

*Substituted by SF 2363  
3-25-96 (p. 935)*

FEB 28 1996

Place On Calendar

HOUSE FILE **2405**

BY COMMITTEE ON COMMERCE AND

REGULATION

**WITHDRAWN**

*3-25-96*

*(p. 936)*

(SUCCESSOR TO HSB 602)

Passed House, Date \_\_\_\_\_

Passed Senate, Date \_\_\_\_\_

Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_

Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_

Approved \_\_\_\_\_

**A BILL FOR**

1 An Act relating to entities and subject matter under the  
2 regulatory authority of the securities bureau of the division  
3 of insurance.

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

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WITHDRAWN

**HF 2405**

1 Section 1. Section 502.102, subsection 14, Code 1995, is  
2 amended to read as follows:

3 14. "Security" means any note; stock; treasury stock;  
4 bond; debenture; evidence of indebtedness; certificate of  
5 interest or participation in a profit sharing agreement;  
6 collateral trust certificate; preorganization certificate or  
7 subscription; transferable share; investment contract; voting  
8 trust certificate; certificate of deposit for a security;  
9 fractional undivided interest in an oil, gas, or other mineral  
10 lease or in payments out of production under such a lease,  
11 right, or royalty; an interest in a limited liability company  
12 or any class or series of such interest, including any  
13 fractional or other interest in such interest; or, in general,  
14 any interest or instrument commonly known as a "security", or  
15 any certificate of interest or participation in, temporary or  
16 interim certificate for, receipt for, guarantee of, or warrant  
17 or right to subscribe to or purchase, any of the foregoing.  
18 "Security" does not include an insurance or endowment policy  
19 or annuity contract under which an insurance company promises  
20 to pay money either in a lump sum or periodically for life or  
21 for some other specified period. "Security" also does not  
22 include an interest in a limited liability company if the  
23 person claiming that such an interest is not a security proves  
24 that all of the members of the limited liability company are  
25 actively engaged in the management of the limited liability  
26 company; provided that the evidence that members vote or have  
27 the right to vote, or the right to information concerning the  
28 business and affairs of the limited liability company, or the  
29 right to participate in management, shall not establish,  
30 without more, that all members are actively engaged in the  
31 management of the limited liability company.

32 Sec. 2. Section 502.202, subsection 1, Code 1995, is  
33 amended to read as follows:

34 1. Any security, including a revenue obligation, issued or  
35 guaranteed by the United States, any state, any political

1 subdivision of a state, or any agency or corporate or other  
2 instrumentality of one or more of the foregoing; or any  
3 certificate of deposit for any of the foregoing; ~~but.~~  
4 However, this exemption shall not include any revenue  
5 obligation payable from payments to be made in respect of  
6 property or money used under a lease, sale or loan arrangement  
7 by or for a nongovernmental industrial or commercial  
8 enterprise, unless such payments are or will be made or  
9 unconditionally guaranteed by a person whose securities are  
10 exempt from registration under this chapter by (a) ~~this~~  
11 ~~section~~, subsection 7, or 8, or 18, or (b) subsection 9 ~~of~~  
12 ~~this-section~~, provided the issuer first files with the  
13 administrator a written notice specifying the terms of the  
14 offer and the administrator does not by order disallow the  
15 exemption within fifteen days thereafter.

16 Sec. 3. Section 502.202, subsection 8, Code 1995, is  
17 amended to read as follows:

18 8. Any security listed or approved for listing upon notice  
19 of issuance on the New York Stock Exchange, the American Stock  
20 Exchange, ~~the-Midwest-Stock-Exchange, the-Pacific-Coast-Stock~~  
21 ~~Exchange~~, or any other national securities exchange registered  
22 under the Securities Exchange Act of 1934 and designated by  
23 rule of the administrator; any other security of the same  
24 issuer which is of senior or substantially equal rank; any  
25 security called for by subscription rights or warrants so  
26 listed or approved; or any warrant or right to purchase or  
27 subscribe to any of the foregoing.

28 Sec. 4. Section 502.203, subsection 2, paragraph b, Code  
29 1995, is amended to read as follows:

30 b. The security was issued by an issuer which has a class  
31 of securities ~~currently-registered~~ subject to registration  
32 under section 12 of the Securities Exchange Act of 1934, and  
33 has been subject to the reporting requirements of section 13  
34 or 15(d) of the Securities Exchange Act of 1934 for not less  
35 than ninety days before the transaction;

1 Sec. 5. Section 502.203, Code 1995, is amended by adding  
2 the following new subsection:

3 NEW SUBSECTION. 18. Any other security or transaction or  
4 class of securities or transactions exempted, by the  
5 administrator by rule, from requirements provided in section  
6 502.201 or 502.602.

7 Sec. 6. Section 502.206, subsection 4, Code 1995, is  
8 amended to read as follows:

9 4. The registrant shall notify the administrator promptly  
10 ~~by telephone or telegram~~ in writing, which may be by  
11 electronic, telegraphic, or facsimile transmission, of the  
12 date and time when the federal registration statement became  
13 effective and the content of the price amendment, if any, and  
14 shall file a post-effective amendment promptly containing the  
15 information and documents in the price amendment. "Price  
16 amendment" means the final federal amendment which includes a  
17 statement of the offering price, underwriting and selling  
18 discounts or commissions, amount of proceeds, conversion  
19 rates, call prices and other matters dependent upon the  
20 offering price. Upon failure to receive the required  
21 notification and post-effective amendment with respect to the  
22 price amendment, the administrator may enter a stop order,  
23 without notice or hearing, retroactively denying the  
24 effectiveness to the registration statement or suspending its  
25 effectiveness until compliance with this subsection is  
26 effected, if the administrator promptly notifies the  
27 registrant ~~by telephone or telegram~~ of the issuance of such  
28 order. If the registrant proves compliance with the  
29 requirements of this subsection as to notice and post-  
30 effective amendment the stop order shall be vacated as of the  
31 time of its entry. The administrator may by rule or order  
32 waive any of the conditions specified in subsection 2 or 3.

33 Sec. 7. Section 502.301, subsection 1, paragraph b,  
34 subparagraph (1), Code 1995, is amended to read as follows:

35 (1) The broker-dealer effects transactions in this state

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

8 Sec. 8. Section 502.302, subsection 1, Code 1995, is  
9 amended to read as follows:

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

32 Sec. 9. Section 502.304, subsection 1, Code 1995, is  
33 amended by adding the following new paragraph:

34 NEW PARAGRAPH. n. Does either of the following:

35 (1) Refuses to allow or otherwise impedes the securities

1 bureau from conducting an audit, examination, inspection, or  
2 investigation as provided under section 502.303 or 502.603,  
3 including by withholding or concealing records or refusing to  
4 furnish records, if the records are required to be kept either  
5 under this chapter or under rules adopted under this chapter  
6 or by the securities bureau acting under this chapter.

7 (2) Refuses securities bureau access to any office or  
8 location within an office to conduct an audit, examination,  
9 inspection, or investigation.

10 Sec. 10. Section 502.304, subsection 2, Code 1995, is  
11 amended to read as follows:

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

17 Sec. 11. Section 502.304, subsection 4, Code 1995, is  
18 amended to read as follows:

19 4. a. If the administrator finds that any registrant or  
20 applicant for registration is no longer in existence or has  
21 ceased to do business as a broker-dealer, or agent, or is  
22 subject to an adjudication of mental incompetence or to the  
23 control of a committee, conservator, or guardian, or cannot be  
24 located after search, the administrator may by order revoke  
25 the registration or application.

26 b. If the administrator finds that the applicant or  
27 registrant for registration has abandoned the application or  
28 registration, the administrator may enter an order of  
29 abandonment, and limit or eliminate further consideration of  
30 the application or registration, as provided by the  
31 administrator. The administrator may enter an order under  
32 this paragraph if notice is sent to the applicant or  
33 registrant, and either the administrator does not receive a  
34 response by the applicant or registrant within forty-five days  
35 from the date that the notice was delivered, or action is not

1 taken by the applicant or registrant within the time specified  
2 by the administrator in the notice, whichever is later.

3 Sec. 12. Section 502.304, subsection 5, Code 1995, is  
4 amended to read as follows:

5 5. Withdrawal from registration as a broker-dealer or  
6 agent becomes effective thirty days after receipt of an  
7 application to withdraw or within such shorter period of time  
8 as the administrator may by order determine, unless a  
9 revocation-or-suspension proceeding to deny, suspend, or  
10 revoke a registration is pending when the application is filed  
11 or a proceeding to revoke-or-suspend deny, suspend, or revoke  
12 a registration, or to impose conditions upon the withdrawal is  
13 instituted within thirty days after the application is filed.  
14 If a proceeding is pending or instituted, withdrawal becomes  
15 effective at such time and upon such conditions as the  
16 administrator by order determines. If no proceeding is  
17 pending or instituted and withdrawal automatically becomes  
18 effective, the administrator may nevertheless institute a  
19 revocation or suspension proceeding under subsection 1,  
20 paragraph "b", within one year after withdrawal became  
21 effective and enter a revocation or suspension order as of the  
22 last date on which registration was effective.

23 Sec. 13. Section 502.502, Code 1995, is amended by adding  
24 the following new subsection:

25 NEW SUBSECTION. 7. A copy of any suit or arbitration  
26 action filed under this section shall be served upon the  
27 administrator within twenty days of the filing in the form and  
28 manner prescribed by the administrator by rule or order,  
29 provided that the failure to comply with this provision shall  
30 not invalidate the action which is the subject of the suit.

31 Sec. 14. Section 502.604, subsection 2, Code 1995, is  
32 amended to read as follows:

33 2. Bring an action in the district court to enjoin the act  
34 or practice and to enforce compliance with this chapter or a  
35 rule or order adopted or issued pursuant to this chapter.

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

12 EXPLANATION

13 This bill amends various provisions in chapter 502, which  
14 is referred to as "Iowa Uniform Securities Act", as follows:

15 Section 502.102 is amended to expand the definition of  
16 "security" regulated under the chapter to include an interest  
17 in a limited liability company. The bill provides that  
18 security does not include an interest in a limited liability  
19 company if the person claiming that the interest is not a  
20 security proves that all of the members of the limited  
21 liability company are actively engaged in the management of  
22 the limited liability company.

23 Section 502.202 provides exemption from registration and  
24 filing requirements. The section exempts a security,  
25 including a revenue obligation, issued or guaranteed by the  
26 United States, a state, a political subdivision of a state, or  
27 any agency or corporation or other instrumentality of one of  
28 these entities, or any certificate of deposit for any of the  
29 entities. The exemption does not include any revenue  
30 obligation payable from payments to be made from an interest  
31 in property or money used under a lease, sale, or loan  
32 arrangement involving a nongovernmental industrial or  
33 commercial enterprise, unless the payments are made or  
34 unconditionally guaranteed by an insurer whose securities are  
35 exempt because they are listed on the New York Stock Exchange,

1 the American Stock Exchange, or other national securities  
2 exchange registered under the Securities Exchange Act of 1934.  
3 The bill provides that this exemption also applies to an  
4 insurer whose securities are exempt because they are listed on  
5 the national association of securities dealers automated  
6 quotations - national market system (NASDAQ/NMS).

7 Section 502.202 also provides an exemption from  
8 registration and filing requirements for a security listed on  
9 several stock exchanges. The bill eliminates automatic  
10 exemption for securities listed on the Midwest Stock Exchange  
11 and the Pacific Coast Stock Exchange.

12 Section 502.203 exempts certain transactions from  
13 registration and filing requirements, including a nonissuer  
14 distribution of an outstanding security, if the security was  
15 issued by an issuer which has a class of securities currently  
16 registered under the Securities Exchange Act of 1934. The  
17 bill adds a requirement that the security must also be subject  
18 to certain reporting requirements of the Securities Exchange  
19 Act of 1934.

20 Section 502.203 is amended to provide that the  
21 administrator of the securities bureau may exempt other  
22 securities or transactions from the registration and filing  
23 requirements of the chapter.

24 Section 502.206 provides for methods by which a registrant  
25 may notify the securities bureau of information regarding a  
26 federal registration statement in cases involving registration  
27 of securities under the chapter and under the federal  
28 Securities Act of 1933. The bill provides that the  
29 notification to the securities bureau must be in writing and  
30 may be by electronic, telegraphic, or facsimile transmission.

31 Section 502.301 provides that it is unlawful for a person  
32 to transact business in this state as a broker-dealer or agent  
33 unless the person is licensed, or certain other conditions are  
34 satisfied. One condition is that if a person is a broker-  
35 dealer who has no place of business in this state, the broker-

1 dealer effects transactions in this state exclusively with or  
2 through the issuers of the securities involved in the  
3 transaction, other broker-dealers, banks, trust companies,  
4 insurance companies, or investment companies as defined in the  
5 Investment Company Act of 1940, pension or profit-sharing  
6 trusts, or other financial institutions or institutional  
7 buyers, whether acting for themselves or as trustees. The  
8 bill eliminates institutional buyers from the list of persons  
9 with whom the out-of-state broker-dealer may do business  
10 without being licensed.

11 Section 502.302 provides procedures for obtaining or  
12 renewing a license as a broker-dealer or agent. The section  
13 provides that unless a denial order is in effect and no  
14 denial, revocation, or suspension proceeding is pending,  
15 registration becomes effective 30 days after a completed  
16 application is filed with the securities bureau. The bill  
17 extends the time for review of the application from 30 to 60  
18 days.

19 Section 502.304 provides that the securities bureau may by  
20 order deny, suspend, or revoke a registration or may censure,  
21 impose a civil penalty upon, or bar an applicant, registrant,  
22 or any related person for violating a number of provisions  
23 included in the section. The bill provides that those  
24 disciplinary sanctions may be imposed upon a person who  
25 impedes the securities bureau from conducting an audit,  
26 examination, inspection, or investigation or who refuses the  
27 securities bureau access to any office or location within an  
28 office to conduct an audit, examination, inspection, or  
29 investigation.

30 Section 502.304 provides for the revocation of a  
31 registration or application for registration if the registrant  
32 is no longer in existence or has ceased to do business under  
33 the chapter. The bill provides that if the applicant or  
34 registrant has abandoned the application or registration, the  
35 administrator of the securities bureau may enter an order of

1 abandonment and limit or eliminate further consideration of  
2 the application or registration. The bill provides procedures  
3 for notifying the applicant or registrant prior to issuing the  
4 order.

5 Section 502.304 provides for the withdrawal from  
6 registration of a broker-dealer or agent. The withdrawal  
7 becomes effective after receipt of an application to withdraw  
8 or a shorter period determined by the administrator. However,  
9 if a proceeding for a revocation or suspension is pending or  
10 instituted within 30 days after the application is filed, the  
11 withdrawal becomes effective under terms and conditions  
12 ordered by the administrator. The bill provides that the  
13 proceeding may involve a denial as well as a revocation or  
14 suspension.

15 Section 502.502 provides a civil remedy for a person  
16 aggrieved by a fraudulent practice as provided in the section.  
17 The bill requires that a copy of any suit or arbitration  
18 action filed under the section be served upon the  
19 administrator of the securities bureau within 20 days of the  
20 filing. The bill also provides that a failure to comply with  
21 this provision does not invalidate the legal action.

22 Section 502.604 provides that if a person fails or refuses  
23 to file a statement or report or to produce materials as  
24 ordered by the administrator, or obey a subpoena issued by the  
25 administrator, the administrator may refer the matter to the  
26 attorney general, who may apply to a district court to enforce  
27 compliance. This bill provides that the securities bureau may  
28 be awarded both prejudgment and postjudgment interest.

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Jacobs - chair

Holveck

Larson

HSB602

COMMERCE REGULATION  
Succeeded By

SF / HF 2405

SENATE/HOUSE FILE  
BY (PROPOSED DEPARTMENT OF  
COMMERCE/INSURANCE  
DIVISION BILL)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

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11 right, or royalty; an interest in a limited liability company  
12 or any class or series of such interest, including any  
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22 include an interest in a limited liability company, if all the  
23 members of the limited liability company are actively engaged  
24 in the management of the limited liability company, as proved  
25 to the division by the person claiming this exemption.  
26 However, evidence that members vote or have the right to vote,  
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22 price amendment, the administrator may enter a stop order,  
23 without notice or hearing, retroactively denying the  
24 effectiveness to the registration statement or suspending its  
25 effectiveness until compliance with this subsection is  
26 effected, if the administrator promptly notifies the  
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28 order. If the registrant proves compliance with the  
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19 the applicant, including, in the case of a broker-dealer, the  
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5 under this chapter or under rules adopted under this chapter  
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12 2. The administrator may not institute a suspension or  
13 revocation proceeding under subsection 1, paragraphs "c"  
14 through "f", on the basis of a fact known to the administrator  
15 when registration became effective unless the proceeding is  
16 instituted within sixty ninety days after the effective date.

17 Sec. 11. Section 502.304, subsection 4, Code 1995, is  
18 amended to read as follows:

19 4. a. If the administrator finds that any registrant or  
20 applicant for registration is no longer in existence or has  
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33 registrant, and either the administrator does not receive a  
34 response by the applicant or registrant within forty-five days  
35 from the date that the notice was delivered, or action is not

1 taken by the applicant or registrant within the time specified  
2 by the administrator in the notice, whichever is later.

3 Sec. 12. Section 502.304, subsection 5, Code 1995, is  
4 amended to read as follows:

5 5. Withdrawal from registration as a broker-dealer or  
6 agent becomes effective thirty days after receipt of an  
7 application to withdraw or within such shorter period of time  
8 as the administrator may by order determine, unless a  
9 revocation-or-suspension proceeding to deny, suspend, or  
10 revoke a registration is pending when the application is filed  
11 or a proceeding to revoke-or-suspend deny, suspend, or revoke  
12 a registration, or to impose conditions upon the withdrawal is  
13 instituted within thirty days after the application is filed.  
14 If a proceeding is pending or instituted, withdrawal becomes  
15 effective at such time and upon such conditions as the  
16 administrator by order determines. If no proceeding is  
17 pending or instituted and withdrawal automatically becomes  
18 effective, the administrator may nevertheless institute a  
19 revocation or suspension proceeding under subsection 1,  
20 paragraph "b", within one year after withdrawal became  
21 effective and enter a revocation or suspension order as of the  
22 last date on which registration was effective.

23 Sec. 13. Section 502.502, Code 1995, is amended by adding  
24 the following new subsection:

25 NEW SUBSECTION. 7. A copy of any suit or arbitration  
26 action filed under this section shall be served upon the  
27 administrator within twenty days of the filing in the form and  
28 manner prescribed by the administrator by rule or order,  
29 provided that the failure to comply with this provision shall  
30 not invalidate the action which is the subject of the suit.

31 Sec. 14. Section 502.604, subsection 2, Code 1995, is  
32 amended to read as follows:

33 2. Bring an action in the district court to enjoin the act  
34 or practice and to enforce compliance with this chapter or a  
35 rule or order adopted or issued pursuant to this chapter.

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

12 EXPLANATION

13 This bill amends various provisions in chapter 502, which  
14 is referred to as "Iowa Uniform Securities Act", as follows:

15 Section 502.102 is amended to expand the definition of  
16 "security" regulated under the chapter to include an interest  
17 in a limited liability company. The bill provides that  
18 security does not include an interest in a limited liability  
19 company if all the members of the limited liability company  
20 are actively engaged in the management of the limited  
21 liability company.

22 Section 502.202 provides exemption from registration and  
23 filing requirements. The section exempts a security,  
24 including a revenue obligation, issued or guaranteed by the  
25 United States, a state, a political subdivision of a state, or  
26 any agency or corporation or other instrumentality of one of  
27 these entities, or any certificate of deposit for any of the  
28 entities. The exemption does not include any revenue  
29 obligation payable from payments to be made from an interest  
30 in property or money used under a lease, sale, or loan  
31 arrangement involving a nongovernmental industrial or  
32 commercial enterprise, unless the payments are made or  
33 unconditionally guaranteed by an insurer whose securities are  
34 exempt because they are listed on the New York Stock Exchange,  
35 the American Stock Exchange, or other national securities

1 exchange registered under the Securities Exchange Act of 1934.  
2 The bill provides that this exemption also applies to an  
3 insurer whose securities are exempt because they are listed on  
4 the national association of securities dealers automated  
5 quotations - national market system (NASDAQ/NMS).

6 Section 502.202 also provides an exemption from  
7 registration and filing requirements for a security listed on  
8 several stock exchanges. The bill eliminates automatic  
9 exemption for securities listed on the Midwest Stock Exchange  
10 and the Pacific Coast Stock Exchange.

11 Section 502.203 exempts certain transactions from  
12 registration and filing requirements, including a nonissuer  
13 distribution of an outstanding security, if the security was  
14 issued by an issuer which has a class of securities currently  
15 registered under the Securities Exchange Act of 1934. The  
16 bill adds a requirement that the security must also be subject  
17 to certain reporting requirements of the Securities Exchange  
18 Act of 1934.

19 Section 502.203 is amended to provide that the  
20 administrator of the securities bureau may exempt other  
21 securities or transactions from the registration and filing  
22 requirements of the chapter.

23 Section 502.206 provides for methods by which a registrant  
24 may notify the securities bureau of information regarding a  
25 federal registration statement in cases involving registration  
26 of securities under the chapter and under the federal  
27 Securities Act of 1933. The bill provides that the  
28 notification to the securities bureau must be in writing and  
29 may be by electronic, telegraphic, or facsimile transmission.

30 Section 502.301 provides that it is unlawful for a person  
31 to transact business in this state as a broker-dealer or agent  
32 unless the person is licensed, or certain other conditions are  
33 satisfied. One condition is that if a person is a broker-  
34 dealer who has no place of business in this state, the broker-  
35 dealer effects transactions in this state exclusively with or

1 through the issuers of the securities involved in the  
2 transaction, other broker-dealers, banks, trust companies,  
3 insurance companies, or investment companies as defined in the  
4 Investment Company Act of 1940, pension or profit-sharing  
5 trusts, or other financial institutions or institutional  
6 buyers, whether acting for themselves or as trustees. The  
7 bill eliminates institutional buyers from the list of persons  
8 with whom the out-of-state broker-dealer may do business  
9 without being licensed.

10 Section 502.302 provides procedures for obtaining or  
11 renewing a license as a broker-dealer or agent. The section  
12 provides that unless a denial order is in effect and no  
13 denial, revocation, or suspension proceeding is pending,  
14 registration becomes effective 30 days after a completed  
15 application is filed with the securities bureau. The bill  
16 extends the time for review of the application from 30 to 60  
17 days.

18 Section 502.304 provides that the securities bureau may by  
19 order deny, suspend, or revoke a registration or may censure,  
20 impose a civil penalty upon, or bar an applicant, registrant,  
21 or any related person for violating a number of provisions  
22 included in the section. The bill provides that those  
23 disciplinary sanctions may be imposed upon a person who  
24 impedes the securities bureau from conducting an audit,  
25 examination, inspection, or investigation or who refuses the  
26 securities bureau access to any office or location within an  
27 office to conduct an audit, examination, inspection, or  
28 investigation.

29 Section 502.304 provides for the revocation of a  
30 registration or application for registration if the registrant  
31 is no longer in existence or has ceased to do business under  
32 the chapter. The bill provides that if the applicant or  
33 registrant has abandoned the application or registration, the  
34 administrator of the securities bureau may enter an order of  
35 abandonment and limit or eliminate further consideration of

1 the application or registration. The bill provides procedures  
2 for notifying the applicant or registrant prior to issuing the  
3 order.

4 Section 502.304 provides for the withdrawal from  
5 registration of a broker-dealer or agent. The withdrawal  
6 becomes effective after receipt of an application to withdraw  
7 or a shorter period determined by the administrator. However,  
8 if a proceeding for a revocation or suspension is pending or  
9 instituted within 30 days after the application is filed, the  
10 withdrawal becomes effective under terms and conditions  
11 ordered by the administrator. The bill provides that the  
12 proceeding may involve a denial as well as a revocation or  
13 suspension.

14 Section 502.502 provides a civil remedy for a person  
15 aggrieved by a fraudulent practice as provided in the section.  
16 The bill requires that a copy of any suit or arbitration  
17 action filed under the section be served upon the  
18 administrator of the securities bureau within 20 days of the  
19 filing. The bill also provides that a failure to comply with  
20 this provision does not invalidate the legal action.

21 Section 502.604 provides that if a person fails or refuses  
22 to file a statement or report or to produce materials as  
23 ordered by the administrator, or obey a subpoena issued by the  
24 administrator, the administrator may refer the matter to the  
25 attorney general, who may apply to a district court to enforce  
26 compliance. This bill provides that the securities bureau may  
27 be awarded both prejudgment and postjudgment interest.

28 BACKGROUND STATEMENT

29 SUBMITTED BY THE AGENCY

30 Section 1 of the bill creates a presumption that a limited  
31 liability company (LLC) falls within the definition of a  
32 security. This will clarify that the Iowa securities law  
33 covers these types of business organizations, unless there is  
34 actual participation in the management of the LLC. The bureau  
35 has been involved in extensive litigation on this definitional

1 issue which is likely to continue without this change. For  
2 the past few years, there has been an ongoing proliferation of  
3 high-tech fraud cases, involving such things as wireless cable  
4 and specialized mobile radio. These are often organized as  
5 LLCs. This area of fraud has also been faced by other states  
6 and the Securities Exchange Commission (SEC), resulting in a  
7 drain on enforcement resources. Several states have already  
8 moved to make this change in their laws.

9 Section 2 of this bill broadens the exemption by providing  
10 similar treatment for industrial revenue bonds where the  
11 underlying payments are to be made by issuers whose securities  
12 are exempt due to being listed on NASDAQ-NMS, whereas  
13 currently this exists only if the underlying issuer has  
14 securities exempt due to a NYSE or AMEX listing.

15 Section 3 of this bill would delete the automatic exemption  
16 for securities listed on two particular regional stock  
17 exchanges. Regional exchange listing criteria have been the  
18 subject of much state scrutiny and negotiations within the  
19 past few years, resulting in the North American Securities  
20 Administrators Association entering into Memorandums of  
21 Understanding (MOU) with several regional exchanges. These  
22 MOUs set minimum listing criteria and report on the adequacy  
23 of their regulatory oversight. The bureau has added by  
24 rulemaking recognition of the Chicago Board Options Exchange,  
25 Philadelphia Stock Exchange (Tier one), and Pacific Stock  
26 Exchange (Tier one) as exempt exchanges. The Midwest and  
27 Pacific (lower tier of the latter) do not meet these floor  
28 standards, and as such the bureau does not want to place the  
29 other exchanges at a competitive disadvantage due to their  
30 agreement to abide by certain minimums.

31 Section 4 of this bill would add a requirement of being  
32 subject to the reporting requirements for a period of time  
33 before the exemption for secondary trading would be available.  
34 This would ensure that the information made in the reports to  
35 the SEC has time to enter the public domain and actually be

1 available to investors. It would also help ensure that new  
2 offerings of securities had actually "come to rest" as is  
3 required by the federal rules.

4 Section 5 of this bill makes clear that the administrator  
5 may expand the types of securities or transactions which are  
6 exempt. Given a renewed focus on better dividing regulatory  
7 oversight between the state and federal regulators, the ever-  
8 increasing explosion in the development of new products,  
9 globalization, and the use of the Internet to offer  
10 securities, the flexibility of rulemaking would be helpful.  
11 This language is taken from the revised Uniform Securities Act  
12 (1985 version).

13 Section 6 of this bill makes clear that official  
14 communications to the bureau may be made using modern systems  
15 such as electronic, telegraphic, or facsimile transmission,  
16 which is the current actual practice.

17 Section 7 of this bill would delete institutional buyers  
18 from the list of persons with whom an out-of-state broker-  
19 dealer may do business without being licensed. Many out-of-  
20 state brokerage firms have mistakenly assumed that this term  
21 can be interpreted as the same for exempt treatment under the  
22 securities registration side, and have done unlimited business  
23 with individual investors having a certain net worth or  
24 income. The bureau believes the confusion will be eliminated  
25 by the deletion of this language. Transactions with financial  
26 institutions and other clearly designated sophisticated  
27 entities would still not require licensing, but doing business  
28 with individual Iowans would clearly require licensing by the  
29 out-of-state firm, thereby ensuring that customers will  
30 receive complete documentation.

31 Section 8 of this bill would lengthen the review period to  
32 the agency from 30 to 60 days before which automatic  
33 effectiveness would occur for an agent or broker-dealer  
34 application. Some states are eliminating this entirely, but  
35 the bureau feels by adding 30 days the bureau can perform the

1 most of the reviews necessary to making a licensing decision.  
2 Currently, if the bureau has questions or concerns, it must  
3 issue a notice of hearing to halt the automatic effectiveness,  
4 a practice that takes time and often is not in the best  
5 interest of either the applicant or the agency.

6 Section 9 of this bill makes clear that the bureau may  
7 issue a sanction when a firm attempts to hide information or  
8 stonewall the agency during audits or investigations. The  
9 securities regulatory system is predicated on full disclosure,  
10 and attempts to foil access to information would subject the  
11 firm to fines or censures.

12 Section 10 of this bill proposal adds 30 days to the length  
13 of time the bureau has to review and make a decision regarding  
14 a licensing action based upon an existing disciplinary  
15 history.

16 Section 11 of this bill would make clear that applications  
17 which are abandoned by the applicant could be deleted from the  
18 licensing system. This happens quite often, but at the  
19 current time the bureau typically has to bring an action to  
20 deny an application, which is more time consuming and also  
21 results in a reportable record if the applicant later files  
22 again.

23 Section 12 of this bill would make clear that the bureau  
24 could bring an administrative licensing action to deny, as  
25 well as revoke or suspend, in the event the applicant tried to  
26 drop the application in the face of actionable activities.  
27 This would eliminate a "race to the courthouse" type of system  
28 where the agency believes that conduct it has discovered  
29 should result in a reportable action and the applicant wants  
30 the issue to die.

31 Section 13 of this bill would require a copy of any lawsuit  
32 or arbitration action brought under the securities act to be  
33 filed with securities bureau. This is modeled on an Illinois  
34 provision. The goal is to ensure that the bureau is aware of  
35 litigation so that it can determine whether the underlying

1 facts warrant agency action of some sort for the public good  
2 as opposed to the civil action on behalf of a particular  
3 investor(s). However, the proposal makes clear that it is a  
4 goal only, since failure to file will not defeat the lawsuit.

5 Section 14 of this bill makes clear that if the bureau  
6 files an action in which the court orders restitution that,  
7 much like in a civil case, interest will be awarded as well.

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