

Substituted for HF 2465
3-25-96 (p. 935)

FILED FEB 29 1996

SENATE FILE 2363
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO SSB 2125)

Passed Senate, ^(p. 617) Date 3/5/96 Passed House, ^(p. 935) Date 3-25-96
Vote: Ayes 50 Nays 0 Vote: Ayes 96 Nays 0
Approved April 1, 1996

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:

- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23

S.F. 2363

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 the interest proves that all
20 the members of the limited liability company are actively
21 engaged in the management of the limited 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

29

30

31

32

33

34

35

DeLukery
Hynan
Radfern

SSB-2125
Commerce

Succeeded By

SENATE/HOUSE FILE SF/HF 2363

BY (PROPOSED DEPARTMENT OF
COMMERCE/INSURANCE
DIVISION BILL)

Passed Senate, Date _____ Passed House, 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:

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

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 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,
27 the right to receive information concerning the business and
28 affairs of the limited liability company, or the right to
29 participate in management shall not prove, without more, that
30 all members are actively engaged in the management of the
31 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 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.

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35

SENATE FILE 2363

AN ACT

RELATING TO ENTITIES AND SUBJECT MATTER UNDER THE REGULATORY
AUTHORITY OF THE SECURITIES BUREAU OF THE DIVISION OF
INSURANCE.

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

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

14. "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in a profit sharing agreement; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting trust certificate; certificate of deposit for a security;

fractional undivided interest in an oil, gas, or other mineral lease or in payments out of production under such a lease, right, or royalty; an interest in a limited liability company or any class or series of such interest, including any fractional or other interest in such interest; or, in general, any interest or instrument commonly known as a "security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. "Security" does not include an insurance or endowment policy or annuity contract under which an insurance company promises to pay money either in a lump sum or periodically for life or for some other specified period. "Security" also does not include an interest in a limited liability company if the person claiming that such an interest is not a security proves that all of the members of the limited liability company are actively engaged in the management of the limited liability company; provided that the evidence that members vote or have the right to vote, or the right to information concerning the business and affairs of the limited liability company, or the right to participate in management, shall not establish, without more, that all members are actively engaged in the management of the limited liability company.

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

1. Any security, including a revenue obligation, issued or guaranteed by the United States, any state, any political subdivision of a state, or any agency or corporate or other instrumentality of one or more of the foregoing; or any certificate of deposit for any of the foregoing; ~~but.~~ However, this exemption shall not include any revenue obligation payable from payments to be made in respect of property or money used under a lease, sale or loan arrangement by or for a nongovernmental industrial or commercial enterprise, unless such payments are or will be made or

unconditionally guaranteed by a person whose securities are exempt from registration under this chapter by (a) ~~this section~~, subsection 7, or 8, or 18, or (b) subsection 9 of ~~this section~~, provided the issuer first files with the administrator a written notice specifying the terms of the offer and the administrator does not by order disallow the exemption within fifteen days thereafter.

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

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

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

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

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

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

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

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

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

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

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

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

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

NEW PARAGRAPH. n. Does either of the following:

(1) Refuses to allow or otherwise impedes the securities bureau from conducting an audit, examination, inspection, or investigation as provided under section 502.303 or 502.603, including by withholding or concealing records or refusing to furnish records, if the records are required to be kept either under this chapter or under rules adopted under this chapter or by the securities bureau acting under this chapter.

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

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

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

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

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

b. If the administrator finds that the applicant or registrant for registration has abandoned the application or registration, the administrator may enter an order of abandonment, and limit or eliminate further consideration of the application or registration, as provided by the administrator. The administrator may enter an order under this paragraph if notice is sent to the applicant or registrant, and either the administrator does not receive a response by the applicant or registrant within forty-five days from the date that the notice was delivered, or action is not taken by the applicant or registrant within the time specified by the administrator in the notice, whichever is later.

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

5. Withdrawal from registration as a broker-dealer or agent becomes effective thirty days after receipt of an

application to withdraw or within such shorter period of time as the administrator may by order determine, unless a revocation-or-suspension proceeding to deny, suspend, or revoke a registration is pending when the application is filed or a proceeding to revoke-or-suspend deny, suspend, or revoke a registration, or to impose conditions upon the withdrawal is instituted within thirty days after the application is filed. If a proceeding is pending or instituted, withdrawal becomes effective at such time and upon such conditions as the administrator by order determines. If no proceeding is pending or instituted and withdrawal automatically becomes effective, the administrator may nevertheless institute a revocation or suspension proceeding under subsection 1, paragraph "b", within one year after withdrawal became effective and enter a revocation or suspension order as of the last date on which registration was effective.

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

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

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

2. Bring an action in the district court to enjoin the act or practice and to enforce compliance with this chapter or a rule or order adopted or issued pursuant to this chapter. Upon a proper showing a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. In addition, upon a proper showing by the administrator, the court may enter an order of rescission, restitution, or disgorgement directed at any person who has

engaged in an act constituting a violation of this chapter, or a rule or order adopted or issued pursuant to this chapter, and may order the payment of prejudgment and postjudgment interest. The administrator shall not be required to post a bond.

LEONARD L. BOSWELL
President of the Senate

RON J. CORBETT
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2363, Seventy-sixth General Assembly.

JOHN F. DWYER
Secretary of the Senate

Approved April 1, 1996

TERRY E. BRANSTAD
Governor