

25 Sec. 26. NEW SECTION. 502A.35 ANNUAL REPORT AND FEE.

26 A commodity broker-dealer or commodity sales representative  
27 licensed under this chapter shall file an annual report,  
28 together with the fee specified in section 502A.32, with the  
29 administrator or the designee of the administrator, at a time  
30 and including that information as the administrator  
31 determines, by rule or order, is necessary or appropriate.

32 Sec. 27. NEW SECTION. 502A.36 POSTLICENSING REQUIRE-  
33 MENTS.

34 1. a. The administrator may, by rule, require a licensed  
35 commodity broker-dealer to maintain either or both of the

1 following:

2 (1) Minimum net capital.

3 (2) A prescribed ratio between net capital and aggregate  
4 indebtedness.

5 The minimum net capital and net capital-to-aggregate-  
6 indebtedness ratio may vary with type or class of commodity  
7 broker-dealer.

8 b. If a licensed commodity broker-dealer believes, or has  
9 reasonable cause to believe, that any requirement imposed on  
10 the commodity broker-dealer under this subsection is not being  
11 met, the commodity broker-dealer shall promptly notify the  
12 administrator of its current financial condition.

13 2. The administrator may, by rule, require the furnishing  
14 of fidelity bonds from commodity broker-dealers.

15 3. A licensed commodity broker-dealer shall file financial  
16 and other reports as the administrator determines, by rule,  
17 are necessary or appropriate.

18 4. a. A licensed commodity broker-dealer or commodity  
19 sales representative shall make and maintain records as the  
20 administrator determines, by rule, are necessary or  
21 appropriate.

22 b. Required records may be maintained in computer or  
23 microform format or any other form of data storage provided  
24 that the records are readily accessible to the administrator.

25 c. Required records must be preserved for five years un-  
26 less the administrator, by rule, specifies either a longer or  
27 shorter period for a particular type or class of records.

28 5. If the information contained in any document filed with  
29 the administrator or the administrator's designee pursuant to  
30 section 502A.31 and sections 502A.33 through 502A.34 or this  
31 section, except for those documents which the administrator,  
32 by rule or order, may exclude from this requirement, is or  
33 becomes inaccurate or incomplete in any material respect, the  
34 licensed person shall promptly file a corrective amendment,  
35 unless notification of the correction has been given under

1 section 502A.34, subsection 5.

2 Sec. 28. NEW SECTION. 502A.37 INSPECTION POWER.

3 1. The administrator, without prior notice, may examine  
4 the records and require copies of the records which a licensed  
5 commodity broker-dealer or commodity sales representative is  
6 required to make and maintain under section 502A.36,  
7 subsection 4, within or without this state, in a manner rea-  
8 sonable under the circumstances. Commodity broker-dealers and  
9 commodity sales representatives shall make their records  
10 available to the administrator in a readable form.

11 2. The administrator may copy records or require a li-  
12 censed person to copy records and provide the copies to the  
13 administrator in a manner reasonable under the circumstances.

14 3. The administrator may charge the cost for conducting an  
15 examination pursuant to this section to the person examined.

16 Sec. 29. NEW SECTION. 502A.38 GROUNDS FOR DENIAL,  
17 REVOCATION, SUSPENSION, CANCELLATION, AND WITHDRAWAL.

18 1. The administrator may, by order, deny, suspend, or  
19 revoke a license, limit the activities which an applicant or  
20 licensed person may perform in this state, censure any  
21 applicant or licensed person, or bar any applicant or licensed  
22 person from association with a licensed commodity broker-  
23 dealer, if the administrator finds that the order is in the  
24 public interest and that the applicant or licensed person or,  
25 in the case of a commodity broker-dealer, any partner,  
26 officer, or director, a person occupying a similar status or  
27 performing similar functions, or a person directly or  
28 indirectly controlling the commodity broker-dealer meets any  
29 or all of the following criteria:

30 a. Has filed an application for licensing with the  
31 administrator or the designee of the administrator which, as  
32 of its effective date, or as of any date after filing in the  
33 case of an order denying effectiveness, was incomplete in any  
34 material respect or contained any statement which was, in  
35 light of the circumstances under which it was made, false or

1 misleading with respect to any material fact.

2 b. (1) Has violated or failed to comply with a provision  
3 of this chapter, a predecessor Act, or a rule or order under  
4 this chapter or a predecessor Act.

5 (2) If the subject of an adjudication or determination  
6 within the last five years by a securities agency or adminis-  
7 trator or court of competent jurisdiction that the person has  
8 willfully violated the federal Securities Act of 1933, the  
9 federal Securities Exchange Act of 1934, the federal  
10 Investment Advisors Act of 1940, the federal Investment  
11 Company Act of 1940, or the Commodity Exchange Act, or the  
12 securities or commodity law of any other state.

13 c. Has, within the last ten years, pled guilty or nolo  
14 contendere to, or been convicted of any crime indicating a  
15 lack of fitness to engage in the investment commodity  
16 business.

17 d. Is permanently or temporarily enjoined by any court of  
18 competent jurisdiction from engaging in, or continuing, any  
19 conduct or practice which injunction indicates a lack of  
20 fitness to engage in the investment commodities business.

21 e. Is subject to an order of the administrator denying,  
22 suspending, or revoking the person's license as a commodity or  
23 securities broker-dealer, sales representative, or investment  
24 advisor.

25 f. Is the subject of any of the following orders which are  
26 currently effective and which were issued within the last five  
27 years:

28 (1) An order by the securities agency or administrator of  
29 another state, Canadian province or territory, or the United  
30 States securities and exchange commission, entered after  
31 notice and opportunity for hearing, denying, suspending, or  
32 revoking the person's license as a commodities or securities  
33 broker-dealer, sales representative, or investment advisor, or  
34 the substantial equivalent of those terms.

35 (2) A suspension or expulsion from membership in or asso-

1 ciation with a self-regulatory organization registered under  
2 the federal Securities and Exchange Act of 1934 or the  
3 Commodity Exchange Act.

4 (3) A United States postal service fraud order.

5 (4) A cease and desist order entered after notice and  
6 opportunity for hearing by the administrator or the securities  
7 agency or administrator of any other state, Canadian province  
8 or territory, the United States securities and exchange  
9 commission, or the commodity futures trading commission.

10 (5) An order entered by the commodity futures trading  
11 commission denying, suspending, or revoking registration under  
12 the Commodity Exchange Act.

13 g. Has engaged in an unethical or dishonest conduct or  
14 practice in the investment commodities or securities business.

15 h. Is insolvent, either in the sense that liabilities  
16 exceed assets, or in the sense that obligations cannot be met  
17 as they mature.

18 i. Is not qualified on the basis of such factors as  
19 training, experience, and knowledge of the securities busi-  
20 ness, which determination shall be governed and limited by  
21 subsection 2.

22 j. Has failed reasonably to supervise sales representa-  
23 tives or employees.

24 k. Has failed to pay the proper filing fee within thirty  
25 days after being notified by the administrator of the  
26 deficiency, but the administrator shall vacate any order under  
27 this subsection when the deficiency has been corrected.

28 2. If the public interest or the protection of investors  
29 so requires, the administrator may, by order, summarily  
30 suspend a license or postpone the effective date of a license.  
31 Upon the entry of the order the administrator shall promptly  
32 notify the applicant or licensed person, as well as the  
33 commodity broker-dealer with whom the person is or will be  
34 associated if the applicant or licensed person is a commodity  
35 sales representative, that an order has been entered and of

1 the reasons therefore and that within thirty days after the  
2 receipt of a written request the matter will be set down for  
3 hearing to be conducted pursuant to chapter 17A.

4 3. If the administrator finds that an applicant or  
5 licensed person is no longer in existence or has ceased to do  
6 business as a commodity broker-dealer or commodity sales  
7 representative, or is subject to an adjudication of mental  
8 incompetence or to the control of a committee, conservator, or  
9 guardian, or cannot be located after reasonable search, the  
10 administrator may, by order, cancel the application or  
11 license.

12 4. The administrator may not institute a suspension or  
13 revocation proceeding on the basis of a fact or transaction  
14 disclosed in the license application unless the proceeding is  
15 instituted within ninety days following issuance of the  
16 license.

54407  
17 Sec. 30. CODIFICATION.

542518 The Code editor shall codify sections 502A.1 through 502A.9  
19 as subchapter I, new sections 502A.11 through 502A.22 as  
20 subchapter II, and new sections 502A.31 through 502A.38 as  
21 subchapter III.

22 EXPLANATION

23 This bill adopts the model state commodity Code as recom-  
24 mended by the North American securities administrators asso-  
25 ciation. The bill would regulate the commodities industry in  
26 an analogous fashion to the existing state regulation of the  
27 securities industry by requiring the licensing of commodity  
28 broker-dealers and sales representatives, mandating certain  
29 minimum standards of conduct and disclosure, and authorizing  
30 the administrator of the securities bureau of the insurance  
31 division of the department of commerce to investigate  
32 violations and impose civil remedies, sanctions, and  
33 penalties. Additionally, the bill authorizes criminal  
34 prosecutions and penalties for certain violations.

35

## HOUSE FILE 2377

H-5297

- 1 Amend House File 2377 as follows:
- 2 1. Page 4, line 16, by striking the words  
3 "offered by and".
- 4 2. Page 5, line 4, by striking the figure "3" and  
5 inserting the following: "III".
- 6 3. Page 5, line 13, by inserting after the word  
7 "contract" the following: ", offered or sold by a  
8 qualified seller as defined in subsection 2,".
- 9 4. Page 6, by inserting after line 8, the  
10 following:
- 11 "c. For the purposes of paragraph "b", a  
12 depository other than the seller shall not include a  
13 financial institution which makes loans to enable the  
14 borrower to finance the purchase of one or more  
15 precious metals if any of the following apply:
- 16 (1) The financial institution knows that the  
17 seller arranged for a commission, brokerage, or  
18 referral fee for the extension of credit by the  
19 financial institution.
- 20 (2) The financial institution is a person related  
21 to the seller, unless the relationship is remote or is  
22 not a factor in the transaction.
- 23 (3) The seller guarantees the loan or otherwise  
24 assumes the risk of loss by the financial institution  
25 upon the loan.
- 26 (4) The financial institution directly supplies  
27 the seller with the contract document used by the  
28 borrower to evidence the loan, and the seller has  
29 knowledge of the credit terms and participates in the  
30 preparation of the document.
- 31 (5) The loan is conditioned upon the borrower's  
32 purchase of the precious metals from a particular  
33 seller, but the financial institution's payment of  
34 proceeds of the loan to the seller does not in itself  
35 establish that the loan was so conditioned.
- 36 (6) The financial institution otherwise knowingly  
37 participates with the seller in the sale. The fact  
38 that the financial institution takes a security  
39 interest in the precious metals sold or makes the  
40 proceeds of the loan payable to the seller does not in  
41 itself constitute knowing participation in the sale."
- 42 5. Page 8, by striking line 17, and inserting the  
43 following: "waive any of the exempt transaction  
44 requirements of this section,".
- 45 6. Page 8, line 29, by striking the figure "3"  
46 and inserting the following: "2".
- 47 7. Page 11, line 21, by striking the word  
48 "employee" and inserting the following: "employ".
- 49 8. Page 11, by striking lines 23 through 27, and  
50 inserting the following:

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Page 2

1 "\_\_\_\_\_. Make a false report or enter a false record.  
 2 \_\_\_\_\_ Make an untrue statement of a material fact  
 3 or omit to state a material fact necessary in order to  
 4 make the statements made, in the light of the  
 5 circumstances under which they were made, not  
 6 misleading."

7 9. Page 14, line 20, by striking the word "of"  
 8 and inserting the following: "or".

9 10. Page 14, by inserting after line 20, the  
 10 following:

11 "e. An action for restitution."

12 11. Page 16, line 6, by striking the word  
 13 "ancilliary" and inserting the following:

14 "ancillary".

15 12. Page 16, line 18, by striking the word  
 16 "ancilliary" and inserting the following:

17 "ancillary".

18 13. Page 16, line 34, by inserting after the word  
 19 "general" the following: "or the proper county  
 20 attorney".

21 14. Page 17, by inserting after line 2, the  
 22 following:

23 "4. This chapter does not limit the power of the  
 24 state to proceed against a person for conduct which  
 25 constitutes a breach of duty, a crime, or a violation  
 26 under common law, rule, or another statute. An action  
 27 pursuant to this chapter is not an election of  
 28 remedies, and an aggrieved person or the state retains  
 29 any other common law or statutory causes of action  
 30 which may exist against a person alleged to have  
 31 violated this chapter or against a person convicted of  
 32 such a violation."

33 15. Page 17, line 20, by striking the word  
 34 "which" and inserting the following: "and".

35 16. Page 17, by striking lines 22 and 23, and  
 36 inserting the following:

37 "(1) Information obtained in an investigation  
 38 pursuant to section 502A.11, unless published pursuant  
 39 to 502A.11, subsection 2."

40 17. Page 23, line 22, by striking the word "all"  
 41 and inserting the following: "the".

42 18. By renumbering, relettering, and  
 43 redesignating as necessary.

By JESSE of Jasper

H-5297 FILED FEBRUARY 22, 1990

*Adopted 3/1 (p. 783)*

*Page 4, lines 40 & 41 } Placed o/o with adoption  
 Page 4, lines 4 & 5 } of H-5425*



HOUSE FILE 2377

H-5296

1 Amend House File 2377 as follows:

2 1. Page 5, line 4, by striking the figure "3" and  
3 inserting the following: "III".

4 2. Page 8, by striking line 17, and inserting the  
5 following: "waive any of the exempt transaction  
6 requirements of this section,".

7 3. Page 8, line 29, by striking the figure "3"  
8 and inserting the following: "2".

9 4. Page 11, line 21, by striking the word  
10 "employee" and inserting the following: "employ".

11 5. Page 11, by striking lines 23 through 27, and  
12 inserting the following:

13 "\_\_\_\_\_. Make a false report or enter a false record.  
14 \_\_\_\_\_ . Make an untrue statement of a material fact  
15 or omit to state a material fact necessary in order to  
16 make the statements made, in the light of the  
17 circumstances under which they were made, not  
18 misleading."

19 6. Page 14, line 20, by striking the word "of"  
20 and inserting the following: "or".

21 7. Page 16, line 6, by striking the word  
22 "ancilliary" and inserting the following:  
23 "ancillary".

24 8. Page 16, line 18, by striking the word  
25 "ancilliary" and inserting the following:  
26 "ancillary".

27 9. Page 17, line 20, by striking the word "which"  
28 and inserting the following: "and".

29 10. Page 17, by striking lines 22 and 23, and  
30 inserting the following:

31 "(1) Information obtained in an investigation  
32 pursuant to section 502A.11, unless published pursuant  
33 to 502A.11, subsection 2."

34 11. Page 23, line 22, by striking the word "all"  
35 and inserting the following: "one or more of the".

36 12. By renumbering as necessary.

By JESSE of Jasper

H-5296 FILED FEBRUARY 22, 1990

*Placed c/o 3/1 (p. 183)*

HOUSE FILE 2377

H-5425

- 1 Amend House File 2377 as follows:  
2 1. Page 5, by striking lines 2 through 4.  
3 2. Page 14, by striking lines 8 and 9.  
4 3. Page 14, by striking lines 21 through 23.  
5 4. Page 15, by striking lines 11 through 13.  
6 5. By striking page 22, line 3 through page 29,  
7 line 16.  
8 6. Page 29, line 19, by striking the figure "1,"  
9 and inserting the following: "1 and".  
10 7. Page 29, by striking lines 20 through 21, and  
11 inserting the following: "subchapter II."  
12 8. By renumbering as necessary.

By JESSE of Jasper

H-5425 FILED FEBRUARY 28, 1990

*Adopted 3/1 (p. 783)*

HOUSE FILE 2377

H-5440

- 1 Amend House File 2377 as follows:  
2 1. Page 29, by inserting after line 16, the  
3 following:  
4 "Sec. 100. NEW SECTION. 553.19 REMEDIES OF  
5 INDIRECT AGRICULTURAL SELLERS.  
6 1. A suit brought under section 553.12 for damages  
7 resulting from an underpayment received on the sale of  
8 cattle, hogs, sheep, grains, or soybeans shall not be  
9 barred because the person seeking damages is not a  
10 direct seller to the defendant. However, the person  
11 seeking damages under section 553.12 must have  
12 possessed the livestock or grain plant for feeding or  
13 growing purposes for at least twenty-one days prior to  
14 sale to assert a cause of action for remedy under  
15 section 553.12.  
16 2. In a suit brought under section 553.12 for  
17 damages resulting from an underpayment received on the  
18 sale of cattle, hogs, sheep, grains, or soybeans, or  
19 the sale of products processed therefrom, the person  
20 seeking damages under section 553.12 shall not recover  
21 for any amount of an underpayment that has been passed  
22 on to other persons who are themselves entitled to  
23 recover damages for such underpayment under section  
24 553.12.  
25 Sec. \_\_\_\_\_. Section 100 applies to all suits brought  
26 under section 553.12 which are tried on or after the  
27 effective date of this Act.  
28 Sec. \_\_\_\_\_. Section 100 being deemed of immediate  
29 importance, takes effect upon enactment."  
30 2. Title page, line 8, by inserting after the  
31 word "penalties" the following: ", and authorizing  
32 certain remedies for indirect sellers of agricultural  
33 grain commodities or livestock commodities, and  
34 providing an effective date".  
35 3. By renumbering as necessary.

By HIBBARD of Madison

H-5440 FILED FEBRUARY 28, 1990

*Revised not germane 3/1 (p. 784)*

**HOUSE FILE 2377  
FISCAL NOTE**

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A fiscal note for House File 2377 is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

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House File 2377 adopts the model state commodity Code as recommended by the North American securities administrators association. The bill would regulate the commodities industry in an analogous fashion to the existing state regulation of the securities industry by requiring the licensing of commodity broker-dealers and sales representatives, mandating certain minimum standards of conduct and disclosure, and authorizing the administrator of the Securities Bureau of the Insurance Division of the Department of Commerce to investigate violations and impose civil remedies, sanctions, and penalties. Additionally, the bill authorizes criminal prosecutions and penalties for certain violations.

**FISCAL IMPACT:**

No additional staff or expense will be required, nor will revenue be generated, so there is no fiscal impact.

Source: (Department of Commerce  
Insurance Division)

(LSB 7780yh, MAS)

FILED FEBRUARY 15, 1990

BY DENNIS PROUTY, FISCAL DIRECTOR

Sen Commerce 3/5 B. Pass 3/12 (p. 984)

HOUSE FILE 2377  
BY SCHRADER

(As Amended and Passed by the House March 1, 1990)

Passed House, Date 3/1/90 (p. 984) Passed Senate, Date 3/26/90 (p. 1299)  
Vote: Ayes 89 Nays 0 Vote: Ayes 50 Nays 0  
Approved April 16, 1990

**A BILL FOR**

1 An Act adopting the model state commodity Code as recommended by  
2 the North American securities administrators association,  
3 regulating the commodities markets and participants,  
4 authorizing the securities bureau of the insurance division to  
5 administer the chapter, requiring licensing of commodity  
6 broker-dealers and sales representatives, authorizing civil  
7 remedies, sanctions, penalties, and imposing criminal  
8 penalties.

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

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House Amendments \_\_\_\_\_  
Deleted Language \*

1 Section 1. NEW SECTION. 502A.1 DEFINITIONS.

2 For purposes of this chapter, unless the context otherwise  
3 requires:

4 1. "Administrator" means the administrator of the  
5 securities bureau of the insurance division of the department  
6 of commerce.

7 2. "Board of trade" means a person or group of persons  
8 engaged in buying or selling any commodity or receiving the  
9 same for sale on consignment, whether the person or group of  
10 persons is characterized as a board of trade, exchange, or  
11 other form of marketplace.

12 3. "CFTC rule" means a regulation or order of the  
13 commodity futures trading commission in effect on the  
14 effective date of this Act, and all subsequent amendments,  
15 additions or other revisions to the regulation or order,  
16 unless the administrator, within ten days following the  
17 effective date of the amendment, addition, or revision,  
18 disallows the application to this chapter in whole or in part  
19 by rule or order.

20 4. "Commodity" means, except as otherwise specified by the  
21 administrator by rule or order: an agricultural, grain, or  
22 livestock product or by-product; a metal or mineral, including  
23 a precious metal; a gem or gemstone, whether characterized as  
24 precious, semiprecious or otherwise; a fuel, whether liquid,  
25 gaseous or otherwise; a foreign currency; and all other goods,  
26 articles, products, or items of any kind.

27 The term commodity does not include any of the following:

28 a. A numismatic coin whose fair market value is at least  
29 fifteen percent higher than the value of the metal it  
30 contains.

31 b. Real property or any timber, agricultural, or livestock  
32 product grown or raised on real property and offered or sold  
33 by the owner or lessee of such real property.

34 c. Any work of art offered or sold by art dealers, at  
35 public auction, or offered or sold through a private sale by

1 the owner of the work of art.

2 5. "Commodity contract" means an account, agreement, or  
3 contract for the purchase or sale, primarily for speculation  
4 or investment purposes and not for use or consumption by the  
5 offeree or purchaser, of one or more commodities, whether for  
6 immediate or subsequent delivery or whether delivery is  
7 intended by the parties, and whether characterized as a cash  
8 contract, deferred shipment or deferred delivery contract,  
9 forward contract, futures contract, installment or margin  
10 contract, leverage contract, or otherwise. A commodity  
11 contract offered or sold, in the absence of evidence to the  
12 contrary, shall be presumed to be offered or sold for  
13 speculation or investment purposes. A commodity contract does  
14 not include a contract or agreement which requires, and under  
15 which the purchaser receives, within twenty-eight days from  
16 the payment in good funds of any portion of the purchase  
17 price, physical delivery of the total amount of each commodity  
18 to be purchased under the contract or agreement.

19 6. "Commodity Exchange Act" means the federal Commodity  
20 Exchange Act, as amended to the effective date of this Act,  
21 codified at 7 U.S.C. § 1, et seq., and all subsequent  
22 amendments, additions, or other revisions to the Act, unless  
23 the administrator, within ten days following the effective  
24 date of the amendment, addition, or revision, disallows its  
25 application to this chapter in whole or in part by rule or  
26 order.

27 7. "Commodity futures trading commission" or "CFTC" means  
28 the independent regulatory agency established by the United  
29 States congress to administer the Commodity Exchange Act.

30 8. "Commodity merchant" means any of the following as  
31 defined or described in the Commodity Exchange Act or by CFTC  
32 rule:

- 33 a. A futures commission merchant.
- 34 b. A commodity pool operator.
- 35 c. A commodity trading adviser.

- 1 d. An introducing broker.
- 2 e. A leverage transaction merchant.
- 3 f. An associated person of any of the persons listed in  
4 paragraphs "a" through "e".
- 5 g. A floor broker.
- 6 h. Any other person, other than a futures association,  
7 required to register with the commodity futures trading  
8 commission.
- 9 9. "Commodity option" means an account, agreement, or  
10 contract giving a party to the account, agreement, or contract  
11 the right but not the obligation to purchase or sell one or  
12 more commodities or one or more commodity contracts, whether  
13 characterized as an option, privilege, indemnity, bid, offer,  
14 put, call, advance guaranty, decline guaranty or otherwise,  
15 but shall not include an option traded on a national  
16 securities exchange registered with the United States  
17 securities and exchange commission.
- 18 10. "Financial institution" means a bank, savings  
19 institution, or trust company organized under, or supervised  
20 pursuant to, the laws of the United States or of any state.
- 21 11. "Offer" includes every offer to sell, offer to  
22 purchase, or offer to enter into a commodity contract or  
23 commodity option.
- 24 12. "Person" means a person as defined in section 4.1, but  
25 does not include a contract market designated by the  
26 commodities futures trading commission or any clearinghouse of  
27 the CFTC or a national securities exchange registered with the  
28 securities and exchange commission, or any employee, officer,  
29 or director of a contract market, clearinghouse, or exchange  
30 acting solely in that capacity.
- 31 13. "Precious metal" means one or more of the following in  
32 either coin, bullion, or other form:
- 33 a. Silver.
- 34 b. Gold.
- 35 c. Platinum.

- 1 d. Palladium.
- 2 e. Copper.
- 3 f. Such other items as the administrator may specify by
- 4 rule or order.

5 14. "Sale" or "sell" includes every sale, contract of  
6 sale, contract to sell, or disposition, for value.

7 Sec. 2. NEW SECTION. 502A.2 UNLAWFUL COMMODITY  
8 TRANSACTIONS.

9 Except as otherwise provided in section 502A.3 or 502A.4, a  
10 person shall not sell or purchase, or offer to sell or  
11 purchase, a commodity under a commodity contract, or under a  
12 commodity option, or offer to enter into, or enter into as  
13 seller or purchaser, a commodity contract or commodity option.

14 Sec. 3. NEW SECTION. 502A.3 EXEMPT PERSON TRANSACTIONS.

15 The prohibitions in section 502A.2 do not apply to a  
\*16 transaction in which any of the following persons, or any  
17 employee, officer, or director of a listed person acting  
18 solely in that capacity, is the purchaser or seller:

19 1. A person registered with the commodity futures trading  
20 commission as a futures commission merchant or as a leverage  
21 transaction merchant whose activities require such  
22 registration.

23 2. A person registered with the securities and exchange  
24 commission as a broker-dealer whose activities require such  
25 registration.

26 3. A person affiliated with, and whose obligations and  
27 liabilities under the transaction are guaranteed by, a person  
28 referred to in subsection 1 or 2.

29 4. A person who is a member of a contract market  
30 designated by the commodity futures trading commission, or any  
31 CFTC clearinghouse.

32 5. A financial institution.

33 6. A person registered under the laws of this state as a  
34 securities broker-dealer whose activities require such  
35 registration.



1 This exemption provided by this section does not apply to  
2 any transaction or activity which is prohibited by the  
3 Commodity Exchange Act or CFTC rule.

4 Sec. 4. NEW SECTION. 502A.4 EXEMPT TRANSACTIONS.

5 1. Section 502A.2 does not apply to any of the following:

6 a. An account, agreement, or transaction within the  
7 exclusive jurisdiction of the commodity futures trading  
8 commission as granted under the Commodity Exchange Act.

9 b. A commodity contract, offered or sold by a qualified  
10 seller as defined in subsection 2, for the purchase of one or  
11 more precious metals which requires, and under which the  
12 purchaser receives, within twenty-eight days from the payment  
13 in good funds of any portion of the purchase price, physical  
14 delivery of the quantity of the precious metals purchased by  
15 the payment. For purposes of this paragraph, physical  
16 delivery shall be deemed to have occurred if both of the  
17 following conditions are satisfied:

18 (1) Within twenty-eight days, the required quantity of  
19 precious metals purchased by the payment is delivered, whether  
20 in specifically segregated or fungible bulk form, into the  
21 possession of a depository, other than the seller, which is  
22 any of the following:

23 (a) A financial institution.

24 (b) A depository the warehouse receipts of which are  
25 recognized for delivery purposes for any commodity on a  
26 contract market designated by the commodity futures trading  
27 commission.

28 (c) A storage facility licensed or regulated by the United  
29 States or any agency of the United States.

30 (d) A depository designated by the administrator.

31 (2) The depository or a qualified seller issues and the  
32 purchaser receives, a certificate, document of title,  
33 confirmation, or other instrument evidencing that the required  
34 quantity of precious metals has been delivered to the  
35 depository and is being and will continue to be held by the

1 depository on the purchaser's behalf, free and clear of all  
2 liens and encumbrances, other than liens of the purchaser, tax  
3 liens, liens agreed to by the purchaser, or liens of the  
4 depository for fees and expenses, which have previously been  
5 disclosed to the purchaser.

6 c. For the purposes of paragraph "b", a depository other  
7 than the seller shall not include a financial institution  
8 which makes loans to enable the borrower to finance the  
9 purchase of one or more precious metals if any of the  
10 following apply:

11 (1) The financial institution knows that the seller  
12 arranged for a commission, brokerage, or referral fee for the  
13 extension of credit by the financial institution.

14 (2) The financial institution is a person related to the  
15 seller, unless the relationship is remote or is not a factor  
16 in the transaction.

17 (3) The seller guarantees the loan or otherwise assumes  
18 the risk of loss by the financial institution upon the loan.

19 (4) The financial institution directly supplies the seller  
20 with the contract document used by the borrower to evidence  
21 the loan, and the seller has knowledge of the credit terms and  
22 participates in the preparation of the document.

23 (5) The loan is conditioned upon the borrower's purchase  
24 of the precious metals from a particular seller, but the  
25 financial institution's payment of proceeds of the loan to the  
26 seller does not in itself establish that the loan was so  
27 conditioned.

28 (6) The financial institution otherwise knowingly  
29 participates with the seller in the sale. The fact that the  
30 financial institution takes a security interest in the  
31 precious metals sold or makes the proceeds of the loan payable  
32 to the seller does not in itself constitute knowing  
33 participation in the sale.

34 d. A commodity contract solely between persons engaged in  
35 producing, processing, using commercially or handling as

1 merchants, the commodity which is the subject of the contract,  
2 or any by-product of the commodity.

3 e. A commodity contract under which the offeree or the  
4 purchaser is a person under section 502A.3, an insurance  
5 company, an investment company as defined in the federal  
6 Investment Company Act of 1940, or an employee pension and  
7 profitsharing or benefit plan other than a self-employed  
8 individual retirement plan, or individual retirement account.

9 2. For the purposes of subsection 1, paragraph "b", a  
10 qualified seller is a person who satisfies all of the  
11 following conditions:

12 a. Is a seller of precious metals and has a tangible net  
13 worth of at least five million dollars, or has an affiliate  
14 who has unconditionally guaranteed the obligations and  
15 liabilities of the seller and the affiliate has a tangible net  
16 worth of at least five million dollars.

17 b. Has stored precious metals with one or more  
18 depositories on behalf of customers for at least the previous  
19 three years.

20 c. Prior to any offer, files with the administrator a  
21 sworn notice of intent to act as a qualified seller under  
22 subsection 1, paragraph "b", and annually files a new notice.  
23 A notice of intent to act as a qualified seller must contain  
24 all of the following:

25 (1) The seller's name and address, names of its directors,  
26 officers, controlling shareholders, partners, principals, and  
27 other controlling persons.

28 (2) The address of its principal place of business, state  
29 and date of incorporation or organization, and the name and  
30 address of seller's registered agent in this state.

31 (3) A statement that the seller, or a person affiliated  
32 with the seller who has guaranteed the obligations and  
33 liabilities of the seller, has a tangible net worth of at  
34 least five million dollars.

35 (4) Depository information including all of the following:

1 (a) The name and address of the depository or depositories  
2 that the seller intends to use.

3 (b) The name and address of each and every depository  
4 where the seller has stored precious metals on behalf of  
5 customers for the previous three years.

6 (c) Independent verification from each and every  
7 depository named in subparagraph subdivision (b) that the  
8 seller has in fact stored precious metals on behalf of the  
9 seller's customers for the previous three years and a  
10 statement of total deposits made during this period.

11 (5) Financial statements for the seller, or the person  
12 affiliated with the seller who has guaranteed the obligations  
13 and liabilities of the seller, for the past three years,  
14 audited by an independent certified public accountant,  
15 together with the accountant's reports.

16 (6) A statement describing the details of all civil,  
17 criminal, or administrative proceedings currently pending or  
18 adversely resolved against the seller or its directors,  
19 officers, controlling shareholders, partners, principals, or  
20 other controlling persons during the past ten years including  
21 all of the following in subparagraph subdivisions (a) through  
22 (d), or if not applicable, subparagraph subdivision (e):

23 (a) Civil litigation and administrative proceedings  
24 involving securities or commodities violations, or fraud.

25 (b) Criminal proceedings.

26 (c) Denials, suspensions, or revocations of securities or  
27 commodities, licenses, or registrations.

28 (d) Suspensions or expulsions from membership in, or  
29 associations with, self-regulatory organizations registered  
30 under the Securities Exchange Act of 1934, or the Commodities  
31 Exchange Act.

32 (e) A statement that there were no such proceedings.

33 d. Notifies the administrator within fifteen days of any  
34 material changes in the information provided in the notice of  
35 intent.

1 e. Annually furnishes to each purchaser for whom the  
2 seller is then storing precious metals, and to the  
3 administrator, a report by an independent certified public  
4 accountant of the accountant's examination of the seller's  
5 precious metals storage program.

6 3. The administrator may, upon request by the seller,  
7 waive any of the exempt transaction requirements of this  
8 section, conditionally or unconditionally.

9 4. The administrator may, by order, deny, suspend, revoke,  
10 or place limitations on the authority to engage in business as  
11 a qualified seller under subsection 1, paragraph "b" if the  
12 administrator finds that the order is in the public interest  
13 and that the person, the person's officers, directors,  
14 partners, agents, servants or employees, a person occupying a  
15 similar status or performing similar functions, a person who  
16 directly or indirectly controls or is controlled by the  
17 seller, or any of them, the seller's affiliates or  
18 subsidiaries meets any of the following conditions:

19 a. Has filed a notice of intention under subsection 2 with  
20 the administrator or the designee of the administrator which  
21 was incomplete in any material respect or contained any  
22 statement which was, in light of the circumstances under which  
23 it was made, false or misleading with respect to any material  
24 fact.

25 b. Has, within the last ten years, pled guilty or nolo  
26 contendere to, or been convicted of any crime indicating a lack  
27 of fitness to engage in the investment commodity business.

28 c. Has been permanently or temporarily enjoined by any  
29 court of competent jurisdiction from engaging in, or  
30 continuing, any conduct or practice which injunction indicates  
31 a lack of fitness to engage in the investment commodities  
32 business.

33 d. Is the subject of an order of the administrator  
34 denying, suspending, or revoking the person's license as a  
35 securities broker-dealer, sales representative, or investment

1 adviser.

2 e. Is the subject of any of the following orders which are  
3 currently effective and which were issued within the last five  
4 years:

5 (1) An order by the securities agency or administrator of  
6 another state, Canadian province or territory, the securities  
7 and exchange commission, or the commodity futures trading  
8 commission, entered after notice and opportunity for hearing,  
9 denying, suspending, or revoking the person's registration as  
10 a futures commission merchant, commodity trading adviser,  
11 commodity pool operator, securities broker-dealer, sales  
12 representative, or investment adviser, or the substantial  
13 equivalent of those terms.

14 (2) Suspension or expulsion from membership in, or  
15 association with, a self-regulatory organization registered  
16 under the federal Securities Exchange Act of 1934 or the  
17 Commodity Exchange Act.

18 (3) A United States postal service fraud order.

19 (4) A cease and desist order entered after notice and  
20 opportunity of hearing by the administrator or the securities  
21 agency or administrator of any other state, Canadian province  
22 or territory, the United States securities and exchange  
23 commission, or the commodity futures trading commission.

24 (5) An order entered by the commodity futures trading  
25 commission denying, suspending, or revoking registration under  
26 the Commodity Exchange Act.

27 f. Has engaged in an unethical or dishonest act or  
28 practice in the investment commodities or securities business.

29 g. Has failed reasonably to supervise sales  
30 representatives or employees.

31 5. If the public interest or the protection of investors  
32 so requires, the administrator may, by order, summarily deny  
33 or suspend the exemption for a qualified seller. Upon the  
34 entry of the order, the administrator shall promptly notify  
35 the person claiming such status that an order has been entered

1 and the reasons for the order and that within thirty days  
2 after the receipt of a written request the matter will be set  
3 for hearing. Section 502A.20 applies with respect to all  
4 subsequent proceedings.

5 6. If the administrator finds that any applicant or  
6 qualified seller is no longer in existence or has ceased to do  
7 business or is subject to an adjudication of mental  
8 incompetence or to the control of a committee, conservator, or  
9 guardian, or cannot be located after reasonable search, the  
10 administrator may, by order deny, or revoke the exemption for  
11 a qualified seller.

12 7. The administrator may issue rules or orders prescribing  
13 the terms and conditions of all transactions and contracts  
14 covered by this chapter which are not within the exclusive  
15 jurisdiction of the commodity futures trading commission as  
16 granted by the Commodity Exchange Act, exempting and  
17 conditionally or unconditionally and otherwise implementing  
18 this chapter for the protection of purchasers and sellers of  
19 commodities.

20 Sec. 5. NEW SECTION. 502A.5 UNLAWFUL COMMODITY  
21 ACTIVITIES.

22 1. A person shall not engage in a trade or business or  
23 otherwise act as a commodity merchant unless the person is  
24 either of the following:

25 a. Registered or temporarily licensed with the commodity  
26 futures trading commission for each activity constituting the  
27 person as a commodity merchant and the registration or  
28 temporary license has not expired, been suspended, or revoked.

29 b. Exempt from such registration by virtue of the  
30 Commodity Exchange Act or of a CFTC rule.

31 2. A board of trade shall not trade, or provide a place  
32 for the trading of, any commodity contract or commodity option  
33 required to be traded on or subject to the rules of a contract  
34 market designated by the commodity futures trading commission  
35 unless the board of trade has been so designated for the

1 commodity contract or commodity option and the designation has  
2 not been vacated, suspended, or revoked.

3 Sec. 6. NEW SECTION. 502A.6 FRAUDULENT CONDUCT.

4 A person, shall not directly or indirectly do any of the  
5 following in or in connection with the purchase or sale of,  
6 the offer to sell, the offer to purchase, the offer to enter  
7 into, or the entry into of, a commodity contract or commodity  
8 option subject to sections 502A.2, 502A.3, 502A.4, subsection  
9 1, paragraph "b", or 502A.4, subsection 1, paragraph "d":

10 1. Cheat or defraud, or attempt to cheat or defraud,  
11 another person or employ any device, scheme, or artifice to  
12 defraud another person.

13 2. Make a false report or enter a false record.

14 3. Make an untrue statement of a material fact or omit to  
15 state a material fact necessary in order to make the  
16 statements made, in the light of the circumstances under which  
17 they were made, not misleading.

18 4. Engage in a transaction, act, practice, or course of  
19 business, including, without limitation, any form of  
20 advertising or solicitation, which operates or would operate  
21 as a fraud or deceit upon any person.

22 5. Misappropriate or convert the funds, security, or  
23 property of another person.

24 Sec. 7. NEW SECTION. 502A.7 LIABILITY OF PRINCIPALS,  
25 CONTROLLING PERSONS, AND OTHERS.

26 1. The act, omission, or failure of an official, agent, or  
27 other person acting for an individual, association,  
28 partnership, corporation, or trust within the scope of the  
29 person's employment or office shall be deemed the act,  
30 omission, or failure of the individual, association,  
31 partnership, corporation, or trust, as well as of the person.

32 2. A person who directly or indirectly controls another  
33 person liable under this chapter, a partner, officer, or  
34 director of the other person, a person occupying a similar  
35 status or performing similar functions, and an employee of



1 such other person who materially aids in the violation, is  
2 liable jointly and severally with and to the same extent as  
3 the other person, unless the person who is liable by virtue of  
4 this provision sustains the burden of proof that the person  
5 did not know, and in exercise of reasonable care could not  
6 have known, of the existence of the facts by reason of which  
7 the liability is alleged to exist.

8 Sec. 8. NEW SECTION. 502A.8 SECURITIES LAWS UNAFFECTED.

9 This chapter does not impair, derogate, or otherwise affect  
10 the authority or powers of the administrator under chapter 502  
11 or the application of any provision of chapter 502 to a person  
12 or transaction subject to that chapter.

13 Sec. 9. NEW SECTION. 502A.9 PURPOSE.

14 This chapter may be construed and implemented to effectuate  
15 its general purpose to protect investors, to prevent and  
16 prosecute illegal and fraudulent schemes involving commodity  
17 contracts and to maximize coordination with federal and other  
18 states' laws and the administration and enforcement of those  
19 laws. This chapter is not intended to create any rights or  
20 remedies upon which actions may be brought by private persons  
21 against persons who violate this chapter.

22 Sec. 10. NEW SECTION. 502A.11 INVESTIGATIONS.

23 1. The administrator may make investigations, within or  
24 without this state, as the administrator finds necessary or  
25 appropriate to do either or both of the following:

26 a. Determine whether any person has violated, or is about  
27 to violate this chapter or any rule or order of the  
28 administrator.

29 b. Aid in enforcement of this chapter.

30 2. The administrator may publish information concerning a  
31 violation of this chapter or any rule or order of the  
32 administrator.

33 3. For purposes of an investigation or proceeding under  
34 this chapter, the administrator or any officer or employee  
35 designated by rule or order, may administer oaths and

1 affirmations, subpoena witnesses, compel their attendance,  
2 take evidence, and require the production of any books,  
3 papers, correspondence, memoranda, agreements, or other  
4 documents or records which the administrator finds to be  
5 relevant or material to the inquiry.

6 4. a. If a person does not give testimony or produce the  
7 documents required by the administrator or a designated  
8 employee pursuant to an administrative subpoena, the  
9 administrator or designated employee may apply for a court  
10 order compelling compliance with the subpoena or the giving of  
11 the required testimony.

12 b. The request for order of compliance may be addressed to  
13 either of the following:

14 (1) The Polk county district trial court or the district  
15 court where service may be obtained on the person refusing to  
16 testify or produce, if the person is within this state.

17 (2) The appropriate court of the state having jurisdiction  
18 over the person refusing to testify or produce, if the person  
19 is outside this state.

20 Sec. 11. NEW SECTION. 502A.12 ENFORCEMENT OF CHAPTER.

21 1. If the administrator believes, whether or not based  
22 upon an investigation conducted under section 502A.11, that a  
23 person has engaged or is about to engage in an act or practice  
24 constituting a violation of this chapter or a rule or order  
25 issued under this chapter, the administrator may do any or all  
26 of the following:

27 a. Issue a cease and desist order.

28 b. Issue an order imposing a civil penalty in amount which  
29 may not exceed ten thousand dollars for a single violation or  
30 one hundred thousand dollars for multiple violations in a  
31 single proceeding or a series of related proceedings.

32 c. Initiate any of the actions specified in subsection 2.

\* 33 2. The administrator may institute any or all of the  
34 following actions in the appropriate courts of this state, or  
35 in the appropriate courts of another state, in addition to any

1 legal or equitable remedies otherwise available:

2 a. A declaratory judgment.

3 b. An action for a prohibitory or mandatory injunction to  
4 enjoin the violation and to ensure compliance with this  
5 chapter or a rule or order of the administrator.

6 c. An action for disgorgement.

7 d. An action for appointment of a receiver or conservator  
8 for the defendant or the defendant's assets.

9 e. An action for restitution.

\* 10 Sec. 12. NEW SECTION. 502A.13 POWER OF COURT TO GRANT  
11 RELIEF.

12 1. a. Upon a proper showing by the administrator that a  
13 person has violated, or is about to violate, this chapter or a  
14 rule or order of the administrator, a court of competent  
15 jurisdiction may grant appropriate legal or equitable  
16 remedies.

17 b. Upon showing of violation of this chapter or a rule or  
18 order of the administrator, the court, in addition to  
19 traditional legal and equitable remedies, including temporary  
20 restraining orders, permanent or temporary prohibitory or  
21 mandatory injunctions, and writs of prohibition or mandamus,  
22 may grant any or all of the following special remedies:

23 (1) Imposition of a civil penalty in amount which may not  
24 exceed ten thousand dollars for any single violation or one  
25 hundred thousand dollars for multiple violations in a single  
26 proceeding or a series of related proceedings.

27 (2) Disgorgement.

28 (3) Declaratory judgment.

29 (4) Restitution to investors wishing restitution.

30 (5) Appointment of a receiver or conservator for the  
31 defendant or the defendant's assets.

\* 32 c. Appropriate remedies when the defendant is shown only  
33 about to violate this chapter or a rule or order of the  
34 administrator shall be limited to any or all of the following:

35 (1) A temporary restraining order.

1 (2) A temporary or permanent injunction.

2 (3) A writ of prohibition or mandamus.

3 (4) An order appointing a receiver or conservator for the  
4 defendant or the defendant's assets.

5 2. The court shall not require the administrator to post a  
6 bond in any official action under this chapter.

7 3. a. Upon a proper showing by the administrator or  
8 securities or commodity agency of another state that a person,  
9 other than a government or governmental agency or  
10 instrumentality, has violated, or is about to violate, the  
11 commodity code of that state or a rule or order of the  
12 administrator or securities or commodity agency of that state,  
13 the district court may grant appropriate legal and equitable  
14 remedies.

15 b. Upon showing of a violation of the securities or  
16 commodity act of the foreign state or a rule or order of the  
17 administrator or securities or commodity agency of the foreign  
18 state, the court, in addition to traditional legal or  
19 equitable remedies including temporary restraining orders,  
20 permanent or temporary prohibitory or mandatory injunctions  
21 and writs of prohibition or mandamus, may grant either or both  
22 of the following special remedies:

23 (1) Disgorgement.

24 (2) Appointment of a receiver, conservator, or ancillary  
25 receiver or conservator for the defendant or the defendant's  
26 assets located in this state.

27 c. Appropriate remedies when the defendant is shown only  
28 about to violate the securities or commodity act of the  
29 foreign state or a rule or order of the administrator or  
30 securities or commodity agency of the foreign state shall be  
31 limited to any or all of the following:

32 (1) A temporary restraining order.

33 (2) A temporary or permanent injunction.

34 (3) A writ of prohibition or mandamus.

35 (4) An order appointing a receiver, conservator, or

1 ancillary receiver or conservator for the defendant or the  
2 defendant's assets located in this state.

3 Sec. 13. NEW SECTION. 502A.14 CRIMINAL PENALTIES.

4 1. A person who willfully violates either of the following  
5 shall, upon conviction, be fined not more than twenty thousand  
6 dollars or be imprisoned not more than ten years, or both, for  
7 each violation.

8 a. This chapter.

9 b. A rule or order of the administrator under this  
10 chapter.

11 2. A person convicted of violating a rule or order under  
12 this chapter may be fined, but may not be imprisoned, if the  
13 person proves the person had no knowledge of the rule or  
14 order.

15 3. The administrator may refer such evidence as is  
16 available concerning violations of this chapter or any rule or  
17 order of the administrator to the attorney general or the  
18 proper county attorney, who may, with or without such a  
19 reference from the administrator, institute the appropriate  
20 criminal proceedings under this chapter.

21 4. This chapter does not limit the power of the state to  
22 proceed against a person for conduct which constitutes a  
23 breach of duty, a crime, or a violation under common law,  
24 rule, or another statute. An action pursuant to this chapter  
25 is not an election of remedies, and an aggrieved person or the  
26 state retains any other common law or statutory causes of  
27 action which may exist against a person alleged to have  
28 violated this chapter or against a person convicted of such a  
29 violation.

30 Sec. 14. NEW SECTION. 502A.15 ADMINISTRATION OF CHAPTER.

31 1. This chapter shall be administered by the administrator  
32 of the securities bureau, of the insurance division of the  
33 department of commerce.

34 2. The administrator or any employees of the administrator  
35 shall not use any information which is filed with or obtained

1 by the administrator which is not public information for  
2 personal gain or benefit, and the administrator or any  
3 employees of the administrator shall not conduct any  
4 securities or commodity dealings based upon any such  
5 information, even though public, if there has not been a  
6 sufficient period of time for the securities or commodity  
7 markets to assimilate such information.

8 3. a. Except as provided in paragraph "b", all  
9 information collected, assembled, or maintained by the  
10 administrator is public information and is available for the  
11 examination of the public as provided by chapter 22.

12 b. The following are exceptions to paragraph "a" and are  
13 confidential:

14 (1) Information obtained in an investigation pursuant to  
15 section 502A.11, unless published pursuant to 502A.11,  
16 subsection 2.

17 (2) Information made confidential by chapter 22.

18 (3) Information obtained from federal agencies which can  
19 not be disclosed under federal law.

20 c. The administrator in the administrator's discretion may  
21 disclose any information made confidential under paragraph "b"  
22 to persons identified in section 502A.16, subsection 1.

23 d. This chapter does not create or derogate any privilege  
24 which exists at common law, by statute or otherwise when  
25 documentary or other evidence is sought under subpoena  
26 directed to the administrator or any employee of the  
27 administrator.

28 Sec. 15. NEW SECTION. 502A.16 COOPERATION WITH OTHER  
29 AGENCIES.

30 1. To encourage uniform application and interpretation of  
31 this chapter and securities regulation and enforcement in  
32 general, the administrator and the employees of the  
33 administrator may cooperate, including bearing the expense of  
34 the cooperation, with the securities agencies or administrator  
35 of another jurisdiction, Canadian province or territory or

1 such other agencies administering this chapter, the commodity  
2 futures trading commission, the United States securities and  
3 exchange commission, any self-regulatory organization  
4 established under the Commodity Exchange Act or the federal  
5 Securities Exchange Act of 1934, any national or international  
6 organization of commodities or securities officials or  
7 agencies, and any governmental law enforcement agency.

8 2. The cooperation authorized by subsection 1 shall  
9 include, but need not be limited to, any or all of the  
10 following:

- 11 a. Making joint examinations or investigations.
- 12 b. Holding joint administrative hearings.
- 13 c. Filing and prosecuting joint litigation.
- 14 d. Sharing and exchanging personnel.
- 15 e. Sharing and exchanging information and documents.
- 16 f. Formulating and adopting mutual regulations, statements  
17 of policy, guidelines, proposed statutory changes, and  
18 releases.
- 19 g. Issuing and enforcing subpoenas at the request of the  
20 agency administering this chapter in another jurisdiction, the  
21 securities agency of another jurisdiction, the commodity  
22 futures trading commission or the United States securities and  
23 exchange commission if the information sought would also be  
24 subject to lawful subpoena for conduct occurring in this  
25 state.

26 Sec. 16. NEW SECTION. 502A.17 GENERAL AUTHORITY TO ADOPT  
27 RULES, FORMS, AND ORDERS.

28 1. In addition to specific authority granted elsewhere in  
29 this chapter, the administrator may adopt rules and forms,  
30 pursuant to chapter 17A, and issue orders as are necessary to  
31 administer this chapter. Rules or forms to be adopted shall  
32 include, but need not be limited to, the following:

- 33 a. Rules defining any terms, whether or not used in this  
34 chapter, insofar as the definitions are not inconsistent with  
35 the provisions of this chapter.

1 b. For the purpose of rules or forms, the administrator  
2 may classify commodities and commodity contracts, persons, and  
3 matters within the administrator's jurisdiction.

4 2. Unless specifically provided in this chapter, a rule,  
5 form, or order shall not be adopted or issued unless the  
6 administrator finds that the action is both of the following:

7 a. Necessary or appropriate in the public interest or for  
8 the protection of investors.

9 b. Consistent with the purposes fairly intended by the  
10 policy of this chapter.

11 3. All rules and forms of the administrator shall be  
12 published as provided in chapter 17A.

13 4. A provision of this chapter imposing any liability  
14 shall not apply to an act done or omitted in good faith in  
15 conformity with a rule or form adopted or order issued by the  
16 administrator, notwithstanding that the rule, order, or form  
17 may later be amended, or rescinded, or be determined by  
18 judicial or other authority to be invalid for any reason.

19 Sec. 17. NEW SECTION. 502A.18 CONSENT TO SERVICE OF  
20 PROCESS.

21 When a person, including a nonresident of this state,  
22 engages in conduct prohibited or made actionable by this  
23 chapter or any rule or order of the administrator, the conduct  
24 shall constitute the appointment of the administrator as the  
25 person's attorney to receive service of any lawful process in  
26 a noncriminal proceeding against the person, a successor, or  
27 personal representative, which grows out of that conduct and  
28 which is brought under this chapter or any rule or order of  
29 the administrator with the same force and validity as if  
30 served personally.

31 Sec. 18. NEW SECTION. 502A.19 CHAPTER SCOPE.

32 1. Sections 502A.2, 502A.5, and 502A.6 apply to a person  
33 who sells or offers to sell when either of the following  
34 occur:

35 a. An offer to sell is made in this state.



- 1     b. An offer to buy is made and accepted in this state.
- 2     2. Sections 502A.2, 502A.5, and 502A.6 apply to a person
- 3 who buys or offers to buy when either of the following occur:
- 4     a. An offer to buy is made in this state.
- 5     b. An offer to sell is made and accepted in this state.
- 6     3. For the purpose of this section, an offer to sell or to
- 7 buy is made in this state, whether or not either party is then
- 8 present in this state, when either of the following occurs:
- 9     a. The offer originates from this state.
- 10    b. The offer is directed by the offeror to this state and
- 11 received at the place to which it is directed, or at any post
- 12 office in this state in the case of a mailed offer.
- 13    4. For the purpose of this section, an offer to buy or to
- 14 sell is accepted in this state when the acceptance satisfies
- 15 both of the following conditions:
- 16    a. The acceptance is communicated to the offeror in this
- 17 state.
- 18    b. The acceptance has not previously been communicated to
- 19 the offeror, orally or in writing, outside this state; and
- 20 acceptance is communicated to the offeror in this state,
- 21 whether or not either party is then present in this state,
- 22 when the offeree directs it to the offeror in this state,
- 23 reasonably believing the offeror to be in this state and it is
- 24 received at the place to which it is directed, or at any post
- 25 office in this state in the case of a mailed acceptance.
- 26    5. An offer to sell or to buy is not made in this state
- 27 when either of the following occurs:
- 28    a. The publisher circulates or there is circulated on the
- 29 publisher's behalf in this state any bona fide newspaper or
- 30 other publication of general, regular, and paid circulation
- 31 which is not published in this state, or which is published in
- 32 this state but has had more than two-thirds of its circulation
- 33 outside this state during the past twelve months.
- 34    b. A radio or television program originating outside this
- 35 state is received in this state.

1     Sec. 19. NEW SECTION. 502A.20 EFFECT OF PENDING JUDICIAL  
2 REVIEW.

3     The filing of a petition for judicial review pursuant to  
4 chapter 17A does not, unless specifically ordered by the  
5 court, operate as a stay of the administrator's order, and the  
6 administrator may enforce or ask the court to enforce the  
7 order pending the outcome of the review proceedings.

8     Sec. 20. NEW SECTION. 502A.21 PLEADING EXEMPTIONS.

9     It is not necessary for the state to plead the absence of  
10 an exemption under this chapter in a complaint, information,  
11 or indictment, or a writ or proceeding brought under this  
12 chapter. The burden of proof of a claimed exemption is upon  
13 the party claiming the exemption.

14    Sec. 21. NEW SECTION. 502A.22 AFFIRMATIVE DEFENSE.

15    It is an affirmative defense in a complaint, information,  
16 indictment, writ, or proceeding brought under this chapter  
17 alleging a violation of section 502A.2 based solely on the  
18 failure in an individual case to make physical delivery within  
19 the applicable time period under section 502A.1, subsection 5,  
20 or section 502A.4, subsection 1, paragraph "b" if both of the  
21 following apply:

22    1. Failure to make physical delivery was due solely to  
23 factors beyond the control of the seller, the seller's  
24 officers, directors, partners, agents, servants, or employees,  
25 every person occupying a similar status or performing similar  
26 functions, every person who directly or indirectly controls or  
27 is controlled by the seller, or any of them, the seller's  
28 affiliates, subsidiaries, or successors.

29    2. Physical delivery was completed within a reasonable  
30 time under the applicable circumstances.

\* 31    Sec. 22. CODIFICATION.

32    The Code editor shall codify sections 502A.1 through 502A.9  
33 as subchapter I and new sections 502A.11 through 502A.22 as  
34 subchapter II.

35

HOUSE FILE 2377

AN ACT

ADOPTING THE MODEL STATE COMMODITY CODE AS RECOMMENDED BY THE NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, REGULATING THE COMMODITIES MARKETS AND PARTICIPANTS, AUTHORIZING THE SECURITIES BUREAU OF THE INSURANCE DIVISION TO ADMINISTER THE CHAPTER, REQUIRING LICENSING OF COMMODITY BROKER-DEALERS AND SALES REPRESENTATIVES, AUTHORIZING CIVIL REMEDIES, SANCTIONS, PENALTIES, AND IMPOSING CRIMINAL PENALTIES.

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

Section 1. NEW SECTION. 502A.1 DEFINITIONS.

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

1. "Administrator" means the administrator of the securities bureau of the insurance division of the department of commerce.
2. "Board of trade" means a person or group of persons engaged in buying or selling any commodity or receiving the same for sale on consignment, whether the person or group of persons is characterized as a board of trade, exchange, or other form of marketplace.
3. "CFTC rule" means a regulation or order of the commodity futures trading commission in effect on the effective date of this Act, and all subsequent amendments, additions or other revisions to the regulation or order, unless the administrator, within ten days following the effective date of the amendment, addition, or revision, disallows the application to this chapter in whole or in part by rule or order.
4. "Commodity" means, except as otherwise specified by the administrator by rule or order: an agricultural, grain, or livestock product or by-product; a metal or mineral, including

a precious metal; a gem or gemstone, whether characterized as precious, semiprecious or otherwise; a fuel, whether liquid, gaseous or otherwise; a foreign currency; and all other goods, articles, products, or items of any kind.

The term commodity does not include any of the following:

- a. A numismatic coin whose fair market value is at least fifteen percent higher than the value of the metal it contains.
- b. Real property or any timber, agricultural, or livestock product grown or raised on real property and offered or sold by the owner or lessee of such real property.
- c. Any work of art offered or sold by art dealers, at public auction, or offered or sold through a private sale by the owner of the work of art.

5. "Commodity contract" means an account, agreement, or contract for the purchase or sale, primarily for speculation or investment purposes and not for use or consumption by the offeree or purchaser, of one or more commodities, whether for immediate or subsequent delivery or whether delivery is intended by the parties, and whether characterized as a cash contract, deferred shipment or deferred delivery contract, forward contract, futures contract, installment or margin contract, leverage contract, or otherwise. A commodity contract offered or sold, in the absence of evidence to the contrary, shall be presumed to be offered or sold for speculation or investment purposes. A commodity contract does not include a contract or agreement which requires, and under which the purchaser receives, within twenty-eight days from the payment in good funds of any portion of the purchase price, physical delivery of the total amount of each commodity to be purchased under the contract or agreement.

6. "Commodity Exchange Act" means the federal Commodity Exchange Act, as amended to the effective date of this Act, codified at 7 U.S.C. § 1, et seq., and all subsequent amendments, additions, or other revisions to the Act, unless the administrator, within ten days following the effective date of the amendment, addition, or revision, disallows its

application to this chapter in whole or in part by rule or order.

7. "Commodity futures trading commission" or "CFTC" means the independent regulatory agency established by the United States congress to administer the Commodity Exchange Act.

8. "Commodity merchant" means any of the following as defined or described in the Commodity Exchange Act or by CFTC rule:

- a. A futures commission merchant.
- b. A commodity pool operator.
- c. A commodity trading adviser.
- d. An introducing broker.
- e. A leverage transaction merchant.
- f. An associated person of any of the persons listed in paragraphs "a" through "e".
- g. A floor broker.
- h. Any other person, other than a futures association, required to register with the commodity futures trading commission.

9. "Commodity option" means an account, agreement, or contract giving a party to the account, agreement, or contract the right but not the obligation to purchase or sell one or more commodities or one or more commodity contracts, whether characterized as an option, privilege, indemnity, bid, offer, put, call, advance guaranty, decline guaranty or otherwise, but shall not include an option traded on a national securities exchange registered with the United States securities and exchange commission.

10. "Financial institution" means a bank, savings institution, or trust company organized under, or supervised pursuant to, the laws of the United States or of any state.

11. "Offer" includes every offer to sell, offer to purchase, or offer to enter into a commodity contract or commodity option.

12. "Person" means a person as defined in section 4.1, but does not include a contract market designated by the commodities futures trading commission or any clearinghouse of

the CFTC or a national securities exchange registered with the securities and exchange commission, or any employee, officer, or director of a contract market, clearinghouse, or exchange acting solely in that capacity.

13. "Precious metal" means one or more of the following in either coin, bullion, or other form:

- a. Silver.
- b. Gold.
- c. Platinum.
- d. Palladium.
- e. Copper.
- f. Such other items as the administrator may specify by rule or order.

14. "Sale" or "sell" includes every sale, contract of sale, contract to sell, or disposition, for value.

Sec. 2. NEW SECTION. 502A.2 UNLAWFUL COMMODITY TRANSACTIONS.

Except as otherwise provided in section 502A.3 or 502A.4, a person shall not sell or purchase, or offer to sell or purchase, a commodity under a commodity contract, or under a commodity option, or offer to enter into, or enter into as seller or purchaser, a commodity contract or commodity option.

Sec. 3. NEW SECTION. 502A.3 EXEMPT PERSON TRANSACTIONS.

The prohibitions in section 502A.2 do not apply to a transaction in which any of the following persons, or any employee, officer, or director of a listed person acting solely in that capacity, is the purchaser or seller:

1. A person registered with the commodity futures trading commission as a futures commission merchant or as a leverage transaction merchant whose activities require such registration.
2. A person registered with the securities and exchange commission as a broker-dealer whose activities require such registration.
3. A person affiliated with, and whose obligations and liabilities under the transaction are guaranteed by, a person referred to in subsection 1 or 2.

4. A person who is a member of a contract market designated by the commodity futures trading commission, or any CFTC clearinghouse.

5. A financial institution.

6. A person registered under the laws of this state as a securities broker-dealer whose activities require such registration.

This exemption provided by this section does not apply to any transaction or activity which is prohibited by the Commodity Exchange Act or CFTC rule.

Sec. 4. NEW SECTION. 502A.4 EXEMPT TRANSACTIONS.

1. Section 502A.2 does not apply to any of the following:

a. An account, agreement, or transaction within the exclusive jurisdiction of the commodity futures trading commission as granted under the Commodity Exchange Act.

b. A commodity contract, offered or sold by a qualified seller as defined in subsection 2, for the purchase of one or more precious metals which requires, and under which the purchaser receives, within twenty-eight days from the payment in good funds of any portion of the purchase price, physical delivery of the quantity of the precious metals purchased by the payment. For purposes of this paragraph, physical delivery shall be deemed to have occurred if both of the following conditions are satisfied:

(1) Within twenty-eight days, the required quantity of precious metals purchased by the payment is delivered, whether in specifically segregated or fungible bulk form, into the possession of a depository, other than the seller, which is any of the following:

(a) A financial institution.

(b) A depository the warehouse receipts of which are recognized for delivery purposes for any commodity on a contract market designated by the commodity futures trading commission.

(c) A storage facility licensed or regulated by the United States or any agency of the United States.

(d) A depository designated by the administrator.

(2) The depository or a qualified seller issues and the purchaser receives, a certificate, document of title, confirmation, or other instrument evidencing that the required quantity of precious metals has been delivered to the depository and is being and will continue to be held by the depository on the purchaser's behalf, free and clear of all liens and encumbrances, other than liens of the purchaser, tax liens, liens agreed to by the purchaser, or liens of the depository for fees and expenses, which have previously been disclosed to the purchaser.

c. For the purposes of paragraph "b", a depository other than the seller shall not include a financial institution which makes loans to enable the borrower to finance the purchase of one or more precious metals if any of the following apply:

(1) The financial institution knows that the seller arranged for a commission, brokerage, or referral fee for the extension of credit by the financial institution.

(2) The financial institution is a person related to the seller, unless the relationship is remote or is not a factor in the transaction.

(3) The seller guarantees the loan or otherwise assumes the risk of loss by the financial institution upon the loan.

(4) The financial institution directly supplies the seller with the contract document used by the borrower to evidence the loan, and the seller has knowledge of the credit terms and participates in the preparation of the document.

(5) The loan is conditioned upon the borrower's purchase of the precious metals from a particular seller, but the financial institution's payment of proceeds of the loan to the seller does not in itself establish that the loan was so conditioned.

(6) The financial institution otherwise knowingly participates with the seller in the sale. The fact that the financial institution takes a security interest in the precious metals sold or makes the proceeds of the loan payable to the seller does not in itself constitute knowing participation in the sale.

d. A commodity contract solely between persons engaged in producing, processing, using commercially or handling as merchants, the commodity which is the subject of the contract, or any by-product of the commodity.

e. A commodity contract under which the offeree or the purchaser is a person under section 502A.3, an insurance company, an investment company as defined in the federal Investment Company Act of 1940, or an employee pension and profit sharing or benefit plan other than a self-employed individual retirement plan, or individual retirement account.

2. For the purposes of subsection 1, paragraph "b", a qualified seller is a person who satisfies all of the following conditions:

a. Is a seller of precious metals and has a tangible net worth of at least five million dollars, or has an affiliate who has unconditionally guaranteed the obligations and liabilities of the seller and the affiliate has a tangible net worth of at least five million dollars.

b. Has stored precious metals with one or more depositories on behalf of customers for at least the previous three years.

c. Prior to any offer, files with the administrator a sworn notice of intent to act as a qualified seller under subsection 1, paragraph "b", and annually files a new notice. A notice of intent to act as a qualified seller must contain all of the following:

(1) The seller's name and address, names of its directors, officers, controlling shareholders, partners, principals, and other controlling persons.

(2) The address of its principal place of business, state and date of incorporation or organization, and the name and address of seller's registered agent in this state.

(3) A statement that the seller, or a person affiliated with the seller who has guaranteed the obligations and liabilities of the seller, has a tangible net worth of at least five million dollars.

(4) Depository information including all of the following:

(a) The name and address of the depository or depositories that the seller intends to use.

(b) The name and address of each and every depository where the seller has stored precious metals on behalf of customers for the previous three years.

(c) Independent verification from each and every depository named in subparagraph subdivision (b) that the seller has in fact stored precious metals on behalf of the seller's customers for the previous three years and a statement of total deposits made during this period.

(5) Financial statements for the seller, or the person affiliated with the seller who has guaranteed the obligations and liabilities of the seller, for the past three years, audited by an independent certified public accountant, together with the accountant's reports.

(6) A statement describing the details of all civil, criminal, or administrative proceedings currently pending or adversely resolved against the seller or its directors, officers, controlling shareholders, partners, principals, or other controlling persons during the past ten years including all of the following in subparagraph subdivisions (a) through (d), or if not applicable, subparagraph subdivision (e):

(a) Civil litigation and administrative proceedings involving securities or commodities violations, or fraud.

(b) Criminal proceedings.

(c) Denials, suspensions, or revocations of securities or commodities, licenses, or registrations.

(d) Suspensions or expulsions from membership in, or associations with, self-regulatory organizations registered under the Securities Exchange Act of 1934, or the Commodities Exchange Act.

(e) A statement that there were no such proceedings.

d. Notifies the administrator within fifteen days of any material changes in the information provided in the notice of intent.

e. Annually furnishes to each purchaser for whom the seller is then storing precious metals, and to the

administrator, a report by an independent certified public accountant of the accountant's examination of the seller's precious metals storage program.

3. The administrator may, upon request by the seller, waive any of the exempt transaction requirements of this section, conditionally or unconditionally.

4. The administrator may, by order, deny, suspend, revoke, or place limitations on the authority to engage in business as a qualified seller under subsection 1, paragraph "b" if the administrator finds that the order is in the public interest and that the person, the person's officers, directors, partners, agents, servants or employees, a person occupying a similar status or performing similar functions, a person who directly or indirectly controls or is controlled by the seller, or any of them, the seller's affiliates or subsidiaries meets any of the following conditions:

a. Has filed a notice of intention under subsection 2 with the administrator or the designee of the administrator which was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact.

b. Has, within the last ten years, pled guilty or nolo contendere to, or been convicted of any crime indicating a lack of fitness to engage in the investment commodity business.

c. Has been permanently or temporarily enjoined by any court of competent jurisdiction from engaging in, or continuing, any conduct or practice which injunction indicates a lack of fitness to engage in the investment commodities business.

d. Is the subject of an order of the administrator denying, suspending, or revoking the person's license as a securities broker-dealer, sales representative, or investment adviser.

e. Is the subject of any of the following orders which are currently effective and which were issued within the last five years:

(1) An order by the securities agency or administrator of another state, Canadian province or territory, the securities and exchange commission, or the commodity futures trading commission, entered after notice and opportunity for hearing, denying, suspending, or revoking the person's registration as a futures commission merchant, commodity trading adviser, commodity pool operator, securities broker-dealer, sales representative, or investment adviser, or the substantial equivalent of those terms.

(2) Suspension or expulsion from membership in, or association with, a self-regulatory organization registered under the federal Securities Exchange Act of 1934 or the Commodity Exchange Act.

(3) A United States postal service fraud order.

(4) A cease and desist order entered after notice and opportunity of hearing by the administrator or the securities agency or administrator of any other state, Canadian province or territory, the United States securities and exchange commission, or the commodity futures trading commission.

(5) An order entered by the commodity futures trading commission denying, suspending, or revoking registration under the Commodity Exchange Act.

f. Has engaged in an unethical or dishonest act or practice in the investment commodities or securities business.

g. Has failed reasonably to supervise sales representatives or employees.

5. If the public interest or the protection of investors so requires, the administrator may, by order, summarily deny or suspend the exemption for a qualified seller. Upon the entry of the order, the administrator shall promptly notify the person claiming such status that an order has been entered and the reasons for the order and that within thirty days after the receipt of a written request the matter will be set for hearing. Section 502A.20 applies with respect to all subsequent proceedings.

6. If the administrator finds that any applicant or qualified seller is no longer in existence or has ceased to do

business or is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian, or cannot be located after reasonable search, the administrator may, by order deny, or revoke the exemption for a qualified seller.

7. The administrator may issue rules or orders prescribing the terms and conditions of all transactions and contracts covered by this chapter which are not within the exclusive jurisdiction of the commodity futures trading commission as granted by the Commodity Exchange Act, exempting and conditionally or unconditionally and otherwise implementing this chapter for the protection of purchasers and sellers of commodities.

**Sec. 5. NEW SECTION. 502A.5 UNLAWFUL COMMODITY ACTIVITIES.**

1. A person shall not engage in a trade or business or otherwise act as a commodity merchant unless the person is either of the following:

a. Registered or temporarily licensed with the commodity futures trading commission for each activity constituting the person as a commodity merchant and the registration or temporary license has not expired, been suspended, or revoked.

b. Exempt from such registration by virtue of the Commodity Exchange Act or of a CFTC rule.

2. A board of trade shall not trade, or provide a place for the trading of, any commodity contract or commodity option required to be traded on or subject to the rules of a contract market designated by the commodity futures trading commission unless the board of trade has been so designated for the commodity contract or commodity option and the designation has not been vacated, suspended, or revoked.

**Sec. 6. NEW SECTION. 502A.6 FRAUDULENT CONDUCT.**

A person, shall not directly or indirectly do any of the following in or in connection with the purchase or sale of, the offer to sell, the offer to purchase, the offer to enter into, or the entry into of, a commodity contract or commodity option subject to sections 502A.2, 502A.3, 502A.4, subsection 1, paragraph "b", or 502A.4, subsection 1, paragraph "d":

1. Cheat or defraud, or attempt to cheat or defraud, another person or employ any device, scheme, or artifice to defraud another person.

2. Make a false report or enter a false record.

3. Make an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

4. Engage in a transaction, act, practice, or course of business, including, without limitation, any form of advertising or solicitation, which operates or would operate as a fraud or deceit upon any person.

5. Misappropriate or convert the funds, security, or property of another person.

**Sec. 7. NEW SECTION. 502A.7 LIABILITY OF PRINCIPALS, CONTROLLING PERSONS, AND OTHERS.**

1. The act, omission, or failure of an official, agent, or other person acting for an individual, association, partnership, corporation, or trust within the scope of the person's employment or office shall be deemed the act, omission, or failure of the individual, association, partnership, corporation, or trust, as well as of the person.

2. A person who directly or indirectly controls another person liable under this chapter, a partner, officer, or director of the other person, a person occupying a similar status or performing similar functions, and an employee of such other person who materially aids in the violation, is liable jointly and severally with and to the same extent as the other person, unless the person who is liable by virtue of this provision sustains the burden of proof that the person did not know, and in exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist.

**Sec. 8. NEW SECTION. 502A.8 SECURITIES LAWS UNAFFECTED.**

This chapter does not impair, derogate, or otherwise affect the authority or powers of the administrator under chapter 502 or the application of any provision of chapter 502 to a person or transaction subject to that chapter.



Sec. 9. NEW SECTION. 502A.9 PURPOSE.

This chapter may be construed and implemented to effectuate its general purpose to protect investors, to prevent and prosecute illegal and fraudulent schemes involving commodity contracts and to maximize coordination with federal and other states' laws and the administration and enforcement of those laws. This chapter is not intended to create any rights or remedies upon which actions may be brought by private persons against persons who violate this chapter.

Sec. 10. NEW SECTION. 502A.11 INVESTIGATIONS.

1. The administrator may make investigations, within or without this state, as the administrator finds necessary or appropriate to do either or both of the following:

a. Determine whether any person has violated, or is about to violate this chapter or any rule or order of the administrator.

b. Aid in enforcement of this chapter.

2. The administrator may publish information concerning a violation of this chapter or any rule or order of the administrator.

3. For purposes of an investigation or proceeding under this chapter, the administrator or any officer or employee designated by rule or order, may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the administrator finds to be relevant or material to the inquiry.

4. a. If a person does not give testimony or produce the documents required by the administrator or a designated employee pursuant to an administrative subpoena, the administrator or designated employee may apply for a court order compelling compliance with the subpoena or the giving of the required testimony.

b. The request for order of compliance may be addressed to either of the following:

(1) The Polk county district trial court or the district court where service may be obtained on the person refusing to testify or produce, if the person is within this state.

(2) The appropriate court of the state having jurisdiction over the person refusing to testify or produce, if the person is outside this state.

Sec. 11. NEW SECTION. 502A.12 ENFORCEMENT OF CHAPTER.

1. If the administrator believes, whether or not based upon an investigation conducted under section 502A.11, that a person has engaged or is about to engage in an act or practice constituting a violation of this chapter or a rule or order issued under this chapter, the administrator may do any or all of the following:

a. Issue a cease and desist order.

b. Issue an order imposing a civil penalty in amount which may not exceed ten thousand dollars for a single violation or one hundred thousand dollars for multiple violations in a single proceeding or a series of related proceedings.

c. Initiate any of the actions specified in subsection 2.

2. The administrator may institute any or all of the following actions in the appropriate courts of this state, or in the appropriate courts of another state, in addition to any legal or equitable remedies otherwise available:

a. A declaratory judgment.

b. An action for a prohibitory or mandatory injunction to enjoin the violation and to ensure compliance with this chapter or a rule or order of the administrator.

c. An action for disgorgement.

d. An action for appointment of a receiver or conservator for the defendant or the defendant's assets.

e. An action for restitution.

Sec. 12. NEW SECTION. 502A.13 POWER OF COURT TO GRANT RELIEF.

1. a. Upon a proper showing by the administrator that a person has violated, or is about to violate, this chapter or a rule or order of the administrator, a court of competent jurisdiction may grant appropriate legal or equitable remedies.

b. Upon showing of violation of this chapter or a rule or order of the administrator, the court, in addition to traditional legal and equitable remedies, including temporary restraining orders, permanent or temporary prohibitory or mandatory injunctions, and writs of prohibition or mandamus, may grant any or all of the following special remedies:

(1) Imposition of a civil penalty in amount which may not exceed ten thousand dollars for any single violation or one hundred thousand dollars for multiple violations in a single proceeding or a series of related proceedings.

(2) Disgorgement.

(3) Declaratory judgment.

(4) Restitution to investors wishing restitution.

(5) Appointment of a receiver or conservator for the defendant or the defendant's assets.

c. Appropriate remedies when the defendant is shown only about to violate this chapter or a rule or order of the administrator shall be limited to any or all of the following:

(1) A temporary restraining order.

(2) A temporary or permanent injunction.

(3) A writ of prohibition or mandamus.

(4) An order appointing a receiver or conservator for the defendant or the defendant's assets.

2. The court shall not require the administrator to post a bond in any official action under this chapter.

3. a. Upon a proper showing by the administrator or securities or commodity agency of another state that a person, other than a government or governmental agency or instrumentality, has violated, or is about to violate, the commodity code of that state or a rule or order of the administrator or securities or commodity agency of that state, the district court may grant appropriate legal and equitable remedies.

b. Upon showing of a violation of the securities or commodity act of the foreign state or a rule or order of the administrator or securities or commodity agency of the foreign state, the court, in addition to traditional legal or

equitable remedies including temporary restraining orders, permanent or temporary prohibitory or mandatory injunctions and writs of prohibition or mandamus, may grant either or both of the following special remedies:

(1) Disgorgement.

(2) Appointment of a receiver, conservator, or ancillary receiver or conservator for the defendant or the defendant's assets located in this state.

c. Appropriate remedies when the defendant is shown only about to violate the securities or commodity act of the foreign state or a rule or order of the administrator or securities or commodity agency of the foreign state shall be limited to any or all of the following:

(1) A temporary restraining order.

(2) A temporary or permanent injunction.

(3) A writ of prohibition or mandamus.

(4) An order appointing a receiver, conservator, or ancillary receiver or conservator for the defendant or the defendant's assets located in this state.

Sec. 13. NEW SECTION. 502A.14 CRIMINAL PENALTIES.

1. A person who willfully violates either of the following shall, upon conviction, be fined not more than twenty thousand dollars or be imprisoned not more than ten years, or both, for each violation.

a. This chapter.

b. A rule or order of the administrator under this chapter.

2. A person convicted of violating a rule or order under this chapter may be fined, but may not be imprisoned, if the person proves the person had no knowledge of the rule or order.

3. The administrator may refer such evidence as is available concerning violations of this chapter or any rule or order of the administrator to the attorney general or the proper county attorney, who may, with or without such a reference from the administrator, institute the appropriate criminal proceedings under this chapter.

4. This chapter does not limit the power of the state to proceed against a person for conduct which constitutes a breach of duty, a crime, or a violation under common law, rule, or another statute. An action pursuant to this chapter is not an election of remedies, and an aggrieved person or the state retains any other common law or statutory causes of action which may exist against a person alleged to have violated this chapter or against a person convicted of such a violation.

Sec. 14. NEW SECTION. 502A.15 ADMINISTRATION OF CHAPTER.

1. This chapter shall be administered by the administrator of the securities bureau, of the insurance division of the department of commerce.

2. The administrator or any employees of the administrator shall not use any information which is filed with or obtained by the administrator which is not public information for personal gain or benefit, and the administrator or any employees of the administrator shall not conduct any securities or commodity dealings based upon any such information, even though public, if there has not been a sufficient period of time for the securities or commodity markets to assimilate such information.

3. a. Except as provided in paragraph "b", all information collected, assembled, or maintained by the administrator is public information and is available for the examination of the public as provided by chapter 22.

b. The following are exceptions to paragraph "a" and are confidential:

(1) Information obtained in an investigation pursuant to section 502A.11, unless published pursuant to 502A.11, subsection 2.

(2) Information made confidential by chapter 22.

(3) Information obtained from federal agencies which can not be disclosed under federal law.

c. The administrator in the administrator's discretion may disclose any information made confidential under paragraph "b" to persons identified in section 502A.16, subsection 1.

d. This chapter does not create or derogate any privilege which exists at common law, by statute or otherwise when documentary or other evidence is sought under subpoena directed to the administrator or any employee of the administrator.

Sec. 15. NEW SECTION. 502A.16 COOPERATION WITH OTHER AGENCIES.

1. To encourage uniform application and interpretation of this chapter and securities regulation and enforcement in general, the administrator and the employees of the administrator may cooperate, including bearing the expense of the cooperation, with the securities agencies or administrator of another jurisdiction, Canadian province or territory or such other agencies administering this chapter, the commodity futures trading commission, the United States securities and exchange commission, any self-regulatory organization established under the Commodity Exchange Act or the federal Securities Exchange Act of 1934, any national or international organization of commodities or securities officials or agencies, and any governmental law enforcement agency.

2. The cooperation authorized by subsection 1 shall include, but need not be limited to, any or all of the following:

- a. Making joint examinations or investigations.
- b. Holding joint administrative hearings.
- c. Filing and prosecuting joint litigation.
- d. Sharing and exchanging personnel.
- e. Sharing and exchanging information and documents.
- f. Formulating and adopting mutual regulations, statements of policy, guidelines, proposed statutory changes, and releases.

g. Issuing and enforcing subpoenas at the request of the agency administering this chapter in another jurisdiction, the securities agency of another jurisdiction, the commodity futures trading commission or the United States securities and exchange commission if the information sought would also be subject to lawful subpoena for conduct occurring in this state.

**Sec. 16. NEW SECTION. 502A.17 GENERAL AUTHORITY TO ADOPT RULES, FORMS, AND ORDERS.**

1. In addition to specific authority granted elsewhere in this chapter, the administrator may adopt rules and forms, pursuant to chapter 17A, and issue orders as are necessary to administer this chapter. Rules or forms to be adopted shall include, but need not be limited to, the following:

a. Rules defining any terms, whether or not used in this chapter, insofar as the definitions are not inconsistent with the provisions of this chapter.

b. For the purpose of rules or forms, the administrator may classify commodities and commodity contracts, persons, and matters within the administrator's jurisdiction.

2. Unless specifically provided in this chapter, a rule, form, or order shall not be adopted or issued unless the administrator finds that the action is both of the following:

a. Necessary or appropriate in the public interest or for the protection of investors.

b. Consistent with the purposes fairly intended by the policy of this chapter.

3. All rules and forms of the administrator shall be published as provided in chapter 17A.

4. A provision of this chapter imposing any liability shall not apply to an act done or omitted in good faith in conformity with a rule or form adopted or order issued by the administrator, notwithstanding that the rule, order, or form may later be amended, or rescinded, or be determined by judicial or other authority to be invalid for any reason.

**Sec. 17. NEW SECTION. 502A.18 CONSENT TO SERVICE OF PROCESS.**

When a person, including a nonresident of this state, engages in conduct prohibited or made actionable by this chapter or any rule or order of the administrator, the conduct shall constitute the appointment of the administrator as the person's attorney to receive service of any lawful process in a noncriminal proceeding against the person, a successor, or personal representative, which grows out of that conduct and

which is brought under this chapter or any rule or order of the administrator with the same force and validity as if served personally.

**Sec. 18. NEW SECTION. 502A.19 CHAPTER SCOPE.**

1. Sections 502A.2, 502A.5, and 502A.6 apply to a person who sells or offers to sell when either of the following occur:

a. An offer to sell is made in this state.

b. An offer to buy is made and accepted in this state.

2. Sections 502A.2, 502A.5, and 502A.6 apply to a person who buys or offers to buy when either of the following occur:

a. An offer to buy is made in this state.

b. An offer to sell is made and accepted in this state.

3. For the purpose of this section, an offer to sell or to buy is made in this state, whether or not either party is then present in this state, when either of the following occurs:

a. The offer originates from this state.

b. The offer is directed by the offeror to this state and received at the place to which it is directed, or at any post office in this state in the case of a mailed offer.

4. For the purpose of this section, an offer to buy or to sell is accepted in this state when the acceptance satisfies both of the following conditions:

a. The acceptance is communicated to the offeror in this state.

b. The acceptance has not previously been communicated to the offeror, orally or in writing, outside this state; and acceptance is communicated to the offeror in this state, whether or not either party is then present in this state, when the offeree directs it to the offeror in this state, reasonably believing the offeror to be in this state and it is received at the place to which it is directed, or at any post office in this state in the case of a mailed acceptance.

5. An offer to sell or to buy is not made in this state when either of the following occurs:

a. The publisher circulates or there is circulated on the publisher's behalf in this state any bona fide newspaper or

other publication of general, regular, and paid circulation which is not published in this state, or which is published in this state but has had more than two-thirds of its circulation outside this state during the past twelve months.

b. A radio or television program originating outside this state is received in this state.

Sec. 19. NEW SECTION. 502A.20 EFFECT OF PENDING JUDICIAL REVIEW.

The filing of a petition for judicial review pursuant to chapter 17A does not, unless specifically ordered by the court, operate as a stay of the administrator's order, and the administrator may enforce or ask the court to enforce the order pending the outcome of the review proceedings.

Sec. 20. NEW SECTION. 502A.21 PLEADING EXEMPTIONS.

It is not necessary for the state to plead the absence of an exemption under this chapter in a complaint, information, or indictment, or a writ or proceeding brought under this chapter. The burden of proof of a claimed exemption is upon the party claiming the exemption.

Sec. 21. NEW SECTION. 502A.22 AFFIRMATIVE DEFENSE.

It is an affirmative defense in a complaint, information, indictment, writ, or proceeding brought under this chapter alleging a violation of section 502A.2 based solely on the failure in an individual case to make physical delivery within the applicable time period under section 502A.1, subsection 5, or section 502A.4, subsection 1, paragraph "b" if both of the following apply:

1. Failure to make physical delivery was due solely to factors beyond the control of the seller, the seller's officers, directors, partners, agents, servants, or employees, every person occupying a similar status or performing similar functions, every person who directly or indirectly controls or is controlled by the seller, or any of them, the seller's affiliates, subsidiaries, or successors.

2. Physical delivery was completed within a reasonable time under the applicable circumstances.

Sec. 22. CODIFICATION.

The Code editor shall codify sections 502A.1 through 502A.9 as subchapter I and new sections 502A.11 through 502A.22 as subchapter II.

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DONALD D. AVENSON  
Speaker of the House

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JO ANN ZIMMERMAN  
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 2377, Seventy-third General Assembly.

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JOSEPH O'HERN  
Chief Clerk of the House

Approved \_\_\_\_\_, 1990

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TERRY E. BRANSTAD  
Governor