

Senate Study Bill 2125

Conference Committee Text

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1 1 Section 1. Section [502.102](#), subsection 14, Code 1995, is
1 2 amended to read as follows:

1 3 14. "Security" means any note; stock; treasury stock;
1 4 bond; debenture; evidence of indebtedness; certificate of
1 5 interest or participation in a profit sharing agreement;
1 6 collateral trust certificate; preorganization certificate or
1 7 subscription; transferable share; investment contract; voting
1 8 trust certificate; certificate of deposit for a security;
1 9 fractional undivided interest in an oil, gas, or other mineral
1 10 lease or in payments out of production under such a lease,
1 11 right, or royalty; an interest in a limited liability company
1 12 or any class or series of such interest, including any
1 13 fractional or other interest in such interest; or, in general,
1 14 any interest or instrument commonly known as a "security", or
1 15 any certificate of interest or participation in, temporary or
1 16 interim certificate for, receipt for, guarantee of, or warrant
1 17 or right to subscribe to or purchase, any of the foregoing.
1 18 "Security" does not include an insurance or endowment policy
1 19 or annuity contract under which an insurance company promises
1 20 to pay money either in a lump sum or periodically for life or
1 21 for some other specified period. "Security" also does not
1 22 include an interest in a limited liability company, if all the
1 23 members of the limited liability company are actively engaged
1 24 in the management of the limited liability company, as proved
1 25 to the division by the person claiming this exemption.
1 26 However, evidence that members vote or have the right to vote,
1 27 the right to receive information concerning the business and
1 28 affairs of the limited liability company, or the right to
1 29 participate in management shall not prove, without more, that
1 30 all members are actively engaged in the management of the
1 31 limited liability company.

1 32 Sec. 2. Section [502.202](#), subsection 1, Code 1995, is
1 33 amended to read as follows:

1 34 1. Any security, including a revenue obligation, issued or
1 35 guaranteed by the United States, any state, any political
2 1 subdivision of a state, or any agency or corporate or other
2 2 instrumentality of one or more of the foregoing; or any
2 3 certificate of deposit for any of the foregoing

~~;~~ but

~~1~~
2 4 However, this exemption shall not include any revenue
2 5 obligation payable from payments to be made in respect of
2 6 property or money used under a lease, sale or loan arrangement
2 7 by or for a nongovernmental industrial or commercial
2 8 enterprise, unless such payments are or will be made or
2 9 unconditionally guaranteed by a person whose securities are
2 10 exempt from registration under this chapter by (a)

~~this~~

2 11

~~section,~~

~~subsection 7.~~

~~or~~

- 8

~~,~~
- ~~or 18,~~ or (b) subsection 9

~~of~~

-

2 12

~~this section~~

- , provided the issuer first files with the

2 13 administrator a written notice specifying the terms of the
2 14 offer and the administrator does not by order disallow the
2 15 exemption within fifteen days thereafter.

2 16 Sec. 3. Section [502.202](#), subsection 8, Code 1995, is
2 17 amended to read as follows:

2 18 8. Any security listed or approved for listing upon notice
2 19 of issuance on the New York Stock Exchange, the American Stock
2 20 Exchange,

~~the Midwest Stock Exchange, the Pacific Coast Stock~~

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2 21

~~Exchange,~~

- or any other national securities exchange registered

2 22 under the Securities Exchange Act of 1934 and designated by
2 23 rule of the administrator; any other security of the same
2 24 issuer which is of senior or substantially equal rank; any
2 25 security called for by subscription rights or warrants so
2 26 listed or approved; or any warrant or right to purchase or
2 27 subscribe to any of the foregoing.

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

2 30 b. The security was issued by an issuer which has a class
2 31 of securities

~~currently registered~~

- subject to registration

2 32 under section 12 of the Securities Exchange Act of 1934, and
2 33 has been subject to the reporting requirements of section 13
2 34 or 15(d) of the Securities Exchange Act of 1934 for not less
2 35 than ninety days before the transaction;

3 1 Sec. 5. Section [502.203](#), Code 1995, is amended by adding
3 2 the following new subsection:

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

3 7 Sec. 6. Section [502.206](#), subsection 4, Code 1995, is
3 8 amended to read as follows:

3 9 4. The registrant shall notify the administrator promptly
3 10

~~by telephone or telegram~~

- in writing, which may be by

3 11 electronic, telegraphic, or facsimile transmission, of the
3 12 date and time when the federal registration statement became
3 13 effective and the content of the price amendment, if any, and
3 14 shall file a post-effective amendment promptly containing the
3 15 information and documents in the price amendment. "Price
3 16 amendment" means the final federal amendment which includes a
3 17 statement of the offering price, underwriting and selling
3 18 discounts or commissions, amount of proceeds, conversion
3 19 rates, call prices and other matters dependent upon the
3 20 offering price. Upon failure to receive the required

3 21 notification and post-effective amendment with respect to the
3 22 price amendment, the administrator may enter a stop order,
3 23 without notice or hearing, retroactively denying the
3 24 effectiveness to the registration statement or suspending its
3 25 effectiveness until compliance with this subsection is
3 26 effected, if the administrator promptly notifies the
3 27 registrant

~~by telephone or telegram~~

- of the issuance of such

3 28 order. If the registrant proves compliance with the
3 29 requirements of this subsection as to notice and post-
3 30 effective amendment the stop order shall be vacated as of the
3 31 time of its entry. The administrator may by rule or order
3 32 waive any of the conditions specified in subsection 2 or 3.

3 33 Sec. 7. Section 502.301, subsection 1, paragraph b,
3 34 subparagraph (1), Code 1995, is amended to read as follows:

3 35 (1) The broker-dealer effects transactions in this state
4 1 exclusively with or through the issuers of the securities
4 2 involved in the transaction, other broker-dealers, banks,
4 3 trust companies, insurance companies, or investment companies
4 4 as defined in the Investment Company Act of 1940, pension or
4 5 profit sharing trusts, or other financial institutions

~~or~~

-
4 6

~~institutional buyers~~

-, whether acting for themselves or as

4 7 trustees;

4 8 Sec. 8. Section [502.302](#), subsection 1, Code 1995, is
4 9 amended to read as follows:

4 10 1. A broker-dealer or agent may obtain an initial or
4 11 renewal license by filing with the administrator, or an
4 12 organization which the administrator by rule designates, an
4 13 application together with a consent to service of process
4 14 pursuant to section 502.609 and the appropriate filing fee.
4 15 The application shall contain the information the
4 16 administrator requires by rule concerning the applicant's form
4 17 and place of organization, proposed method of doing business
4 18 and financial condition, the qualifications and experience of
4 19 the applicant, including, in the case of a broker-dealer, the
4 20 qualifications and experience of any partner, officer,
4 21 director or controlling person, any injunction or
4 22 administrative order or conviction of a misdemeanor involving
4 23 securities and any conviction of a felony, and any other
4 24 matters which the administrator determines are relevant to the
4 25 application. If no denial order is in effect and no
4 26 proceeding is pending under section 502.304, registration
4 27 becomes effective at noon of the

~~thirtieth~~

- ~~sixtieth~~ day after

4 28 a completed application or an amendment completing the
4 29 application is filed, unless waived by the applicant. The
4 30 administrator may by rule or order specify an earlier
4 31 effective date.

4 32 Sec. 9. Section [502.304](#), subsection 1, Code 1995, is
4 33 amended by adding the following new paragraph:

4 34 NEW PARAGRAPH. n. Does either of the following:

4 35 (1) Refuses to allow or otherwise impedes the securities
5 1 bureau from conducting an audit, examination, inspection, or
5 2 investigation as provided under section 502.303 or 502.603,
5 3 including by withholding or concealing records or refusing to
5 4 furnish records, if the records are required to be kept either
5 5 under this chapter or under rules adopted under this chapter

5 6 or by the securities bureau acting under this chapter.

5 7 (2) Refuses securities bureau access to any office or
5 8 location within an office to conduct an audit, examination,
5 9 inspection, or investigation.

5 10 Sec. 10. Section [502.304](#), subsection 2, Code 1995, is
5 11 amended to read as follows:

5 12 2. The administrator may not institute a suspension or
5 13 revocation proceeding under subsection 1, paragraphs "c"
5 14 through "f", on the basis of a fact known to the administrator
5 15 when registration became effective unless the proceeding is
5 16 instituted within

~~—sixty~~

~~— ninety~~ days after the effective date.

5 17 Sec. 11. Section [502.304](#), subsection 4, Code 1995, is
5 18 amended to read as follows:

5 19 4. a. If the administrator finds that any registrant or
5 20 applicant for registration is no longer in existence or has
5 21 ceased to do business as a broker-dealer, or agent, or is
5 22 subject to an adjudication of mental incompetence or to the
5 23 control of a committee, conservator, or guardian, or cannot be
5 24 located after search, the administrator may by order revoke
5 25 the registration or application.

5 26 b. If the administrator finds that the applicant or
5 27 registrant for registration has abandoned the application or
5 28 registration, the administrator may enter an order of
5 29 abandonment, and limit or eliminate further consideration of
5 30 the application or registration, as provided by the
5 31 administrator. The administrator may enter an order under
5 32 this paragraph if notice is sent to the applicant or
5 33 registrant, and either the administrator does not receive a
5 34 response by the applicant or registrant within forty-five days
5 35 from the date that the notice was delivered, or action is not
6 1 taken by the applicant or registrant within the time specified
6 2 by the administrator in the notice, whichever is later.

6 3 Sec. 12. Section [502.304](#), subsection 5, Code 1995, is
6 4 amended to read as follows:

6 5 5. Withdrawal from registration as a broker-dealer or
6 6 agent becomes effective thirty days after receipt of an
6 7 application to withdraw or within such shorter period of time
6 8 as the administrator may by order determine, unless a
6 9

~~—revocation or suspension~~

~~— proceeding to deny, suspend, or~~

6 10 ~~revoke a registration~~ is pending when the application is filed
6 11 or a proceeding to

~~— revoke or suspend~~

~~— deny, suspend, or revoke~~

6 12 ~~a registration~~, or to impose conditions upon the withdrawal is
6 13 instituted within thirty days after the application is filed.
6 14 If a proceeding is pending or instituted, withdrawal becomes
6 15 effective at such time and upon such conditions as the
6 16 administrator by order determines. If no proceeding is
6 17 pending or instituted and withdrawal automatically becomes
6 18 effective, the administrator may nevertheless institute a
6 19 revocation or suspension proceeding under subsection 1,
6 20 paragraph "b", within one year after withdrawal became
6 21 effective and enter a revocation or suspension order as of the
6 22 last date on which registration was effective.

6 23 Sec. 13. Section [502.502](#), Code 1995, is amended by adding
6 24 the following new subsection:

6 25 NEW SUBSECTION. 7. A copy of any suit or arbitration
6 26 action filed under this section shall be served upon the
6 27 administrator within twenty days of the filing in the form and
6 28 manner prescribed by the administrator by rule or order,

6 29 provided that the failure to comply with this provision shall
6 30 not invalidate the action which is the subject of the suit.
6 31 Sec. 14. Section [502.604](#), subsection 2, Code 1995, is
6 32 amended to read as follows:
6 33 2. Bring an action in the district court to enjoin the act
6 34 or practice and to enforce compliance with this chapter or a
6 35 rule or order adopted or issued pursuant to this chapter.
7 1 Upon a proper showing a permanent or temporary injunction,
7 2 restraining order, or writ of mandamus shall be granted and a
7 3 receiver or conservator may be appointed for the defendant or
7 4 the defendant's assets. In addition, upon a proper showing by
7 5 the administrator, the court may enter an order of rescission,
7 6 restitution, or disgorgement directed at any person who has
7 7 engaged in an act constituting a violation of this chapter, or
7 8 a rule or order adopted or issued pursuant to this chapter,
7 9 and may order the payment of prejudgment and postjudgment
7 10 interest. The administrator shall not be required to post a
7 11 bond.

7 12 EXPLANATION

7 13 This bill amends various provisions in chapter 502, which
7 14 is referred to as "Iowa Uniform Securities Act", as follows:

7 15 Section 502.102 is amended to expand the definition of
7 16 "security" regulated under the chapter to include an interest
7 17 in a limited liability company. The bill provides that
7 18 security does not include an interest in a limited liability
7 19 company if all the members of the limited liability company
7 20 are actively engaged in the management of the limited
7 21 liability company.

7 22 Section 502.202 provides exemption from registration and
7 23 filing requirements. The section exempts a security,
7 24 including a revenue obligation, issued or guaranteed by the
7 25 United States, a state, a political subdivision of a state, or
7 26 any agency or corporation or other instrumentality of one of
7 27 these entities, or any certificate of deposit for any of the
7 28 entities. The exemption does not include any revenue
7 29 obligation payable from payments to be made from an interest
7 30 in property or money used under a lease, sale, or loan
7 31 arrangement involving a nongovernmental industrial or
7 32 commercial enterprise, unless the payments are made or
7 33 unconditionally guaranteed by an insurer whose securities are
7 34 exempt because they are listed on the New York Stock Exchange,
7 35 the American Stock Exchange, or other national securities
8 1 exchange registered under the Securities Exchange Act of 1934.
8 2 The bill provides that this exemption also applies to an
8 3 insurer whose securities are exempt because they are listed on
8 4 the national association of securities dealers automated
8 5 quotations - national market system (NASDAQ/NMS).

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

8 11 Section 502.203 exempts certain transactions from
8 12 registration and filing requirements, including a nonissuer
8 13 distribution of an outstanding security, if the security was
8 14 issued by an issuer which has a class of securities currently
8 15 registered under the Securities Exchange Act of 1934. The
8 16 bill adds a requirement that the security must also be subject
8 17 to certain reporting requirements of the Securities Exchange
8 18 Act of 1934.

8 19 Section 502.203 is amended to provide that the
8 20 administrator of the securities bureau may exempt other
8 21 securities or transactions from the registration and filing
8 22 requirements of the chapter.

8 23 Section 502.206 provides for methods by which a registrant
8 24 may notify the securities bureau of information regarding a
8 25 federal registration statement in cases involving registration

8 26 of securities under the chapter and under the federal
8 27 Securities Act of 1933. The bill provides that the
8 28 notification to the securities bureau must be in writing and
8 29 may be by electronic, telegraphic, or facsimile transmission.
8 30 Section 502.301 provides that it is unlawful for a person
8 31 to transact business in this state as a broker-dealer or agent
8 32 unless the person is licensed, or certain other conditions are
8 33 satisfied. One condition is that if a person is a broker-
8 34 dealer who has no place of business in this state, the broker-
8 35 dealer effects transactions in this state exclusively with or
9 1 through the issuers of the securities involved in the
9 2 transaction, other broker-dealers, banks, trust companies,
9 3 insurance companies, or investment companies as defined in the
9 4 Investment Company Act of 1940, pension or profit-sharing
9 5 trusts, or other financial institutions or institutional
9 6 buyers, whether acting for themselves or as trustees. The
9 7 bill eliminates institutional buyers from the list of persons
9 8 with whom the out-of-state broker-dealer may do business
9 9 without being licensed.

9 10 Section 502.302 provides procedures for obtaining or
9 11 renewing a license as a broker-dealer or agent. The section
9 12 provides that unless a denial order is in effect and no
9 13 denial, revocation, or suspension proceeding is pending,
9 14 registration becomes effective 30 days after a completed
9 15 application is filed with the securities bureau. The bill
9 16 extends the time for review of the application from 30 to 60
9 17 days.

9 18 Section 502.304 provides that the securities bureau may by
9 19 order deny, suspend, or revoke a registration or may censure,
9 20 impose a civil penalty upon, or bar an applicant, registrant,
9 21 or any related person for violating a number of provisions
9 22 included in the section. The bill provides that those
9 23 disciplinary sanctions may be imposed upon a person who
9 24 impedes the securities bureau from conducting an audit,
9 25 examination, inspection, or investigation or who refuses the
9 26 securities bureau access to any office or location within an
9 27 office to conduct an audit, examination, inspection, or
9 28 investigation.

9 29 Section 502.304 provides for the revocation of a
9 30 registration or application for registration if the registrant
9 31 is no longer in existence or has ceased to do business under
9 32 the chapter. The bill provides that if the applicant or
9 33 registrant has abandoned the application or registration, the
9 34 administrator of the securities bureau may enter an order of
9 35 abandonment and limit or eliminate further consideration of
10 1 the application or registration. The bill provides procedures
10 2 for notifying the applicant or registrant prior to issuing the
10 3 order.

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

10 14 Section 502.502 provides a civil remedy for a person
10 15 aggrieved by a fraudulent practice as provided in the section.
10 16 The bill requires that a copy of any suit or arbitration
10 17 action filed under the section be served upon the
10 18 administrator of the securities bureau within 20 days of the
10 19 filing. The bill also provides that a failure to comply with
10 20 this provision does not invalidate the legal action.

10 21 Section 502.604 provides that if a person fails or refuses
10 22 to file a statement or report or to produce materials as

10 23 ordered by the administrator, or obey a subpoena issued by the
10 24 administrator, the administrator may refer the matter to the
10 25 attorney general, who may apply to a district court to enforce
10 26 compliance. This bill provides that the securities bureau may
10 27 be awarded both pre-judgment and post-judgment interest.

10 28 BACKGROUND STATEMENT
10 29 SUBMITTED BY THE AGENCY

10 30 Section 1 of the bill creates a presumption that a limited
10 31 liability company (LLC) falls within the definition of a
10 32 security. This will clarify that the Iowa securities law
10 33 covers these types of business organizations, unless there is
10 34 actual participation in the management of the LLC. The bureau
10 35 has been involved in extensive litigation on this definitional
11 1 issue which is likely to continue without this change. For
11 2 the past few years, there has been an ongoing proliferation of
11 3 high-tech fraud cases, involving such things as wireless cable
11 4 and specialized mobile radio. These are often organized as
11 5 LLCs. This area of fraud has also been faced by other states
11 6 and the Securities Exchange Commission (SEC), resulting in a
11 7 drain on enforcement resources. Several states have already
11 8 moved to make this change in their laws.

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

11 15 Section 3 of this bill would delete the automatic exemption
11 16 for securities listed on two particular regional stock
11 17 exchanges. Regional exchange listing criteria have been the
11 18 subject of much state scrutiny and negotiations within the
11 19 past few years, resulting in the North American Securities
11 20 Administrators Association entering into Memorandums of
11 21 Understanding (MOU) with several regional exchanges. These
11 22 MOUs set minimum listing criteria and report on the adequacy
11 23 of their regulatory oversight. The bureau has added by
11 24 rulemaking recognition of the Chicago Board Options Exchange,
11 25 Philadelphia Stock Exchange (Tier one), and Pacific Stock
11 26 Exchange (Tier one) as exempt exchanges. The Midwest and
11 27 Pacific (lower tier of the latter) do not meet these floor
11 28 standards, and as such the bureau does not want to place the
11 29 other exchanges at a competitive disadvantage due to their
11 30 agreement to abide by certain minimums.

11 31 Section 4 of this bill would add a requirement of being
11 32 subject to the reporting requirements for a period of time
11 33 before the exemption for secondary trading would be available.
11 34 This would ensure that the information made in the reports to
11 35 the SEC has time to enter the public domain and actually be
12 1 available to investors. It would also help ensure that new
12 2 offerings of securities had actually "come to rest" as is
12 3 required by the federal rules.

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

12 13 Section 6 of this bill makes clear that official
12 14 communications to the bureau may be made using modern systems
12 15 such as electronic, telegraphic, or facsimile transmission,
12 16 which is the current actual practice.

12 17 Section 7 of this bill would delete institutional buyers
12 18 from the list of persons with whom an out-of-state broker-
12 19 dealer may do business without being licensed. Many out-of-

12 20 state brokerage firms have mistakenly assumed that this term
12 21 can be interpreted as the same for exempt treatment under the
12 22 securities registration side, and have done unlimited business
12 23 with individual investors having a certain net worth or
12 24 income. The bureau believes the confusion will be eliminated
12 25 by the deletion of this language. Transactions with financial
12 26 institutions and other clearly designated sophisticated
12 27 entities would still not require licensing, but doing business
12 28 with individual Iowans would clearly require licensing by the
12 29 out-of-state firm, thereby ensuring that customers will
12 30 receive complete documentation.

12 31 Section 8 of this bill would lengthen the review period to
12 32 the agency from 30 to 60 days before which automatic
12 33 effectiveness would occur for an agent or broker-dealer
12 34 application. Some states are eliminating this entirely, but
12 35 the bureau feels by adding 30 days the bureau can perform the
13 1 most of the reviews necessary to making a licensing decision.
13 2 Currently, if the bureau has questions or concerns, it must
13 3 issue a notice of hearing to halt the automatic effectiveness,
13 4 a practice that takes time and often is not in the best
13 5 interest of either the applicant or the agency.

13 6 Section 9 of this bill makes clear that the bureau may
13 7 issue a sanction when a firm attempts to hide information or
13 8 stonewall the agency during audits or investigations. The
13 9 securities regulatory system is predicated on full disclosure,
13 10 and attempts to foil access to information would subject the
13 11 firm to fines or censures.

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

13 16 Section 11 of this bill would make clear that applications
13 17 which are abandoned by the applicant could be deleted from the
13 18 licensing system. This happens quite often, but at the
13 19 current time the bureau typically has to bring an action to
13 20 deny an application, which is more time consuming and also
13 21 results in a reportable record if the applicant later files
13 22 again.

13 23 Section 12 of this bill would make clear that the bureau
13 24 could bring an administrative licensing action to deny, as
13 25 well as revoke or suspend, in the event the applicant tried to
13 26 drop the application in the face of actionable activities.
13 27 This would eliminate a "race to the courthouse" type of system
13 28 where the agency believes that conduct it has discovered
13 29 should result in a reportable action and the applicant wants
13 30 the issue to die.

13 31 Section 13 of this bill would require a copy of any lawsuit
13 32 or arbitration action brought under the securities act to be
13 33 filed with securities bureau. This is modeled on an Illinois
13 34 provision. The goal is to ensure that the bureau is aware of
13 35 litigation so that it can determine whether the underlying
14 1 facts warrant agency action of some sort for the public good
14 2 as opposed to the civil action on behalf of a particular
14 3 investor(s). However, the proposal makes clear that it is a
14 4 goal only, since failure to file will not defeat the lawsuit.

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

14 8 LSB 3280DP 76

14 9 da/jj/8