

Senate Study Bill 284

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; interest in a limited liability company;
1 12 or, in general, any interest or instrument commonly known as a
1 13 "security", or any certificate of interest or participation
1 14 in, temporary or interim certificate for, receipt for,
1 15 guarantee of, or warrant or right to subscribe to or purchase,
1 16 any of the foregoing. "Security" does not include an
1 17 insurance or endowment policy or annuity contract under which
1 18 an insurance company promises to pay money either in a lump
1 19 sum or periodically for life or for some other specified
1 20 period.

1 21 Sec. 2. Section [502.202](#), subsection 1, Code 1995, is
1 22 amended to read as follows:

1 23 1. Any security, including a revenue obligation, issued
1 24 or guaranteed by the United States, any state, any political
1 25 subdivision of a state, or any agency or corporate or other
1 26 instrumentality of one or more of the foregoing; or any
1 27 certificate of deposit for any of the foregoing; but this
1 28 exemption shall not include any revenue obligation payable
1 29 from payments to be made in respect of property or money used
1 30 under a lease, sale or loan arrangement by or for a
1 31 nongovernmental industrial or commercial enterprise, unless
1 32 such payments are or will be made or unconditionally
1 33 guaranteed by a person whose securities are exempt from
1 34 registration under this chapter by (a) this section,
1 35 subsection 7.

~~or~~

- 8, or ~~18~~, (b) subsection 9 of this section,
2 1 provided the issuer first files with the administrator a
2 2 written notice specifying the terms of the offer and the
2 3 administrator does not by order disallow the exemption within
2 4 fifteen days thereafter.

2 5 Sec. 3. Section [502.202](#), subsection 8, Code 1995, is
2 6 amended to read as follows:

2 7 8. Any security listed or approved for listing upon notice
2 8 of issuance on the New York Stock Exchange, the American Stock
2 9 Exchange,

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

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2 10

~~Exchange,~~

- or any other national securities exchange registered
2 11 under the Securities Exchange Act of 1934 and designated by
2 12 rule of the administrator; any other security of the same

2 13 issuer which is of senior or substantially equal rank; any
2 14 security called for by subscription rights or warrants so
2 15 listed or approved; or any warrant or right to purchase or
2 16 subscribe to any of the foregoing.
2 17 Sec. 4. Section 502.203, subsection 2, paragraph b, Code
2 18 1995, is amended by striking the paragraph and inserting in
2 19 lieu thereof the following:
2 20 b. The security was issued by an issuer which has a class
2 21 of securities subject to registration under section 12 of the
2 22 Securities Exchange Act of 1934 and has been subject to the
2 23 reporting requirements of section 13 or 15(d) of the
2 24 Securities Exchange Act of 1934 for not less than one hundred
2 25 eighty days before the transaction.
2 26 Sec. 5. Section [502.206](#), subsection 4, Code 1995, is
2 27 amended to read as follows:
2 28 4. The registrant shall notify the administrator promptly
2 29

~~by telephone or telegram~~

~~in writing, which may be by~~

2 30 electronic, telegraphic, or facsimile transmission, of the
2 31 date and time when the federal registration statement became
2 32 effective and the content of the price amendment, if any, and
2 33 shall file a post-effective amendment promptly containing the
2 34 information and documents in the price amendment. "Price
2 35 amendment" means the final federal amendment which includes a
3 1 statement of the offering price, underwriting and selling
3 2 discounts or commissions, amount of proceeds, conversion
3 3 rates, call prices and other matters dependent upon the
3 4 offering price. Upon failure to receive the required
3 5 notification and post-effective amendment with respect to the
3 6 price amendment, the administrator may enter a stop order,
3 7 without notice or hearing, retroactively denying the
3 8 effectiveness to the registration statement or suspending its
3 9 effectiveness until compliance with this subsection is
3 10 effected, if the administrator promptly notifies the
3 11 registrant

~~by telephone or telegram~~

~~of the issuance of such~~

3 12 order. If the registrant proves compliance with the
3 13 requirements of this subsection as to notice and post-
3 14 effective amendment the stop order shall be vacated as of the
3 15 time of its entry. The administrator may by rule or order
3 16 waive any of the conditions specified in subsection 2 or 3.

3 17 Sec. 6. Section 502.301, subsection 1, paragraph b,
3 18 subparagraph (1), Code 1995, is amended to read as follows:

3 19 (1) The broker-dealer effects transactions in this state
3 20 exclusively with or through the issuers of the securities
3 21 involved in the transaction, other broker-dealers, banks,
3 22 trust companies, insurance companies, or investment companies
3 23 as defined in the Investment Company Act of 1940, pension or
3 24 profit sharing trusts, or other financial institutions

~~or~~

3 25

~~institutional buyers~~

~~, whether acting for themselves or as~~

3 26 trustees;

3 27 Sec. 7. Section [502.302](#), subsection 1, Code 1995, is
3 28 amended to read as follows:

3 29 1. A broker-dealer or agent may obtain an initial or
3 30 renewal license by filing with the administrator, or an
3 31 organization which the administrator by rule designates, an
3 32 application together with a consent to service of process

3 33 pursuant to section 502.609 and the appropriate filing fee.
3 34 The application shall contain the information the
3 35 administrator requires by rule concerning the applicant's form
4 1 and place of organization, proposed method of doing business
4 2 and financial condition, the qualifications and experience of
4 3 the applicant, including, in the case of a broker-dealer, the
4 4 qualifications and experience of any partner, officer,
4 5 director or controlling person, any injunction or
4 6 administrative order or conviction of a misdemeanor involving
4 7 securities and any conviction of a felony, and any other
4 8 matters which the administrator determines are relevant to the
4 9 application. If no denial order is in effect and no
4 10 proceeding is pending under section 502.304, registration
4 11 becomes effective at noon of the

~~thirtieth~~

- sixtieth day after

4 12 a completed application or an amendment completing the
4 13 application is filed, unless waived by the applicant. The
4 14 administrator may by rule or order specify an earlier
4 15 effective date.

4 16 Sec. 8. Section [502.304](#), subsection 1, Code 1995, is
4 17 amended by adding the following new paragraph:

4 18 NEW PARAGRAPH. n. Has done either of the following:

4 19 (1) Refused to allow or otherwise impeded the adminis-
4 20 trator or an employee of the securities bureau from conducting
4 21 an audit, examination, inspection, or investigation provided
4 22 for under section 502.303 or 502.603, including by withholding
4 23 or concealing material information from, or refusing to
4 24 furnish material information to, the administrator or employee
4 25 of the bureau.

4 26 (2) Refused the administrator, or an employee of the
4 27 securities bureau, access to any office or location within an
4 28 office to conduct an audit, examination, inspection, or
4 29 investigation.

4 30 Sec. 9. Section [502.304](#), subsection 2, Code 1995, is
4 31 amended to read as follows:

4 32 2. The administrator

~~may~~

- shall not institute a suspension

4 33 or revocation proceeding under subsection 1, paragraphs "c"
4 34 through "f", on the basis of a fact known to the administrator
4 35 when registration became effective, unless the proceeding is
5 1 instituted within

~~sixty~~

- ninety days after the effective date.

5 2 Sec. 10. Section 502.304, subsection 4, is amended to read
5 3 as follows:

5 4 4. a. If the administrator finds that any registrant or
5 5 applicant for registration is no longer in existence or has
5 6 ceased to do business as a broker-dealer, or agent, or is
5 7 subject to an adjudication of mental incompetence or to the
5 8 control of a committee, conservator, or guardian, or cannot be
5 9 located after search, the administrator may by order revoke
5 10 the registration or application.

5 11 b. If the administrator finds that the applicant or
5 12 registrant has abandoned the application or registration, the
5 13 administrator may enter an order of abandonment, and take the
5 14 appropriate action to reflect that within the licensing
5 15 system. The administrator may enter an order under this
5 16 paragraph, if the notice is sent to the applicant or
5 17 registrant, and either the administrator does not receive a
5 18 response from the applicant or registrant, or action is not
5 19 taken by the applicant or registrant within the time specified
5 20 by the administrator.

5 21 Sec. 11. Section [502.304](#), subsection 5, Code 1995, is
5 22 amended to read as follows:

5 23 5. Withdrawal from registration as a broker-dealer or
5 24 agent becomes effective thirty days after receipt of an
5 25 application to withdraw or within such shorter period of time
5 26 as the administrator may by order determine, unless a
5 27 revocation or suspension proceeding is pending when the
5 28 application is filed or a proceeding to revoke or suspend or
5 29 deny or to impose conditions upon the withdrawal is instituted
5 30 within thirty days after the application is filed. If a
5 31 proceeding is pending or instituted, withdrawal becomes
5 32 effective at such time and upon such conditions as the
5 33 administrator by order determines. If no proceeding is
5 34 pending or instituted and withdrawal automatically becomes
5 35 effective, the administrator may nevertheless institute a
6 1 revocation or suspension proceeding under subsection 1,
6 2 paragraph "b", within one year after withdrawal became
6 3 effective and enter a revocation or suspension order as of the
6 4 last date on which registration was effective.

6 5 Sec. 12. Section [502.502](#), Code 1995, is amended by adding
6 6 the following new subsection:

6 7 NEW SUBSECTION. 7. A copy of any suit filed under this
6 8 section shall be served upon the administrator within five
6 9 business days of the filing in the form and manner prescribed
6 10 by the administrator by rule or order, provided that the
6 11 failure to comply with this provision shall not invalidate the
6 12 action which is the subject of the suit.

6 13 Sec. 13. Section [502.604](#), subsection 2, Code 1995, is
6 14 amended to read as follows:

6 15 2. Bring an action in the district court to enjoin the act
6 16 or practice and to enforce compliance with this chapter or a
6 17 rule or order adopted or issued pursuant to this chapter.
6 18 Upon a proper showing a permanent or temporary injunction,
6 19 restraining order, or writ of mandamus shall be granted and a
6 20 receiver or conservator may be appointed for the defendant or
6 21 the defendant's assets. In addition, upon a proper showing by
6 22 the administrator, the court may enter an order of rescission,
6 23 restitution, or disgorgement directed at any person who has
6 24 engaged in an act constituting a violation of this chapter, or
6 25 a rule or order adopted or issued pursuant to this chapter,
6 26 and may order the payment of prejudgment and post-judgment
6 27 interest. The administrator shall not be required to post a
6 28 bond.

6 29 Sec. 14. Section [523A.11](#), Code 1995, is amended to read as
6 30 follows:

6 31 523A.11 INVESTIGATIONS.

6 32 The attorney general or the commissioner may, for the
6 33 purpose of discovering violations of this chapter or any rules
6 34 adopted under this chapter:

6 35 1. Investigate the business and examine the books, ac-
7 1 counts, records, and files used by every permit holder under
7 2 this chapter.

7 3 2. Notwithstanding chapter 22, keep confidential the
7 4 information obtained in the course of an investigation.
7 5 However, if the attorney general or the commissioner
7 6 determines that it is necessary or appropriate in the public
7 7 interest or for the protection of consumers, the attorney
7 8 general or commissioner may share information with other
7 9 attorneys general, commissioners, regulatory authorities, or
7 10 governmental agencies, or may publish information concerning a
7 11 violation of this chapter or a rule or order under this
7 12 chapter.

7 13

~~- 2.~~

- 3. Administer oaths and affirmations, subpoena

7 14 witnesses, receive evidence, and require the production of

7 15 documents and records in connection with an investigation or
7 16 proceeding being conducted pursuant to this chapter.
7 17

~~3.~~

- 4. Apply to the district court for issuance of an order
7 18 requiring a person's appearance before the commissioner or
7 19 attorney general, or a designee of either or both, in cases
7 20 where the person has refused to obey a subpoena issued by the
7 21 commissioner or attorney general. The person may also be
7 22 required to produce documentary evidence germane to the
7 23 subject of the investigation. Failure to obey a court order
7 24 under this subsection constitutes contempt of court.
7 25 Sec. 15. Section 523B.8, subsection 1, unnumbered para-
7 26 graph 1, Code 1995, is amended to read as follows:
7 27 If it appears to the administrator that a person has
7 28 engaged, is engaging, or is about to engage in any act or
7 29 practice constituting a violation of this chapter or a rule or
7 30 order adopted or issued under this chapter, the administrator
7 31 may issue an order directed at the person requiring the person
7 32 to cease and desist from engaging in the act or practice. The
7 33 person named in the order may, within fourteen days

~~after~~

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7 34

~~receipt~~

- of the date of the issuance of the order, file a
7 35 written request for a hearing. The hearing shall be held in
8 1 accordance with chapter 17A.
8 2 Sec. 16. Section [523B.8](#), subsection 4, Code 1995, is
8 3 amended to read as follows:
8 4 4. If it appears to the administrator that a person has
8 5 engaged, is engaged, or is about to engage in any act or
8 6 practice constituting a violation of this chapter, or of a
8 7 rule or order adopted or issued under this chapter, the
8 8 administrator may take either or both of the following
8 9 actions:
8 10 a.

~~Notify the attorney general who shall bring~~

- Bring an
8 11 action in the district court to enjoin the acts or practices
8 12 constituting the violation and to enforce compliance with this
8 13 chapter or any rule or order adopted or issued pursuant to
8 14 this chapter. Upon a proper showing a permanent or temporary
8 15 injunction shall be granted and a receiver or conservator may
8 16 be appointed for the defendant or the defendant's assets.
8 17 b.

~~Sue on behalf of a purchaser to enforce the purchaser's~~

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8 18

~~rights.~~

- Bring an action in district court and upon proper
8 19 showing by the administrator, the court may enter an order of
8 20 rescission, restitution, or disgorgement, directed at any
8 21 person who has engaged in an act constituting a violation of
8 22 this chapter, or a rule or order adopted or issued pursuant to
8 23 this chapter, and may order the payment of prejudgment and
8 24 post-judgment interest. The administrator shall not be
8 25 required to post bond.
8 26 Sec. 17. Section [523E.11](#), Code 1995, is amended to read as
8 27 follows:
8 28 523E.11 INVESTIGATIONS.

8 29 The attorney general or the commissioner may, for the
8 30 purpose of discovering violations of this chapter or any rules
8 31 adopted under this chapter:

8 32 1. Investigate the business and examine the books,
8 33 accounts, records, and files used by every permit holder under
8 34 this chapter.

8 35 2. Notwithstanding chapter 22, keep confidential the
9 1 information obtained in the course of an investigation.
9 2 However, if the attorney general or the commissioner
9 3 determines that it is necessary or appropriate in the public
9 4 interest or for the protection of consumers, the attorney
9 5 general or the commissioner may share information with other
9 6 attorneys general, commissioners, regulatory authorities, or
9 7 governmental agencies or may publish information concerning a
9 8 violation of this chapter or a rule or order under this
9 9 chapter.

9 10

~~2.~~

- 3. Administer oaths and affirmations, subpoena

9 11 witnesses, receive evidence, and require the production of
9 12 documents and records in connection with an investigation or
9 13 proceeding being conducted pursuant to this chapter.
9 14

~~3.~~

- 4. Apply to the district court for issuance of an order

9 15 requiring a person's appearance before the commissioner or
9 16 attorney general, or a designee of either or both, in cases
9 17 where the person has refused to obey a subpoena issued by the
9 18 commissioner or attorney general. The person may also be
9 19 required to produce documentary evidence germane to the
9 20 subject of the investigation. Failure to obey a court order
9 21 under this subsection constitutes contempt of court.

9 22 EXPLANATION

9 23 This bill amends a number of provisions in chapters 502,
9 24 523A, 523B, and 523E under the regulatory authority of the
9 25 securities bureau of the division of insurance. The bill
9 26 makes the following amendments:

9 27 Section 502.102 is amended to include an interest in a
9 28 limited liability company within the definition of "security"
9 29 under chapter 502.

9 30 Section 502.202 exempts securities issued or guaranteed by
9 31 a governmental organization from requirements related to
9 32 registration and filing sales and advertising literature.
9 33 This bill provides that the exemption applies to any revenue
9 34 obligation payable from payments relating to property or money
9 35 used under a lease, sale, or loan arrangement by or for a
10 1 nongovernmental industrial or commercial enterprise which are
10 2 made or unconditionally guaranteed by a person whose
10 3 securities are exempt from registration under subsection 18
10 4 which refers to a security designated or approved for
10 5 designation upon notice of issuance on the national
10 6 association of securities dealers automated
10 7 quotations&endash;national market system (NASDAQ/NMS).

10 8 Section 502.202 provides that securities listed upon notice
10 9 of issuance on the Midwest Stock Exchange and the Pacific
10 10 Coast Stock Exchange are exempt from requirements relating to
10 11 registration and filing sales and advertising literature.
10 12 This bill eliminates the reference to the Midwest Stock
10 13 Exchange and the Pacific Stock Exchange.

10 14 Section 502.203 provides that certain transactions are
10 15 exempt from requirements relating to registration and the
10 16 filing of promotional and sales literature. The bill
10 17 eliminates a provision exempting securities issued by an
10 18 issuer which has a class of securities currently registered
10 19 under the Securities Exchange Act of 1934, and adds an

10 20 exemption for a security issued by an issuer which has a class
10 21 of securities subject to registration under section 12 of the
10 22 Securities Exchange Act of 1934 and has been subject to the
10 23 reporting requirements of section 13 or 15(d) of the
10 24 Securities Exchange Act of 1934 for not less than 180 days
10 25 before the transaction.

10 26 Section 502.206 provides for registration by coordination.
10 27 The bill eliminates a provision requiring a registrant to
10 28 notify the administrator of the securities bureau by telephone
10 29 or telegram, and adds that the notification must be in
10 30 writing, which may be by electronic, telegraphic, or facsimile
10 31 transmission.

10 32 Section 502.301 provides that an out-of-state broker-dealer
10 33 may effect transactions in this state with certain persons in
10 34 Iowa without being licensed. This bill eliminates
10 35 institutional buyers as persons with whom the out-of-state
11 1 broker may act.

11 2 Section 502.302 provides for registration procedures. The
11 3 section provides that registration becomes effective at noon
11 4 of the thirtieth day after a completed application is filed,
11 5 unless the bureau takes other action. This bill changes the
11 6 thirtieth-day requirement to a sixtieth-day requirement.

11 7 Section 502.304 provides for the denial, revocation,
11 8 suspension, or withdrawal of a registration. The bill adds a
11 9 new ground for disciplinary action, including a refusal to
11 10 allow the bureau to conduct an audit, examination, inspection,
11 11 or investigation as provided in the chapter, or a refusal to
11 12 allow access to an office or location in order to conduct an
11 13 audit, examination, inspection, or investigation.

11 14 Section 502.304 currently provides that the bureau cannot
11 15 institute a disciplinary action against a person involving a
11 16 revocation or suspension of a registration for certain
11 17 purposes on the basis of a fact known to the bureau when the
11 18 registration became effective unless the proceeding is
11 19 instituted within 60 days after the effective date of the
11 20 registration. The bill increases this time to 90 days.

11 21 Section 502.304 is amended to provide that if the
11 22 administrator finds that the applicant or registrant has
11 23 abandoned the application or registration, the administrator
11 24 may enter an order of abandonment and take the appropriate
11 25 action to reflect that within the licensing system.

11 26 Section 502.304 provides for a person's withdrawal from
11 27 registration as a broker-dealer to become effective on a date
11 28 determined by the bureau if there is no proceeding to revoke
11 29 or suspend the registration. This bill provides that a
11 30 proceeding may include denial of a registration and the date
11 31 of denial may be determined by the bureau.

11 32 Section 502.502 provides for fraudulent practices. The
11 33 bill provides that a copy of any suit filed under the section
11 34 must be served upon the bureau within five business days of
11 35 the filing in a form and manner prescribed by the bureau.

12 1 Section 502.604 provides for cease and desist orders and
12 2 injunctions. The bill provides that a court may enter
12 3 prejudgment and post-judgment interest against a defendant.

12 4 Chapter 523A regulates funeral services and merchandise.
12 5 Section 523A.11 provides for investigations by the attorney
12 6 general or the commissioner of insurance. The bill provides
12 7 that information obtained in the course of an investigation is
12 8 not subject to the public records law.

12 9 The bill amends chapter 523B which regulates business
12 10 opportunity promotions. Section 523B.8 provides that the
12 11 bureau may issue an order directing a person to cease and
12 12 desist from engaging in an act or practice which is a
12 13 violation of the chapter. The bill provides that the person
12 14 named in the order has 14 days from the date of issuance
12 15 rather than the date of receipt to file a request for a
12 16 hearing. Section 523B.8 provides that if it appears to the

12 17 bureau that a person is violating the chapter or a rule or
12 18 order adopted or issued under the chapter the administrator
12 19 may notify the attorney general who is required to bring an
12 20 action in district court. The bill provides that the bureau
12 21 may bring the action directly. The bill also provides that
12 22 the court may enter an order of rescission, restitution, or
12 23 disgorgement, as well as prejudgment and post-judgment
12 24 interest against a defendant.

12 25 Finally, the bill amends chapter 523E which regulates
12 26 cemetery merchandising. Section 523E.11 provides that the
12 27 attorney general or the commissioner of insurance may conduct
12 28 investigations of businesses regulated under the chapter.
12 29 This bill provides that information obtained in the course of
12 30 an investigation is not subject to the public records law.

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