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H 3/24/98 UNFINISHED BUSINESS CALENDAR

SENATE FILE 2325

BY COMMITTEE ON COMMERCE

(SUCCESSOR TO SSB 2142)

Passed Senate, Date ^(p. 715) 3/16/98
Vote: Ayes 48 Nays 0

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Vote: Ayes 93 Nays 0

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Vote 48-0

A BILL FOR

1 An Act amending the Uniform Securities Act, by regulating persons
2 involved in managing investments, providing for the
3 administration of the securities bureau, providing fees, and
4 providing for penalties.

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

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S.F. 2325

UNFINISHED BUSINESS CALENDAR

1 Section 1. Section 502.102, Code Supplement 1997, is
2 amended by adding the following new subsections:

3 NEW SUBSECTION. 5A. "Federal covered adviser" means a
4 person who is registered under section 203 of the Investment
5 Advisers Act of 1940, 15 U.S.C. § 80(b) et. seq. "Federal
6 covered adviser" does not include a person who is excluded
7 from the definition of "investment adviser" as provided in
8 subsection 9A, paragraph "c", subparagraphs (1) through (7).

9 NEW SUBSECTION. 9A. a. "Investment adviser" means any
10 person who, for compensation, does any of the following:

11 (1) Engages in the business of providing investment
12 advisory services by advising others, either directly or
13 through publications or writings, as to the value of
14 securities or as to the advisability of investing in,
15 purchasing, or selling securities.

16 (2) As a part of a regular business, issues or promulgates
17 analyses or reports concerning securities.

18 b. "Investment adviser" includes a financial planner or
19 other person who, as an integral component of other
20 financially related services, does either of the following:

21 (1) Provides investment advisory services to others for
22 compensation and as part of a business.

23 (2) Holds oneself out as providing investment advisory
24 services to others for compensation.

25 c. "Investment adviser" does not include a person who is
26 any of the following:

27 (1) An investment adviser representative.

28 (2) A bank, savings institution, or trust company.

29 (3) An attorney licensed to practice law in this state, a
30 certified public accountant licensed pursuant to chapter 542C,
31 a professional engineer licensed pursuant to chapter 542B, or
32 a certified teacher, if the person's performance of these
33 services is solely incidental to the practice of the person's
34 profession.

35 (4) An attorney licensed to practice law in this state or

1 a certified public accountant licensed pursuant to chapter
2 542C who does not do any of the following:

3 (a) Exercise investment discretion regarding the assets of
4 a client or maintain custody of the assets of a client for the
5 purpose of investing the assets, except when the person is
6 acting as a bona fide fiduciary in a capacity such as an
7 executor, administrator, trustee, estate or trust agent,
8 guardian, or conservator.

9 (b) Accept or receive directly or indirectly any
10 commission, fee, or other remuneration contingent upon the
11 purchase or sale of any specific security by a client of such
12 person.

13 (c) Provide advice regarding the purchase or sale of
14 specific securities. However, this subparagraph subdivision
15 (c) shall not apply when the advice about specific securities
16 is based on a financial statement analysis or tax
17 considerations that are reasonably related to and in
18 connection with the person's profession.

19 (5) A broker-dealer or its agent whose performance of
20 these services is solely incidental to the conduct of its
21 business as a broker-dealer and who receives no special
22 compensation for them.

23 (6) A publisher of any bona fide newspaper, news column,
24 newsletter, news magazine, or business or financial
25 publication or service, whether communicated in hard copy
26 form, or by electronic means, or otherwise, that does not
27 consist of the rendering of advice on the basis of the
28 specific investment situation of each client.

29 (7) A person who is excluded from the definition of
30 "investment adviser" under section 202(a)(11) of the
31 Investment Advisers Act of 1940.

32 (8) A person who is a federal covered adviser.

33 (9) A person not within the intent of this subsection as
34 the administrator may by rule or order designate.

35 d. As used in this subsection, "compensation" does not

1 include a commission, fee, or a combination of a commission
2 and a fee, which is paid to an insurance agent licensed under
3 chapter 522, if the insurance agent receives the commission,
4 fee, or the combination of a commission and a fee, for the
5 sale of insurance as regulated pursuant to Title XIII,
6 subtitle 1.

7 NEW SUBSECTION. 9B. a. "Investment adviser
8 representative" means an individual including but not limited
9 to a partner, officer, director, or an individual occupying a
10 similar status or performing similar functions as a partner,
11 officer, or director, except clerical or ministerial
12 personnel, if both of the following apply:

13 (1) The individual is employed by or associated with an
14 investment adviser that is registered or required to be
15 registered under this chapter, or who is employed by or
16 associated with a federal covered adviser.

17 (2) The individual does any of the following:

18 (a) Makes any recommendations or otherwise renders advice
19 regarding securities.

20 (b) Manages accounts or portfolios of clients.

21 (c) Determines which recommendation or advice regarding
22 securities should be given.

23 (d) Solicits, offers, or negotiates for the sale of or
24 sells investment advisory services.

25 (e) Supervises employees who perform any of the functions
26 in subparagraphs (a) through (d).

27 b. "Investment adviser representative" does not include
28 any other person not within the intent of this subsection as
29 the administrator may by rule or order designate.

30 Sec. 2. Section 502.102, subsection 14, Code Supplement
31 1997, is amended to read as follows:

32 14. "Securities Act of 1933", "Securities Exchange Act of
33 1934", "Public Utility Holding Company Act of 1935",
34 "Investment Advisers Act of 1940", "Investment Company Act of
35 1940", "Internal Revenue Code" and "Agricultural Marketing

1 Act" mean the federal statutes of those names.

2 Sec. 3. Section 502.301, subsection 3, Code 1997, is
3 amended by striking the subsection and inserting in lieu
4 thereof the following:

5 3. It is unlawful for any person to transact business in
6 this state as an investment adviser or as an investment
7 adviser representative unless one of the following applies:

8 a. The person is registered under this part.

9 b. The person has no place of business in this state, and
10 either of the following applies:

11 (1) The person's only clients in this state are investment
12 companies as defined in the Investment Company Act of 1940,
13 other investment advisers, federal covered advisers, broker-
14 dealers, banks, trust companies, savings and loan
15 associations, insurance companies, employee benefit plans with
16 assets of not less than one million dollars, and governmental
17 agencies or instrumentalities, whether acting for themselves
18 or as trustees with investment control, or other institutional
19 investors as are designated by rule or order of the
20 administrator.

21 (2) During the preceding twelve-month period the person
22 has had no more than five clients, other than those specified
23 in subparagraph (1), who are residents of this state.

24 Sec. 4. Section 502.301, Code 1997, is amended by adding
25 the following new subsections:

26 NEW SUBSECTION. 4. It is unlawful for any of the
27 following persons to do the following:

28 a. An investment adviser required to be registered to
29 employ an investment adviser representative unless the
30 investment adviser representative is registered under this
31 chapter, provided that the registration of an investment
32 adviser representative is not effective during any period when
33 the investment adviser representative is not employed by an
34 investment adviser registered under this part.

35 b. A federal covered adviser to employ, supervise, or

1 associate with an investment adviser representative having a
2 place of business located in this state, unless the investment
3 adviser representative is registered under this chapter, or is
4 exempt from registration.

5 When an investment adviser representative begins or
6 terminates employment or association with an investment
7 adviser, the investment adviser in the case of paragraph "a",
8 or the investment adviser representative in the case of
9 paragraph "b", shall promptly notify the administrator.

10 NEW SUBSECTION. 5. Every registration or notice filing
11 under this section expires December 31, unless renewed.

12 NEW SUBSECTION. 6. Except with respect to advisers whose
13 only clients are those described in section 502.301,
14 subsection 3, paragraph "b", it is unlawful for any federal
15 covered adviser to conduct advisory business in this state
16 unless such person complies with the provisions of section
17 502.302, subsection 2.

18 Sec. 5. Section 502.302, Code Supplement 1997, is amended
19 to read as follows:

20 502.302 REGISTRATION AND NOTICE FILING PROCEDURES.

21 1. A broker-dealer, or agent, investment adviser, or
22 investment adviser representative may obtain an initial or
23 renewal license by filing with the administrator, or an
24 organization which the administrator by rule designates, an
25 application together with a consent to service of process
26 pursuant to section 502.609 and the appropriate filing fee.
27 The application shall contain the information the
28 administrator requires by rule concerning the applicant's form
29 and place of organization, proposed method of doing business
30 and financial condition, and the qualifications and experience
31 of the applicant, ~~including, in.~~ In the case of a broker-
32 dealer or investment adviser, the application shall include
33 the qualifications and experience of any partner, officer,
34 director or controlling person, any injunction or
35 administrative order or conviction of a misdemeanor involving

1 securities and any conviction of a felony, and any other
2 matters which the administrator determines are relevant to the
3 application. In addition, in the case of an investment
4 adviser, the application shall include any information to be
5 furnished or disseminated to any client or prospective client,
6 and any other information which the administrator determines
7 is relevant to the application. If no denial order is in
8 effect and no proceeding is pending under section 502.304,
9 registration becomes effective at noon of the sixtieth day
10 after a completed application or an amendment completing the
11 application is filed, unless waived by the applicant. The
12 administrator may by rule or order specify an earlier
13 effective date.

14 2. Except with respect to federal covered advisers whose
15 only clients are those described in section 502.301,
16 subsection 3, paragraph "b", a federal covered adviser shall
17 file with the administrator, prior to acting as a federal
18 covered adviser in this state, such documents as have been
19 filed with the securities and exchange commission as the
20 administrator, by rule or order, may require.

21 3. Every applicant for initial or renewal registration as
22 a broker-dealer or investment adviser shall pay a filing fee
23 of two hundred dollars. Every applicant for initial or
24 renewal registration as an agent or investment adviser
25 representative shall pay a filing fee of thirty dollars. A
26 filing fee is not refundable. Every person acting as a
27 federal covered adviser in this state, except with respect to
28 federal covered advisers whose only clients are those
29 described in section 502.301, subsection 3, paragraph "b",
30 shall pay an initial and renewal notice filing fee of one
31 hundred dollars.

32 3- 4. A registered broker-dealer, federal covered adviser,
33 or investment adviser may file an application for registration
34 of a successor, whether or not the successor is then in
35 existence, for the unexpired portion of the year. There shall

1 be no filing fee.

2 4: 5. The administrator may by rule or order require a
3 minimum capital for broker-dealers subject to the limitations
4 of section 15 of the Securities Exchange Act of 1934. The
5 administrator by rule or order may also establish minimum
6 financial requirements for investment advisers, subject to the
7 limitations of section 222 of the Investment Advisers Act of
8 1940, which may include different requirements for those
9 investment advisers who maintain custody of client funds or
10 securities or who have discretionary authority over client
11 funds or securities and those investment advisers who do not.

12 6. The administrator may by rule or order require
13 investment advisers who have custody of or discretionary
14 authority over client funds or securities to post bonds in
15 amounts as the administrator may prescribe, subject to the
16 limitations of section 222 of the Investment Advisers Act of
17 1940 and may determine conditions on the bonds. A bond shall
18 not be required of any investment adviser whose minimum
19 financial requirements, which may be defined by rule, exceed
20 the amounts required by the administrator. Every bond shall
21 provide for suit on the bond by the person who has a cause of
22 action under this chapter and, if the administrator by rule or
23 order requires, by any person who has a cause of action not
24 arising under this chapter. Every bond shall provide that a
25 suit shall not be maintained to enforce liability on the bond
26 unless brought within the time limitations of section 502.504.

27 5: 7. The administrator may by rule or order impose such
28 other conditions in connection with registration under this
29 chapter as are deemed appropriate, in the public interest or
30 for the protection of investors.

31 Sec. 6. Section 502.303, Code Supplement 1997, is amended
32 to read as follows:

33 502.303 POST-REGISTRATION PROVISIONS.

34 1. Every registered broker-dealer and investment adviser
35 shall make and keep accounts, correspondence, memoranda,

1 papers, books, and other records as the administrator may
2 prescribe by rule or order, except as provided by section 15
3 of the Securities Exchange Act of 1934 in the case of a
4 broker-dealer, and section 222 of the Investment Advisers Act
5 of 1940 in the case of an investment adviser. All records
6 required, with respect to an investment adviser, shall be
7 preserved for a period as the administrator prescribes by rule
8 or order.

9 2. With respect to investment advisers, the administrator
10 may require that certain information be furnished or
11 disseminated to clients or prospective clients as necessary or
12 appropriate in the public interest or for the protection of
13 investors and advisory clients. To the extent determined in
14 the administrator's discretion, information furnished to
15 clients or prospective clients of an investment adviser that
16 would be in compliance with the Investment Advisers Act of
17 1940 and the rules under that Act may be used in whole or in
18 partial satisfaction of this requirement.

19 3. Every registered broker-dealer and investment adviser
20 shall file such financial reports as the administrator
21 prescribes by rule or order, not to exceed the limitations
22 provided in section 15 of the Securities Exchange Act of 1934
23 in the case of a broker-dealer, and section 222 of the
24 Investment Advisers Act of 1940 in the case of an investment
25 adviser.

26 3. 4. If the information contained in any document filed
27 with the administrator is or becomes inaccurate or incomplete
28 in any material respect, the registrant or federal covered
29 adviser shall promptly file a correcting amendment promptly if
30 the document is filed with respect to a registrant, or when
31 such amendment is required to be filed with the securities and
32 exchange commission, if the document is filed with respect to
33 a federal covered adviser, unless notification of the
34 correction has been given under section 502.301, subsection 2.

35 4. 5. The administrator may make examinations, within or

1 without this state, of the business and records of each
2 registered broker-dealer or investment adviser, at the times
3 and in the scope as the administrator determines. The
4 examinations may be made without prior notice to the broker-
5 dealer or investment adviser. The administrator may copy all
6 records the administrator ~~feels~~ believes are necessary to
7 conduct the examination. The expense reasonably attributable
8 to an examination shall be paid by the broker-dealer or
9 investment adviser whose business is examined, but the expense
10 so payable shall not exceed an amount which the administrator
11 by rule prescribes. For the purpose of avoiding unnecessary
12 duplication of examinations, the administrator may co-operate
13 with securities administrators of other states, the securities
14 and exchange commission, and any national securities exchange
15 or national securities association registered under the
16 Securities Exchange Act of 1934. The administrator shall not
17 make public the information obtained in the course of
18 examinations, except when a duty under this chapter requires
19 the administrator to take action regarding a broker-dealer or
20 investment adviser or to make the information available to one
21 of the agencies specified in this section, or except when the
22 administrator is called as a witness in a criminal or civil
23 proceeding.

24 Sec. 7. Section 502.304, subsection 1, unnumbered
25 paragraph 1, Code Supplement 1997, is amended to read as
26 follows:

27 The administrator may by order deny, suspend, or revoke a
28 registration or may censure, impose a civil penalty upon, or
29 bar an applicant, registrant, or any officer, director,
30 partner, or person occupying a similar status or performing
31 similar functions for a registrant. A person barred under
32 this subsection may be prohibited by the administrator from
33 employment with a registered broker-dealer or investment
34 adviser. The administrator may restrict the person barred
35 from engaging in any activity for which registration is

1 required. Any action by the administrator under this
2 subsection may be taken if the order is found to be in the
3 public interest and it is found that the applicant or
4 registrant or, in the case of a broker-dealer or investment
5 adviser, a partner, an officer, or a director, a person
6 occupying a similar status or performing similar functions, or
7 a person directly or indirectly controlling the broker-dealer
8 or investment adviser:

9 Sec. 8. Section 502.304, subsection 1, paragraphs e, h,
10 and j, Code Supplement 1997, are amended to read as follows:

11 e. Is the subject of an order of the administrator
12 denying, suspending, or revoking registration as a broker-
13 dealer, agent, investment adviser, investment adviser
14 representative, or insurance agent;

15 h. Is insolvent, either in the equity or bankruptcy sense;
16 but the administrator may not enter an order against a broker-
17 dealer or investment adviser under this paragraph without a
18 finding of insolvency as to the broker-dealer or investment
19 adviser;

20 j. Has failed reasonably to supervise an agent or employee
21 in the case of a broker-dealer, or an investment adviser
22 representative or employee in the case of an investment
23 adviser;

24 Sec. 9. Section 502.304, subsection 1, paragraph m,
25 subparagraph (2), Code Supplement 1997, is amended to read as
26 follows:

27 (2) Within the past five years, has been the subject of an
28 action of a securities regulator of a foreign jurisdiction
29 denying, revoking, or suspending the right to engage in the
30 business of securities as a broker-dealer, or agent,
31 investment adviser, or investment adviser representative.

32 Sec. 10. Section 502.304, subsection 3, Code Supplement
33 1997, is amended to read as follows:

34 3. The administrator may by order summarily postpone or
35 suspend registration pending final determination of any

1 proceeding under this section. Upon the entry of the order,
2 the administrator shall promptly notify the applicant or
3 registrant, as well as the employer or prospective employer if
4 the applicant or registrant is an agent or investment adviser
5 representative, that it has been entered and of the reasons
6 therefor and that within fifteen days after the receipt of a
7 written request the matter will be set down for hearing. If
8 no hearing is requested and none is ordered by the
9 administrator, the order will remain in effect until it is
10 modified or vacated by the administrator. If a hearing is
11 requested or ordered, the administrator, after notice of and
12 opportunity for hearing, may modify or vacate the order or
13 extend it until final determination.

14 Sec. 11. Section 502.304, subsection 4, paragraph a, Code
15 Supplement 1997, is amended to read as follows:

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

24 Sec. 12. Section 502.304, subsection 5, Code Supplement
25 1997, is amended to read as follows:

26 5. Withdrawal from registration as a broker-dealer, or
27 agent, investment adviser, or investment adviser
28 representative becomes effective thirty days after receipt of
29 an application to withdraw or within such shorter period of
30 time as the administrator may by order determine, unless a
31 proceeding to deny, suspend, or revoke a registration is
32 pending when the application is filed or a proceeding to deny,
33 suspend, or revoke a registration, or to impose conditions
34 upon the withdrawal is instituted within thirty days after the
35 application is filed. If a proceeding is pending or

1 instituted, withdrawal becomes effective at such time and upon
2 such conditions as the administrator by order determines. If
3 no proceeding is pending or instituted and withdrawal
4 automatically becomes effective, the administrator may
5 nevertheless institute a revocation or suspension proceeding
6 under subsection 1, paragraph "b", within one year after
7 withdrawal became effective and enter a revocation or
8 suspension order as of the last date on which registration was
9 effective.

10 Sec. 13. NEW SECTION. 502.305 EXAMINATION OF INVESTMENT
11 ADVISER REPRESENTATIVE AND EXEMPTION FROM EXAMINATION.

12 The administrator may adopt rules requiring the passage of
13 an examination by an individual who is required to be
14 registered under this chapter as an investment adviser
15 representative. However, a person who is registered as an
16 investment adviser representative between January 1, 1999, and
17 December 31, 2000, shall not be required to pass an
18 examination for as long as the person maintains a continuous
19 registration.

20 Sec. 14. Section 502.406, subsections 1 and 2, Code
21 Supplement 1997, are amended to read as follows:

22 1. It is unlawful for any person registered as a broker-
23 dealer, or agent, investment adviser, or investment adviser
24 representative under this chapter to represent or imply in any
25 manner whatsoever that such person has been sponsored,
26 recommended, or approved or that the person's abilities or
27 qualifications have in any respect been passed upon by the
28 administrator. Nothing in this subsection prohibits a
29 statement other than in a paid advertisement that a person is
30 registered under this chapter, if such statement is true in
31 fact and if the effect of such registration is not
32 misrepresented.

33 2. a. The fact that an application for registration or
34 notice filing under part III or a registration statement or a
35 notice filing has been filed under this chapter or the fact

1 that a person or the statement has become effective does not
2 constitute a finding by the administrator that any document
3 filed under this chapter is true, complete, or not misleading.
4 Any such fact or the fact that an exemption is available for a
5 security or a transaction does not mean that the administrator
6 has passed in any way upon the merits or qualifications of, or
7 has recommended or given approval to, any person, security, or
8 transaction.

9 b. It is unlawful to make, or cause to be made, to any
10 prospective purchaser, customer, client, or any other person,
11 any representation inconsistent with paragraph "a" of ~~this~~
12 subsection.

13 Sec. 15. NEW SECTION. 502.408 ADVISORY ACTIVITIES.

14 1. It is unlawful for any person who receives, directly or
15 indirectly, any consideration from another person for advising
16 the other person as to the value of securities or their
17 purchase or sale, whether through the issuance of analyses or
18 reports or otherwise, to do any of the following:

19 a. Employ any device, scheme, or artifice to defraud the
20 other person.

21 b. Engage in any act, practice, or course of business
22 which operates or would operate as a fraud or deceit upon the
23 other person.

24 c. Engage in dishonest or unethical practices as the
25 administrator may define by rule.

26 2. In the solicitation of advisory clients, it is unlawful
27 for a person to make any untrue statement of a material fact,
28 or omit to state a material fact necessary in order to make
29 the statements made, in light of the circumstances under which
30 they are made, not misleading.

31 3. Except as may be permitted by rule or order of the
32 administrator, it is unlawful for any investment adviser to
33 enter into, extend, or renew any investment advisory contract
34 unless it provides in writing all of the following:

35 a. That the investment adviser shall not be compensated on

1 the basis of a share of capital gains upon or capital
2 appreciation of the funds or any portion of the funds of the
3 client.

4 b. That no assignment of the contract may be made by the
5 investment adviser without the consent of the other party to
6 the contract.

7 c. That the investment adviser, if a partnership, shall
8 notify the other party to the contract of any change in the
9 membership of the partnership within a reasonable time after
10 the change.

11 4. Subsection 3, paragraph "a", does not prohibit an
12 investment advisory contract which provides for compensation
13 based upon the total value of a fund averaged over a definite
14 period, or as of definite dates or taken as of a definite
15 date. "Assignment", as used in subsection 3, paragraph "b",
16 includes any direct or indirect transfer or hypothecation of
17 an investment advisory contract by the assignor or of a
18 controlling block of the assignor's outstanding voting
19 securities by a security holder of the assignor. However, if
20 the investment adviser is a partnership, no assignment of an
21 investment advisory contract is considered to result from the
22 death or withdrawal of a minority of the members of the
23 investment adviser having only a minority interest in the
24 business of the investment adviser, or from the admission to
25 the investment adviser of one or more members who, after
26 admission, will be only a minority of the members and will
27 have only a minority interest in the business.

28 5. It is unlawful for any investment adviser to take or
29 have custody of any securities or funds of any client if any
30 of the following applies:

31 a. The administrator by rule prohibits custody.

32 b. In the absence of rule, the investment adviser fails to
33 notify the administrator that it has or may have custody.

34 6. The administrator may by rule or order adopt exemptions
35 from the requirements of subsection 1, paragraph "c", and

1 subsection 3, paragraphs "a", "b", and "c", where such
2 exemptions are consistent with the public interest and within
3 the purposes fairly intended by the policy and provisions of
4 this chapter.

5 Sec. 16. Section 502.501, subsection 1, paragraph c, Code
6 Supplement 1997, is amended to read as follows:

7 ~~c. Offers or sells a security at any time when such person~~
8 ~~has committed a material violation of~~ Violates section
9 502.301, or

10 Sec. 17. NEW SECTION. 502.502A ADVISORY MISCONDUCT.

11 1. A person shall be held civilly liable for doing any of
12 the following:

13 a. Engaging in the business of advising others, for
14 compensation, either directly or through publications or
15 writings, as to the value of securities or as to the
16 advisability of investing in, purchasing, or selling
17 securities, or who, for compensation and as a part of a
18 regular business, issues or promulgates analyses or reports
19 concerning securities in violation of section 502.301,
20 subsection 3 or 4; section 502.406, subsection 2; section
21 502.408; or of any rule or order under section 502.602.

22 b. Receiving directly or indirectly any consideration from
23 another person for advice as to the value of securities or
24 their purchase or sale, whether through the issuance of
25 analyses, reports, or otherwise and employs any device,
26 scheme, or artifice to defraud such other person or engages in
27 any act, practice, or course of business which operates or
28 would operate as a fraud or deceit on such other person. The
29 person acting in violation of this section is liable to the
30 other person who may sue either at law or in equity to recover
31 the consideration paid for such advice and any loss due to
32 such advice, together with interest at the legal rate per year
33 from the date of payment of the consideration plus costs and
34 reasonable attorney's fees, less the amount of any income
35 received from such advice.

1 2. A person shall not base the civil action on a contract,
2 if the person did any of the following:

3 a. Engaged in the performance of the contract in violation
4 of any provision of this chapter, or any rule adopted or order
5 issued under this chapter.

6 b. Acquired any purported right under the contract with
7 knowledge of the facts by reason of which its making or
8 performance was in violation of any provision of this chapter
9 or any rule adopted or order issued under this chapter.

10 Sec. 18. Section 502.503, subsection 1, unnumbered
11 paragraph 1, Code 1997, is amended to read as follows:

12 Affiliates of a person liable under either section 502.501,
13 or 502.502, or 502.502A, partners, principal executive
14 officers or directors of such person, persons occupying a
15 similar status or performing similar functions for such
16 person, persons (whether employees of such person or
17 otherwise) who materially aid and abet in the act or
18 transaction constituting the violation, and broker-dealers or
19 agents who materially aid and abet in the act or transaction
20 constituting the violation, are also liable jointly and
21 severally with and to the same extent as such person, unless:

22 Sec. 19. Section 502.503, subsection 1, paragraph a, Code
23 1997, is amended to read as follows:

24 a. With respect to section 502.501, and section 502.502,
25 subsections 1 and 5, or section 502.502A, any person liable
26 hereunder proves that the person did not know, and in the
27 exercise of reasonable care could not have known, of the
28 existence of the facts by reason of which the liability is
29 alleged to exist; and

30 Sec. 20. Section 502.602, Code Supplement 1997, is amended
31 to read as follows:

32 502.602 FILING OF SALES AND ADVERTISING LITERATURE.

33 The administrator may by rule or order require the filing
34 of any prospectus, pamphlet, circular, form letter,
35 advertisement, or other sales literature or advertising

1 communication addressed or intended for distribution to
2 prospective investors, including clients or prospective
3 clients of an investment adviser, unless the security is a
4 federal covered security or the transaction relates to a
5 federal covered security or the security or transaction is
6 exempted by section 502.202 or 502.203. The administrator may
7 by rule or order prohibit the publication, circulation or use
8 of any advertising deemed false or misleading.

9 Sec. 21. Section 502.608, subsection 2, Code Supplement
10 1997, is amended to read as follows:

11 2. The administrator shall keep a register of all
12 applications for registration, notice filings, and
13 registration statements which are or have been effective under
14 this chapter and predecessor laws, and all censure, denial,
15 suspension, or revocation orders which have been entered under
16 this chapter and predecessor laws. All records may be
17 maintained in an electronic or microfilm format or any other
18 form of data storage. The register shall be open for public
19 inspection.

20 Sec. 22. Section 502.610, Code 1997, is amended by adding
21 the following new subsection:

22 NEW SUBSECTION. 5. Section 502.301, subsection 3, and
23 section 502.408, and section 502.406 so far as investment
24 advisers and investment adviser representatives are concerned,
25 apply when any act instrumental in effecting prohibited
26 conduct is done in this state, whether or not either party is
27 then present in this state.

28 Sec. 23. **CONDITION TO ADMINISTRATION AND ENFORCEMENT.** The
29 securities bureau of the insurance division of the department
30 of commerce is not required to administer or enforce the
31 provisions of this Act, unless the administrator of the
32 securities bureau determines that there are sufficient moneys
33 available to support administration and enforcement of this
34 Act. Sufficient moneys to administer and enforce the
35 provisions of this Act shall be deemed to be available if the

1 fees, and authorizes rules to set minimum financial
2 requirements and bonds for investment advisers.

3 The bill establishes postregistration requirements, such as
4 recordkeeping, financial reports, corrective amendments, and
5 bureau inspection authority.

6 The bill prohibits certain conduct. The bill lists
7 prohibited advisory transactions, including fraud or deceit,
8 unethical or dishonest business practices, and limits certain
9 types of compensation arrangements. The bill creates civil
10 liability for fraud or deceit, failure to register, and
11 violations of rules or orders. The bill provides for filing
12 certain sales and advertising literature. The bill provides
13 that public records may be maintained in electronic,
14 microfilm, or other format.

15 The bill conditions initial implementation of the bill upon
16 an appropriation to the bureau by the general assembly. The
17 bill requires the bureau to commence rulemaking as soon as
18 possible. The bill provides for a delayed effective date of
19 January 1, 1999, except for the rulemaking authority.

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SENATE FILE 2325

H-8761

- 1 Amend Senate File 2325, as passed by the Senate, as
- 2 follows:
- 3 1. By striking page 17, line 28, through page 18,
- 4 line 8.
- 5 2. Title page, line 4, by inserting after the
- 6 word "penalties" the following: "and effective
- 7 dates".
- 8 3. By renumbering as necessary.

By CHAPMAN of Linn

H-8761 FILED MARCH 30, 1998

adopted 3/30/98

p.1071

HOUSE AMENDMENT TO
SENATE FILE 2325

S-5437

- 1 Amend Senate File 2325, as passed by the Senate, as
- 2 follows:
- 3 1. By striking page 17, line 28, through page 18,
- 4 line 8.
- 5 2. Title page, line 4, by inserting after the
- 6 word "penalties" the following: "and effective
- 7 dates".
- 8 3. By renumbering as necessary.

RECEIVED FROM THE HOUSE

S-5437 FILED MARCH 31, 1998

Senate Concurred

4.6-98

(p.1060)

*Delaney
Douglas
Redfern*

SSB-2142
Commerce
Succeeded By
SF HF 2325

SENATE/HOUSE FILE _____
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 amending the Uniform Securities Act, by regulating persons
2 involved in managing investments, providing for the
3 administration of the securities bureau, providing fees, and
4 providing for penalties.

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

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1 Section 1. Section 502.102, Code Supplement 1997, is
2 amended by adding the following new subsections:

3 NEW SUBSECTION. 5B. "Federal covered adviser" means a
4 person who is registered under section 203 of the Investment
5 Advisers Act of 1940, 15 U.S.C. § 80(b) et. seq. "Federal
6 covered adviser" does not include a person who is excluded
7 from the definition of "investment adviser" as provided in
8 subsection 8A, paragraph "c", subparagraphs (1) through (7).

9 NEW SUBSECTION. 9A. a. "Investment adviser" means any
10 person who, for compensation, does any of the following:

11 (1) Engages in the business of providing investment
12 advisory services by advising others, either directly or
13 through publications or writings, as to the value of
14 securities or as to the advisability of investing in,
15 purchasing, or selling securities.

16 (2) As a part of a regular business, issues or promulgates
17 analyses or reports concerning securities.

18 b. "Investment adviser" includes a financial planner or
19 other person who, as an integral component of other
20 financially related services, does either of the following:

21 (1) Provides investment advisory services to others for
22 compensation and as part of a business.

23 (2) Holds oneself out as providing investment advisory
24 services to others for compensation.

25 c. "Investment adviser" does not include a person who is
26 any of the following:

27 (1) An investment adviser representative.

28 (2) A bank, savings institution, or trust company.

29 (3) An attorney licensed to practice law in this state, a
30 certified public accountant licensed pursuant to chapter 542C,
31 a professional engineer licensed pursuant to chapter 542B, or
32 a certified teacher, if the person's performance of these
33 services is solely incidental to the practice of the person's
34 profession.

35 (4) An attorney licensed to practice law in this state or

1 a certified public accountant licensed pursuant to chapter
2 542C who does not do any of the following:

3 (a) Exercise investment discretion regarding the assets of
4 a client or maintain custody of the assets of a client for the
5 purpose of investing the assets, except when the person is
6 acting as a bona fide fiduciary in a capacity such as an
7 executor, administrator, trustee, estate or trust agent,
8 guardian, or conservator.

9 (b) Accept or receive directly or indirectly any
10 commission, fee, or other remuneration contingent upon the
11 purchase or sale of any specific security by a client of such
12 person.

13 (c) Provide advice regarding the purchase or sale of
14 specific securities. However, this subparagraph subdivision
15 (c) shall not apply when the advice about specific securities
16 is based on a financial statement analysis or tax
17 considerations that are reasonably related to and in
18 connection with the person's profession.

19 (5) A broker-dealer or its agent whose performance of
20 these services is solely incidental to the conduct of its
21 business as a broker-dealer and who receives no special
22 compensation for them.

23 (6) A publisher of any bona fide newspaper, news column,
24 newsletter, news magazine, or business or financial
25 publication or service, whether communicated in hard copy
26 form, or by electronic means, or otherwise, that does not
27 consist of the rendering of advice on the basis of the
28 specific investment situation of each client.

29 (7) A person who is excluded from the definition of
30 "investment adviser" under section 202(a)(11) of the
31 Investment Advisers Act of 1940.

32 (8) A person who is a federal covered adviser.

33 (9) A person not within the intent of this subsection as
34 the administrator may by rule or order designate.

35 d. As used in this subsection, "compensation" does not

1 include a commission, fee, or a combination of a commission
2 and a fee, which is paid to an insurance agent licensed under
3 chapter 522, if the insurance agent receives the commission,
4 fee, or the combination of a commission and a fee, for the
5 sale of insurance as regulated pursuant to Title XIII,
6 subtitle 1.

7 NEW SUBSECTION. 9B. a. "Investment adviser
8 representative" means an individual including but not limited
9 to a partner, officer, director, or an individual occupying a
10 similar status or performing similar functions as a partner,
11 officer, or director, except clerical or ministerial
12 personnel, if both of the following apply:

13 (1) The individual is employed by or associated with an
14 investment adviser that is registered or required to be
15 registered under this chapter, or who is employed by or
16 associated with a federal covered adviser.

17 (2) The individual does any of the following:

18 (a) Makes any recommendations or otherwise renders advice
19 regarding securities.

20 (b) Manages accounts or portfolios of clients.

21 (c) Determines which recommendation or advice regarding
22 securities should be given.

23 (d) Solicits, offers, or negotiates for the sale of or
24 sells investment advisory services.

25 (e) Supervises employees who perform any of the functions
26 in subparagraphs (a) through (d).

27 b. "Investment adviser representative" does not include
28 any other person not within the intent of this subsection as
29 the administrator may by rule or order designate.

30 Sec. 2. Section 502.102, subsection 14, Code Supplement
31 1997, is amended to read as follows:

32 14. "Securities Act of 1933", "Securities Exchange Act of
33 1934", "Public Utility Holding Company Act of 1935",
34 "Investment Advisers Act of 1940", "Investment Company Act of
35 1940", "Internal Revenue Code" and "Agricultural Marketing

1 Act" mean the federal statutes of those names.

2 Sec. 3. Section 502.301, subsection 3, Code 1997, is
3 amended by striking the subsection and inserting in lieu
4 thereof the following:

5 3. It is unlawful for any person to transact business in
6 this state as an investment adviser or as an investment
7 adviser representative unless one of the following applies:

8 a. The person is registered under this part.

9 b. The person has no place of business in this state, and
10 either of the following applies:

11 (1) The person's only clients in this state are investment
12 companies as defined in the Investment Company Act of 1940,
13 other investment advisers, federal covered advisers, broker-
14 dealers, banks, trust companies, savings and loan
15 associations, insurance companies, employee benefit plans with
16 assets of not less than one million dollars, and governmental
17 agencies or instrumentalities, whether acting for themselves
18 or as trustees with investment control, or other institutional
19 investors as are designated by rule or order of the
20 administrator.

21 (2) During the preceding twelve-month period the person
22 has had no more than five clients, other than those specified
23 in subparagraph (1), who are residents of this state.

24 Sec. 4. Section 502.301, Code 1997, is amended by adding
25 the following new subsections:

26 NEW SUBSECTION. 4. It is unlawful for any of the
27 following persons to do the following:

28 a. An investment adviser required to be registered to
29 employ an investment adviser representative unless the
30 investment adviser representative is registered under this
31 chapter, provided that the registration of an investment
32 adviser representative is not effective during any period when
33 the investment adviser representative is not employed by an
34 investment adviser registered under this part.

35 b. A federal covered adviser to employ, supervise, or

1 associate with an investment adviser representative having a
2 place of business located in this state, unless the investment
3 adviser representative is registered under this chapter, or is
4 exempt from registration.

5 When an investment adviser representative begins or
6 terminates employment or association with an investment
7 adviser, the investment adviser in the case of paragraph "a",
8 or the investment adviser representative in the case of
9 paragraph "b", shall promptly notify the administrator.

10 NEW SUBSECTION. 5. Every registration or notice filing
11 under this section expires December 31, unless renewed.

12 NEW SUBSECTION. 6. Except with respect to advisers whose
13 only clients are those described in section 502.301,
14 subsection 3, paragraph "b", it is unlawful for any federal
15 covered adviser to conduct advisory business in this state
16 unless such person complies with the provisions of section
17 502.302, subsection 2.

18 Sec. 5. Section 502.302, Code Supplement 1997, is amended
19 to read as follows:

20 502.302 REGISTRATION AND NOTICE FILING PROCEDURES.

21 1. A broker-dealer, or agent, investment adviser, or
22 investment adviser representative may obtain an initial or
23 renewal license by filing with the administrator, or an
24 organization which the administrator by rule designates, an
25 application together with a consent to service of process
26 pursuant to section 502.609 and the appropriate filing fee.
27 The application shall contain the information the
28 administrator requires by rule concerning the applicant's form
29 and place of organization, proposed method of doing business
30 and financial condition, and the qualifications and experience
31 of the applicant, including, in. In the case of a broker-
32 dealer or investment adviser, the application shall include
33 the qualifications and experience of any partner, officer,
34 director or controlling person, any injunction or
35 administrative order or conviction of a misdemeanor involving

1 securities and any conviction of a felony, and any other
 2 matters which the administrator determines are relevant to the
 3 application. In addition, in the case of an investment
 4 adviser, the application shall include any information to be
 5 furnished or disseminated to any client or prospective client,
 6 and any other information which the administrator determines
 7 is relevant to the application. If no denial order is in
 8 effect and no proceeding is pending under section 502.304,
 9 registration becomes effective at noon of the sixtieth day
 10 after a completed application or an amendment completing the
 11 application is filed, unless waived by the applicant. The
 12 administrator may by rule or order specify an earlier
 13 effective date.

14 2. Except with respect to federal covered advisers whose
 15 only clients are those described in section 502.301,
 16 subsection 3, paragraph "b", a federal covered adviser shall
 17 file with the administrator, prior to acting as a federal
 18 covered adviser in this state, such documents as have been
 19 filed with the securities and exchange commission as the
 20 administrator, by rule or order, may require.

21 3. Every applicant for initial or renewal registration as
 22 a broker-dealer or investment adviser shall pay a filing fee
 23 of two hundred dollars. Every applicant for initial or
 24 renewal registration as an agent or investment adviser
 25 representative shall pay a filing fee of thirty dollars. A
 26 filing fee is not refundable. Every person acting as a
 27 federal covered adviser in this state, except with respect to
 28 federal covered advisers whose only clients are those
 29 described in section 502.301, subsection 3, paragraph "b",
 30 shall pay an initial and renewal notice filing fee of one
 31 hundred dollars.

32 3- 4. A registered broker-dealer, federal covered adviser,
 33 or investment adviser may file an application for registration
 34 of a successor, whether or not the successor is then in
 35 existence, for the unexpired portion of the year. There shall

1 be no filing fee.

2 ~~4~~ 5. The administrator may by rule or order require a
3 minimum capital for broker-dealers subject to the limitations
4 of section 15 of the Securities Exchange Act of 1934. The
5 administrator by rule or order may also establish minimum
6 financial requirements for investment advisers, subject to the
7 limitations of section 222 of the Investment Advisers Act of
8 1940, which may include different requirements for those
9 investment advisers who maintain custody of client funds or
10 securities or who have discretionary authority over client
11 funds or securities and those investment advisers who do not.

12 6. The administrator may by rule or order require
13 investment advisers who have custody of or discretionary
14 authority over client funds or securities to post bonds in
15 amounts as the administrator may prescribe, subject to the
16 limitations of section 222 of the Investment Advisers Act of
17 1940 and may determine conditions on the bonds. A bond shall
18 not be required of any investment adviser whose minimum
19 financial requirements, which may be defined by rule, exceed
20 the amounts required by the administrator. Every bond shall
21 provide for suit on the bond by the person who has a cause of
22 action under this chapter and, if the administrator by rule or
23 order requires, by any person who has a cause of action not
24 arising under this chapter. Every bond shall provide that a
25 suit shall not be maintained to enforce liability on the bond
26 unless brought within the time limitations of section 502.504.

27 ~~5~~ 7. The administrator may by rule or order impose such
28 other conditions in connection with registration under this
29 chapter as are deemed appropriate, in the public interest or
30 for the protection of investors.

31 Sec. 6. Section 502.303, Code Supplement 1997, is amended
32 to read as follows:

33 502.303 POST-REGISTRATION PROVISIONS.

34 1. Every registered broker-dealer and investment adviser
35 shall make and keep accounts, correspondence, memoranda,

1 papers, books, and other records as the administrator may
 2 prescribe by rule or order, except as provided by section 15
 3 of the Securities Exchange Act of 1934 in the case of a
 4 broker-dealer, and section 222 of the Investment Advisers Act
 5 of 1940 in the case of an investment adviser. All records
 6 required, with respect to an investment adviser, shall be
 7 preserved for a period as the administrator prescribes by rule
 8 or order.

9 2. With respect to investment advisers, the administrator
 10 may require that certain information be furnished or
 11 disseminated to clients or prospective clients as necessary or
 12 appropriate in the public interest or for the protection of
 13 investors and advisory clients. To the extent determined in
 14 the administrator's discretion, information furnished to
 15 clients or prospective clients of an investment adviser that
 16 would be in compliance with the Investment Advisers Act of
 17 1940 and the rules under that Act may be used in whole or in
 18 partial satisfaction of this requirement.

19 3. Every registered broker-dealer and investment adviser
 20 shall file such financial reports as the administrator
 21 prescribes by rule or order, not to exceed the limitations
 22 provided in section 15 of the Securities Exchange Act of 1934
 23 in the case of a broker-dealer, and section 222 of the
 24 Investment Advisers Act of 1940 in the case of an investment
 25 adviser.

26 3- 4. If the information contained in any document filed
 27 with the administrator is or becomes inaccurate or incomplete
 28 in any material respect, the registrant or federal covered
 29 adviser shall promptly file a correcting amendment promptly if
 30 the document is filed with respect to a registrant, or when
 31 such amendment is required to be filed with the securities and
 32 exchange commission, if the document is filed with respect to
 33 a federal covered adviser, unless notification of the
 34 correction has been given under section 502.301, subsection 2.

35 4- 5. The administrator may make examinations, within or

1 without this state, of the business and records of each
2 registered broker-dealer or investment adviser, at the times
3 and in the scope as the administrator determines. The
4 examinations may be made without prior notice to the broker-
5 dealer or investment adviser. The administrator may copy all
6 records the administrator ~~feels~~ believes are necessary to
7 conduct the examination. The expense reasonably attributable
8 to an examination shall be paid by the broker-dealer or
9 investment adviser whose business is examined, but the expense
10 so payable shall not exceed an amount which the administrator
11 by rule prescribes. For the purpose of avoiding unnecessary
12 duplication of examinations, the administrator may co-operate
13 with securities administrators of other states, the securities
14 and exchange commission, and any national securities exchange
15 or national securities association registered under the
16 Securities Exchange Act of 1934. The administrator shall not
17 make public the information obtained in the course of
18 examinations, except when a duty under this chapter requires
19 the administrator to take action regarding a broker-dealer or
20 investment adviser or to make the information available to one
21 of the agencies specified in this section, or except when the
22 administrator is called as a witness in a criminal or civil
23 proceeding.

24 Sec. 7. Section 502.304, subsection 1, unnumbered
25 paragraph 1, Code Supplement 1997, is amended to read as
26 follows:

27 The administrator may by order deny, suspend, or revoke a
28 registration or may censure, impose a civil penalty upon, or
29 bar an applicant, registrant, or any officer, director,
30 partner, or person occupying a similar status or performing
31 similar functions for a registrant. A person barred under
32 this subsection may be prohibited by the administrator from
33 employment with a registered broker-dealer or investment
34 adviser. The administrator may restrict the person barred
35 from engaging in any activity for which registration is

1 required. Any action by the administrator under this
2 subsection may be taken if the order is found to be in the
3 public interest and it is found that the applicant or
4 registrant or, in the case of a broker-dealer or investment
5 adviser, a partner, an officer, or a director, a person
6 occupying a similar status or performing similar functions, or
7 a person directly or indirectly controlling the broker-dealer
8 or investment adviser:

9 Sec. 8. Section 502.304, subsection 1, paragraphs e, h,
10 and j, Code Supplement 1997, are amended to read as follows:

11 e. Is the subject of an order of the administrator
12 denying, suspending, or revoking registration as a broker-
13 dealer, agent, investment adviser, investment adviser
14 representative, or insurance agent;

15 h. Is insolvent, either in the equity or bankruptcy sense;
16 but the administrator may not enter an order against a broker-
17 dealer or investment adviser under this paragraph without a
18 finding of insolvency as to the broker-dealer or investment
19 adviser;

20 j. Has failed reasonably to supervise an agent or employee
21 in the case of a broker-dealer, or an investment adviser
22 representative or employee in the case of an investment
23 adviser;

24 Sec. 9. Section 502.304, subsection 1, paragraph m,
25 subparagraph (2), Code Supplement 1997, is amended to read as
26 follows:

27 (2) Within the past five years, has been the subject of an
28 action of a securities regulator of a foreign jurisdiction
29 denying, revoking, or suspending the right to engage in the
30 business of securities as a broker-dealer, or agent,
31 investment adviser, or investment adviser representative.

32 Sec. 10. Section 502.304, subsection 3, Code Supplement
33 1997, is amended to read as follows:

34 3. The administrator may by order summarily postpone or
35 suspend registration pending final determination of any

1 proceeding under this section. Upon the entry of the order,
2 the administrator shall promptly notify the applicant or
3 registrant, as well as the employer or prospective employer if
4 the applicant or registrant is an agent or investment adviser
5 representative, that it has been entered and of the reasons
6 therefor and that within fifteen days after the receipt of a
7 written request the matter will be set down for hearing. If
8 no hearing is requested and none is ordered by the
9 administrator, the order will remain in effect until it is
10 modified or vacated by the administrator. If a hearing is
11 requested or ordered, the administrator, after notice of and
12 opportunity for hearing, may modify or vacate the order or
13 extend it until final determination.

14 Sec. 11. Section 502.304, subsection 4, paragraph a, Code
15 Supplement 1997, is amended to read as follows:

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

24 Sec. 12. Section 502.304, subsection 5, Code Supplement
25 1997, is amended to read as follows:

26 5. Withdrawal from registration as a broker-dealer, or
27 agent, investment adviser, or investment adviser
28 representative becomes effective thirty days after receipt of
29 an application to withdraw or within such shorter period of
30 time as the administrator may by order determine, unless a
31 proceeding to deny, suspend, or revoke a registration is
32 pending when the application is filed or a proceeding to deny,
33 suspend, or revoke a registration, or to impose conditions
34 upon the withdrawal is instituted within thirty days after the
35 application is filed. If a proceeding is pending or

1 instituted, withdrawal becomes effective at such time and upon
2 such conditions as the administrator by order determines. If
3 no proceeding is pending or instituted and withdrawal
4 automatically becomes effective, the administrator may
5 nevertheless institute a revocation or suspension proceeding
6 under subsection 1, paragraph "b", within one year after
7 withdrawal became effective and enter a revocation or
8 suspension order as of the last date on which registration was
9 effective.

10 Sec. 13. NEW SECTION. 502.305 EXAMINATION OF INVESTMENT
11 ADVISER REPRESENTATIVE AND EXEMPTION FROM EXAMINATION.

12 The administrator may adopt rules requiring the passage of
13 an examination by an individual who is required to be
14 registered under this chapter as an investment adviser
15 representative. However, a person who is registered as an
16 investment adviser representative between January 1, 1999, and
17 December 31, 2000, shall not be required to pass an
18 examination for as long as the person maintains a continuous
19 registration.

20 Sec. 14. Section 502.406, subsections 1 and 2, Code
21 Supplement 1997, are amended to read as follows:

22 1. It is unlawful for any person registered as a broker-
23 dealer, or agent, investment adviser, or investment adviser
24 representative under this chapter to represent or imply in any
25 manner whatsoever that such person has been sponsored,
26 recommended, or approved or that the person's abilities or
27 qualifications have in any respect been passed upon by the
28 administrator. Nothing in this subsection prohibits a
29 statement other than in a paid advertisement that a person is
30 registered under this chapter, if such statement is true in
31 fact and if the effect of such registration is not
32 misrepresented.

33 2. a. The fact that an application for registration or
34 notice filing under part III or a registration statement or a
35 notice filing has been filed under this chapter or the fact

1 that a person or the statement has become effective does not
2 constitute a finding by the administrator that any document
3 filed under this chapter is true, complete, or not misleading.
4 Any such fact or the fact that an exemption is available for a
5 security or a transaction does not mean that the administrator
6 has passed in any way upon the merits or qualifications of, or
7 has recommended or given approval to, any person, security, or
8 transaction.

9 b. It is unlawful to make, or cause to be made, to any
10 prospective purchaser, customer, client, or any other person,
11 any representation inconsistent with paragraph "a" of ~~this~~
12 subsection.

13 Sec. 15. NEW SECTION. 502.408 ADVISORY ACTIVITIES.

14 1. It is unlawful for any person who receives, directly or
15 indirectly, any consideration from another person for advising
16 the other person as to the value of securities or their
17 purchase or sale, whether through the issuance of analyses or
18 reports or otherwise, to do any of the following:

19 a. Employ any device, scheme, or artifice to defraud the
20 other person.

21 b. Engage in any act, practice, or course of business
22 which operates or would operate as a fraud or deceit upon the
23 other person.

24 c. Engage in dishonest or unethical practices as the
25 administrator may define by rule.

26 2. In the solicitation of advisory clients, it is unlawful
27 for a person to make any untrue statement of a material fact,
28 or omit to state a material fact necessary in order to make
29 the statements made, in light of the circumstances under which
30 they are made, not misleading.

31 3. Except as may be permitted by rule or order of the
32 administrator, it is unlawful for any investment adviser to
33 enter into, extend, or renew any investment advisory contract
34 unless it provides in writing all of the following:

35 a. That the investment adviser shall not be compensated on

1 the basis of a share of capital gains upon or capital
2 appreciation of the funds or any portion of the funds of the
3 client.

4 b. That no assignment of the contract may be made by the
5 investment adviser without the consent of the other party to
6 the contract.

7 c. That the investment adviser, if a partnership, shall
8 notify the other party to the contract of any change in the
9 membership of the partnership within a reasonable time after
10 the change.

11 4. Subsection 3, paragraph "a", does not prohibit an
12 investment advisory contract which provides for compensation
13 based upon the total value of a fund averaged over a definite
14 period, or as of definite dates or taken as of a definite
15 date. "Assignment", as used in subsection 3, paragraph "b",
16 includes any direct or indirect transfer or hypothecation of
17 an investment advisory contract by the assignor or of a
18 controlling block of the assignor's outstanding voting
19 securities by a security holder of the assignor. However, if
20 the investment adviser is a partnership, no assignment of an
21 investment advisory contract is considered to result from the
22 death or withdrawal of a minority of the members of the
23 investment adviser having only a minority interest in the
24 business of the investment adviser, or from the admission to
25 the investment adviser of one or more members who, after
26 admission, will be only a minority of the members and will
27 have only a minority interest in the business.

28 5. It is unlawful for any investment adviser to take or
29 have custody of any securities or funds of any client if any
30 of the following applies:

- 31 a. The administrator by rule prohibits custody.
- 32 b. In the absence of rule, the investment adviser fails to
33 notify the administrator that it has or may have custody.

34 6. The administrator may by rule or order adopt exemptions
35 from the requirements of subsection 1, paragraph "c", and

1 subsection 3, paragraphs "a", "b", and "c", where such
2 exemptions are consistent with the public interest and within
3 the purposes fairly intended by the policy and provisions of
4 this chapter.

5 Sec. 16. Section 502.501, subsection 1, paragraph c, Code
6 Supplement 1997, is amended to read as follows:

7 ~~c. Offers-or-sells-a-security-at-any-time-when-such-person~~
8 ~~has-committed-a-material-violation-of~~ Violates section
9 502.301, or

10 Sec. 17. NEW SECTION. 502.502A ADVISORY MISCONDUCT.

11 1. A person shall be held civilly liable for doing any of
12 the following:

13 a. Engaging in the business of advising others, for
14 compensation, either directly or through publications or
15 writings, as to the value of securities or as to the
16 advisability of investing in, purchasing, or selling
17 securities, or who, for compensation and as a part of a
18 regular business, issues or promulgates analyses or reports
19 concerning securities in violation of section 502.301,
20 subsection 3 or 4; section 502.406, subsection 2; section
21 502.408; or of any rule or order under section 502.602.

22 b. Receiving directly or indirectly any consideration from
23 another person for advice as to the value of securities or
24 their purchase or sale, whether through the issuance of
25 analyses, reports, or otherwise and employs any device,
26 scheme, or artifice to defraud such other person or engages in
27 any act, practice, or course of business which operates or
28 would operate as a fraud or deceit on such other person. The
29 person acting in violation of this section is liable to the
30 other person who may sue either at law or in equity to recover
31 the consideration paid for such advice and any loss due to
32 such advice, together with interest at the legal rate per year
33 from the date of payment of the consideration plus costs and
34 reasonable attorney's fees, less the amount of any income
35 received from such advice.

1 2. A person shall not base the civil action on a contract,
2 if the person did any of the following:

3 a. Engaged in the performance of the contract in violation
4 of any provision of this chapter, or any rule adopted or order
5 issued under this chapter.

6 b. Acquired any purported right under the contract with
7 knowledge of the facts by reason of which its making or
8 performance was in violation of any provision of this chapter
9 or any rule adopted or order issued under this chapter.

10 Sec. 18. Section 502.503, subsection 1, unnumbered
11 paragraph 1, Code 1997, is amended to read as follows:

12 Affiliates of a person liable under either section 502.501,
13 or 502.502, or 502.502A, partners, principal executive
14 officers or directors of such person, persons occupying a
15 similar status or performing similar functions for such
16 person, persons (whether employees of such person or
17 otherwise) who materially aid and abet in the act or
18 transaction constituting the violation, and broker-dealers or
19 agents who materially aid and abet in the act or transaction
20 constituting the violation, are also liable jointly and
21 severally with and to the same extent as such person, unless:

22 Sec. 19. Section 502.503, subsection 1, paragraph a, Code
23 1997, is amended to read as follows:

24 a. With respect to section 502.501, and section 502.502,
25 subsections 1 and 5, or section 502.502A, any person liable
26 hereunder proves that the person did not know, and in the
27 exercise of reasonable care could not have known, of the
28 existence of the facts by reason of which the liability is
29 alleged to exist; and

30 Sec. 20. Section 502.602, Code Supplement 1997, is amended
31 to read as follows:

32 502.602 FILING OF SALES AND ADVERTISING LITERATURE.

33 The administrator may by rule or order require the filing
34 of any prospectus, pamphlet, circular, form letter,
35 advertisement, or other sales literature or advertising

1 communication addressed or intended for distribution to
2 prospective investors, including clients or prospective
3 clients of an investment adviser, unless the security is a
4 federal covered security or the transaction relates to a
5 federal covered security or the security or transaction is
6 exempted by section 502.202 or 502.203. The administrator may
7 by rule or order prohibit the publication, circulation or use
8 of any advertising deemed false or misleading.

9 Sec. 21. Section 502.608, subsection 2, Code Supplement
10 1997, is amended to read as follows:

11 2. The administrator shall keep a register of all
12 applications for registration, notice filings, and
13 registration statements which are or have been effective under
14 this chapter and predecessor laws, and all censure, denial,
15 suspension, or revocation orders which have been entered under
16 this chapter and predecessor laws. All records may be
17 maintained in an electronic or microfilm format or any other
18 form of data storage. The register shall be open for public
19 inspection.

20 Sec. 22. Section 502.610, Code 1997, is amended by adding
21 the following new subsection:

22 NEW SUBSECTION. 5. Section 502.301, subsection 3, and
23 section 502.408, and section 502.406 so far as investment
24 advisers and investment adviser representatives are concerned,
25 apply when any act instrumental in effecting prohibited
26 conduct is done in this state, whether or not either party is
27 then present in this state.

28 Sec. 23. **CONDITION TO ADMINISTRATION AND ENFORCEMENT.** The
29 securities bureau of the insurance division of the department
30 of commerce is not required to administer or enforce the
31 provisions of this Act, unless the administrator of the
32 securities bureau determines that there are sufficient moneys
33 available to support administration and enforcement of this
34 Act. Sufficient moneys to administer and enforce the
35 provisions of this Act shall be deemed to be available if the

1 general assembly appropriates at least sixty-nine thousand
2 dollars, which provides for two full-time equivalent
3 positions, for the fiscal year beginning July 1, 1998, and
4 ending June 30, 1999, to the insurance division of the
5 department of commerce for purposes of administering and
6 enforcing the provisions of this Act. If such sufficient
7 funds are available for that fiscal year this Act shall be
8 given full force and effect indefinitely.

9 Sec. 24. RULEMAKING. The securities bureau of the
10 insurance division of the department of commerce shall adopt
11 rules as soon as is practicable in order to administer the
12 provisions of this Act.

13 Sec. 25. EFFECTIVE DATES.

14 1. Except as provided in subsection 2, this Act takes
15 effect January 1, 1999.

16 2. This section and section 24 of this Act, being deemed
17 of immediate importance, take effect upon enactment.

18 EXPLANATION

19 This bill is proposed by the securities bureau of the
20 insurance division of the department of commerce. The bill
21 amends chapter 502, the Iowa Uniform Securities Act.

22 The bill regulates investment advisers. The bill provides
23 that an investment adviser is a person who is engaged in the
24 business of providing investment advice to persons in return
25 for compensation. The bill provides exemptions for federally
26 registered advisers, financial institutions, and professionals
27 such as attorneys, accountants, engineers, and teachers who
28 provide advice incidentally to their practice. The bill also
29 regulates investment adviser representatives who are
30 individuals employed by or associated with an investment
31 adviser and who are involved in managing investments.

32 The bill establishes the licensure, registration, and
33 examination provisions for investment advisers and investment
34 adviser representatives, establishes notice filing
35 requirements for federal covered advisers, provides for filing

1 fees, and authorizes rules to set minimum financial
2 requirements and bonds for investment advisers.

3 The bill establishes postregistration requirements, such as
4 recordkeeping, financial reports, corrective amendments, and
5 bureau inspection authority.

6 The bill prohibits certain conduct. The bill lists
7 prohibited advisory transactions, including fraud or deceit,
8 unethical or dishonest business practices, and limits certain
9 types of compensation arrangements. The bill creates civil
10 liability for fraud or deceit, failure to register, and
11 violations of rules or orders. The bill provides for filing
12 certain sales and advertising literature. The bill provides
13 that public records may be maintained in electronic,
14 microfilm, or other format.

15 The bill conditions initial implementation of the bill upon
16 an appropriation to the bureau by the general assembly. The
17 bill requires the bureau to commence rulemaking as soon as
18 possible. The bill provides for a delayed effective date of
19 January 1, 1999, except for the rulemaking authority.

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SENATE FILE 2325

AN ACT

AMENDING THE UNIFORM SECURITIES ACT, BY REGULATING PERSONS INVOLVED IN MANAGING INVESTMENTS, PROVIDING FOR THE ADMINISTRATION OF THE SECURITIES BUREAU, PROVIDING FEES, AND PROVIDING FOR PENALTIES AND EFFECTIVE DATES.

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

Section 1. Section 502.102, Code Supplement 1997, is amended by adding the following new subsections:

NEW SUBSECTION. 5A. "Federal covered adviser" means a person who is registered under section 203 of the Investment Advisers Act of 1940, 15 U.S.C. § 80(b) et seq. "Federal covered adviser" does not include a person who is excluded from the definition of "investment adviser" as provided in subsection 9A, paragraph "c", subparagraphs (1) through (7).

NEW SUBSECTION. 9A. a. "Investment adviser" means any person who, for compensation, does any of the following:

(1) Engages in the business of providing investment advisory services by advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities.

(2) As a part of a regular business, issues or promulgates analyses or reports concerning securities.

b. "Investment adviser" includes a financial planner or other person who, as an integral component of other financially related services, does either of the following:

(1) Provides investment advisory services to others for compensation and as part of a business.

(2) Holds oneself out as providing investment advisory services to others for compensation.

c. "Investment adviser" does not include a person who is any of the following:

(1) An investment adviser representative.

(2) A bank, savings institution, or trust company.

(3) An attorney licensed to practice law in this state, a certified public accountant licensed pursuant to chapter 542C, a professional engineer licensed pursuant to chapter 542B, or a certified teacher, if the person's performance of these services is solely incidental to the practice of the person's profession.

(4) An attorney licensed to practice law in this state or a certified public accountant licensed pursuant to chapter 542C who does not do any of the following:

(a) Exercise investment discretion regarding the assets of a client or maintain custody of the assets of a client for the purpose of investing the assets, except when the person is acting as a bona fide fiduciary in a capacity such as an executor, administrator, trustee, estate or trust agent, guardian, or conservator.

(b) Accept or receive directly or indirectly any commission, fee, or other remuneration contingent upon the purchase or sale of any specific security by a client of such person.

(c) Provide advice regarding the purchase or sale of specific securities. However, this subparagraph subdivision (c) shall not apply when the advice about specific securities is based on a financial statement analysis or tax considerations that are reasonably related to and in connection with the person's profession.

(5) A broker-dealer or its agent whose performance of these services is solely incidental to the conduct of its business as a broker-dealer and who receives no special compensation for them.

(6) A publisher of any bona fide newspaper, news column, newletter, news magazine, or business or financial publication or service, whether communicated in hard copy form, or by electronic means, or otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation of each client.

(7) A person who is excluded from the definition of "investment adviser" under section 202(a)(11) of the Investment Advisers Act of 1940.

(8) A person who is a federal covered adviser.

(9) A person not within the intent of this subsection as the administrator may by rule or order designate.

d. As used in this subsection, "compensation" does not include a commission, fee, or a combination of a commission and a fee, which is paid to an insurance agent licensed under chapter 522, if the insurance agent receives the commission, fee, or the combination of a commission and a fee, for the sale of insurance as regulated pursuant to Title XIII, subtitle 1.

NEW SUBSECTION. 9B. a. "Investment adviser representative" means an individual including but not limited to a partner, officer, director, or an individual occupying a similar status or performing similar functions as a partner, officer, or director, except clerical or ministerial personnel, if both of the following apply:

(1) The individual is employed by or associated with an investment adviser that is registered or required to be registered under this chapter, or who is employed by or associated with a federal covered adviser.

(2) The individual does any of the following:

(a) Makes any recommendations or otherwise renders advice regarding securities.

(b) Manages accounts or portfolios of clients.

(c) Determines which recommendation or advice regarding securities should be given.

(d) Solicits, offers, or negotiates for the sale of or sells investment advisory services.

(e) Supervises employees who perform any of the functions in subparagraphs (a) through (d).

b. "Investment adviser representative" does not include any other person not within the intent of this subsection as the administrator may by rule or order designate.

Sec. 2. Section 502.102, subsection 14, Code Supplement 1997, is amended to read as follows:

14. "Securities Act of 1933", "Securities Exchange Act of 1934", "Public Utility Holding Company Act of 1935", "Investment Advisers Act of 1940", "Investment Company Act of 1940", "Internal Revenue Code" and "Agricultural Marketing Act" mean the federal statutes of those names.

Sec. 3. Section 502.301, subsection 3, Code 1997, is amended by striking the subsection and inserting in lieu thereof the following:

3. It is unlawful for any person to transact business in this state as an investment adviser or as an investment adviser representative unless one of the following applies:

a. The person is registered under this part.

b. The person has no place of business in this state, and either of the following applies:

(1) The person's only clients in this state are investment companies as defined in the Investment Company Act of 1940, other investment advisers, federal covered advisers, broker-dealers, banks, trust companies, savings and loan associations, insurance companies, employee benefit plans with assets of not less than one million dollars, and governmental agencies or instrumentalities, whether acting for themselves or as trustees with investment control, or other institutional investors as are designated by rule or order of the administrator.

(2) During the preceding twelve-month period the person has had no more than five clients, other than those specified in subparagraph (1), who are residents of this state.

Sec. 4. Section 502.301, Code 1997, is amended by adding the following new subsections:

NEW SUBSECTION. 4. It is unlawful for any of the following persons to do the following:

a. An investment adviser required to be registered to employ an investment adviser representative unless the investment adviser representative is registered under this chapter, provided that the registration of an investment adviser representative is not effective during any period when the investment adviser representative is not employed by an investment adviser registered under this part.

b. A federal covered adviser to employ, supervise, or associate with an investment adviser representative having a place of business located in this state, unless the investment adviser representative is registered under this chapter, or is exempt from registration.

When an investment adviser representative begins or terminates employment or association with an investment adviser, the investment adviser in the case of paragraph "a", or the investment adviser representative in the case of paragraph "b", shall promptly notify the administrator.

NEW SUBSECTION. 5. Every registration or notice filing under this section expires December 31, unless renewed.

NEW SUBSECTION. 6. Except with respect to advisers whose only clients are those described in section 502.301, subsection 3, paragraph "b", it is unlawful for any federal covered adviser to conduct advisory business in this state unless such person complies with the provisions of section 502.302, subsection 2.

Sec. 5. Section 502.302, Code Supplement 1997, is amended to read as follows:

502.302 REGISTRATION AND NOTICE FILING PROCEDURES.

1. A broker-dealer, or agent, investment adviser, or investment adviser representative 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, and the qualifications and experience of the applicant, including, in the case of a broker-dealer or investment adviser, the application shall include 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. In addition, in the case of an investment adviser, the application shall include any information to be furnished or disseminated to any client or prospective client, and any other information which the administrator determines is 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 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.

2. Except with respect to federal covered advisers whose only clients are those described in section 502.301, subsection 3, paragraph "b", a federal covered adviser shall file with the administrator, prior to acting as a federal covered adviser in this state, such documents as have been filed with the securities and exchange commission as the administrator, by rule or order, may require.

3. Every applicant for initial or renewal registration as a broker-dealer or investment adviser shall pay a filing fee of two hundred dollars. Every applicant for initial or renewal registration as an agent or investment adviser representative shall pay a filing fee of thirty dollars. A filing fee is not refundable. Every person acting as a federal covered adviser in this state, except with respect to federal covered advisers whose only clients are those described in section 502.301, subsection 3, paragraph "b", shall pay an initial and renewal notice filing fee of one hundred dollars.

3r 4. A registered broker-dealer, federal covered adviser, or investment adviser may file an application for registration of a successor, whether or not the successor is then in existence, for the unexpired portion of the year. There shall be no filing fee.

4r 5. The administrator may by rule or order require a minimum capital for broker-dealers subject to the limitations of section 15 of the Securities Exchange Act of 1934. The administrator by rule or order may also establish minimum financial requirements for investment advisers, subject to the limitations of section 222 of the Investment Advisers Act of 1940, which may include different requirements for those investment advisers who maintain custody of client funds or securities or who have discretionary authority over client funds or securities and those investment advisers who do not.

6. The administrator may by rule or order require investment advisers who have custody of or discretionary authority over client funds or securities to post bonds in amounts as the administrator may prescribe, subject to the limitations of section 222 of the Investment Advisers Act of 1940 and may determine conditions on the bonds. A bond shall not be required of any investment adviser whose minimum financial requirements, which may be defined by rule, exceed the amounts required by the administrator. Every bond shall provide for suit on the bond by the person who has a cause of

action under this chapter and, if the administrator by rule or order requires, by any person who has a cause of action not arising under this chapter. Every bond shall provide that a suit shall not be maintained to enforce liability on the bond unless brought within the time limitations of section 502.504.

5r 7. The administrator may by rule or order impose such other conditions in connection with registration under this chapter as are deemed appropriate, in the public interest or for the protection of investors.

Sec. 6. Section 502.303, Code Supplement 1997, is amended to read as follows:

502.303 POST-REGISTRATION PROVISIONS.

1. Every registered broker-dealer and investment adviser shall make and keep accounts, correspondence, memoranda, papers, books, and other records as the administrator may prescribe by rule or order, except as provided by section 15 of the Securities Exchange Act of 1934 in the case of a broker-dealer, and section 222 of the Investment Advisers Act of 1940 in the case of an investment adviser. All records required, with respect to an investment adviser, shall be preserved for a period as the administrator prescribes by rule or order.

2. With respect to investment advisers, the administrator may require that certain information be furnished or disseminated to clients or prospective clients as necessary or appropriate in the public interest or for the protection of investors and advisory clients. To the extent determined in the administrator's discretion, information furnished to clients or prospective clients of an investment adviser that would be in compliance with the Investment Advisers Act of 1940 and the rules under that Act may be used in whole or in partial satisfaction of this requirement.

3. Every registered broker-dealer and investment adviser shall file such financial reports as the administrator prescribes by rule or order, not to exceed the limitations provided in section 15 of the Securities Exchange Act of 1934

in the case of a broker-dealer, and section 222 of the Investment Advisers Act of 1940 in the case of an investment adviser.

3+ 4. If the information contained in any document filed with the administrator is or becomes inaccurate or incomplete in any material respect, the registrant or federal covered adviser shall promptly file a correcting amendment promptly if the document is filed with respect to a registrant, or when such amendment is required to be filed with the securities and exchange commission, if the document is filed with respect to a federal covered adviser, unless notification of the correction has been given under section 502.301, subsection 2.

4+ 5. The administrator may make examinations, within or without this state, of the business and records of each registered broker-dealer or investment adviser, at the times and in the scope as the administrator determines. The examinations may be made without prior notice to the broker-dealer or investment adviser. The administrator may copy all records the administrator feels believes are necessary to conduct the examination. The expense reasonably attributable to an examination shall be paid by the broker-dealer or investment adviser whose business is examined, but the expense so payable shall not exceed an amount which the administrator by rule prescribes. For the purpose of avoiding unnecessary duplication of examinations, the administrator may co-operate with securities administrators of other states, the securities and exchange commission, and any national securities exchange or national securities association registered under the Securities Exchange Act of 1934. The administrator shall not make public the information obtained in the course of examinations, except when a duty under this chapter requires the administrator to take action regarding a broker-dealer or investment adviser or to make the information available to one of the agencies specified in this section, or except when the administrator is called as a witness in a criminal or civil proceeding.

Sec. 7. Section 502.304, subsection 1, unnumbered paragraph 1, Code Supplement 1997, is amended to read as follows:

The administrator may by order deny, suspend, or revoke a registration or may censure, impose a civil penalty upon, or bar an applicant, registrant, or any officer, director, partner, or person occupying a similar status or performing similar functions for a registrant. A person barred under this subsection may be prohibited by the administrator from employment with a registered broker-dealer or investment adviser. The administrator may restrict the person barred from engaging in any activity for which registration is required. Any action by the administrator under this subsection may be taken if the order is found to be in the public interest and it is found that the applicant or registrant or, in the case of a broker-dealer or investment adviser, a partner, an officer, or a director, a person occupying a similar status or performing similar functions, or a person directly or indirectly controlling the broker-dealer or investment adviser:

Sec. 8. Section 502.304, subsection 1, paragraphs e, h, and j, Code Supplement 1997, are amended to read as follows:

e. Is the subject of an order of the administrator denying, suspending, or revoking registration as a broker-dealer, agent, investment adviser, investment adviser representative, or insurance agent;

h. Is insolvent, either in the equity or bankruptcy sense; but the administrator may not enter an order against a broker-dealer or investment adviser under this paragraph without a finding of insolvency as to the broker-dealer or investment adviser;

j. Has failed reasonably to supervise an agent or employee in the case of a broker-dealer, or an investment adviser representative or employee in the case of an investment adviser;

Sec. 9. Section 502.304, subsection 1, paragraph m, subparagraph (2), Code Supplement 1997, is amended to read as follows:

(2) Within the past five years, has been the subject of an action of a securities regulator of a foreign jurisdiction denying, revoking, or suspending the right to engage in the business of securities as a broker-dealer, or agent, investment adviser, or investment adviser representative.

Sec. 10. Section 502.304, subsection 3, Code Supplement 1997, is amended to read as follows:

3. The administrator may by order summarily postpone or suspend registration pending final determination of any proceeding under this section. Upon the entry of the order, the administrator shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is an agent or investment adviser representative, that it has been entered and of the reasons therefor and that within fifteen days after the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the administrator, the order will remain in effect until it is modified or vacated by the administrator. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing, may modify or vacate the order or extend it until final determination.

Sec. 11. Section 502.304, subsection 4, paragraph a, Code Supplement 1997, is amended to read as follows:

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, investment adviser, or investment adviser representative, 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.

Sec. 12. Section 502.304, subsection 5, Code Supplement 1997, is amended to read as follows:

5. Withdrawal from registration as a broker-dealer, or agent, investment adviser, or investment adviser representative 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 proceeding to deny, suspend, or revoke a registration is pending when the application is filed or a proceeding to 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. NEW SECTION. 502.305 EXAMINATION OF INVESTMENT ADVISER REPRESENTATIVE AND EXEMPTION FROM EXAMINATION.

The administrator may adopt rules requiring the passage of an examination by an individual who is required to be registered under this chapter as an investment adviser representative. However, a person who is registered as an investment adviser representative between January 1, 1999, and December 31, 2000, shall not be required to pass an examination for as long as the person maintains a continuous registration.

Sec. 14. Section 502.406, subsections 1 and 2, Code Supplement 1997, are amended to read as follows:

1. It is unlawful for any person registered as a broker-dealer, or agent, investment adviser, or investment adviser representative under this chapter to represent or imply in any

manner whatsoever that such person has been sponsored, recommended, or approved or that the person's abilities or qualifications have in any respect been passed upon by the administrator. Nothing in this subsection prohibits a statement other than in a paid advertisement that a person is registered under this chapter, if such statement is true in fact and if the effect of such registration is not misrepresented.

2. a. The fact that an application for registration or notice filing under part III or a registration statement or a notice filing has been filed under this chapter or the fact that a person or the statement has become effective does not constitute a finding by the administrator that any document filed under this chapter is true, complete, or not misleading. Any such fact or the fact that an exemption is available for a security or a transaction does not mean that the administrator has passed in any way upon the merits or qualifications of, or has recommended or given approval to, any person, security, or transaction.

b. It is unlawful to make, or cause to be made, to any prospective purchaser, customer, client, or any other person, any representation inconsistent with paragraph "a" of this subsection.

Sec. 15. NEW SECTION. 502.408 ADVISORY ACTIVITIES.

1. It is unlawful for any person who receives, directly or indirectly, any consideration from another person for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise, to do any of the following:

a. Employ any device, scheme, or artifice to defraud the other person.

b. Engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon the other person.

c. Engage in dishonest or unethical practices as the administrator may define by rule.

2. In the solicitation of advisory clients, it is unlawful for a person to make any untrue statement of a material fact, or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading.

3. Except as may be permitted by rule or order of the administrator, it is unlawful for any investment adviser to enter into, extend, or renew any investment advisory contract unless it provides in writing all of the following:

a. That the investment adviser shall not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client.

b. That no assignment of the contract may be made by the investment adviser without the consent of the other party to the contract.

c. That the investment adviser, if a partnership, shall notify the other party to the contract of any change in the membership of the partnership within a reasonable time after the change.

4. Subsection 3, paragraph "a", does not prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period, or as of definite dates or taken as of a definite date. "Assignment", as used in subsection 3, paragraph "b", includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor. However, if the investment adviser is a partnership, no assignment of an investment advisory contract is considered to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser, or from the admission to the investment adviser of one or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business.

5. It is unlawful for any investment adviser to take or have custody of any securities or funds of any client if any of the following applies:

- a. The administrator by rule prohibits custody.
- b. In the absence of rule, the investment adviser fails to notify the administrator that it has or may have custody.

6. The administrator may by rule or order adopt exemptions from the requirements of subsection 1, paragraph "c", and subsection 3, paragraphs "a", "b", and "c", where such exemptions are consistent with the public interest and within the purposes fairly intended by the policy and provisions of this chapter.

Sec. 16. Section 502.501, subsection 1, paragraph c, Code Supplement 1997, is amended to read as follows:

c. ~~Offers or sells a security at any time when such person has committed a material violation of~~ Violates section 502.301, or

Sec. 17. NEW SECTION. 502.502A ADVISORY MISCONDUCT.

1. A person shall be held civilly liable for doing any of the following:

- a. Engaging in the business of advising others, for compensation, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities in violation of section 502.301, subsection 3 or 4; section 502.406, subsection 2; section 502.408; or of any rule or order under section 502.602.

- b. Receiving directly or indirectly any consideration from another person for advice as to the value of securities or their purchase or sale, whether through the issuance of analyses, reports, or otherwise and employs any device, scheme, or artifice to defraud such other person or engages in any act, practice, or course of business which operates or would operate as a fraud or deceit on such other person. The

person acting in violation of this section is liable to the other person who may sue either at law or in equity to recover the consideration paid for such advice and any loss due to such advice, together with interest at the legal rate per year from the date of payment of the consideration plus costs and reasonable attorney's fees, less the amount of any income received from such advice.

2. A person shall not base the civil action on a contract, if the person did any of the following:

- a. Engaged in the performance of the contract in violation of any provision of this chapter, or any rule adopted or order issued under this chapter.

- b. Acquired any purported right under the contract with knowledge of the facts by reason of which its making or performance was in violation of any provision of this chapter or any rule adopted or order issued under this chapter.

Sec. 18. Section 502.503, subsection 1, unnumbered paragraph 1, Code 1997, is amended to read as follows:

Affiliates of a person liable under either section 502.501, or 502.502, or 502.502A, partners, principal executive officers or directors of such person, persons occupying a similar status or performing similar functions for such person, persons (whether employees of such person or otherwise) who materially aid and abet in the act or transaction constituting the violation, and broker-dealers or agents who materially aid and abet in the act or transaction constituting the violation, are also liable jointly and severally with and to the same extent as such person, unless:

Sec. 19. Section 502.503, subsection 1, paragraph a, Code 1997, is amended to read as follows:

- a. With respect to section 502.501, and section 502.502, subsections 1 and 5, or section 502.502A, any person liable hereunder proves that the person did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist; and

Sec. 20. Section 502.602, Code Supplement 1997, is amended to read as follows:

502.602 PILING OF SALES AND ADVERTISING LITERATURE.

The administrator may by rule or order require the filing of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature or advertising communication addressed or intended for distribution to prospective investors, including clients or prospective clients of an investment adviser, unless the security is a federal covered security or the transaction relates to a federal covered security or the security or transaction is exempted by section 502.202 or 502.203. The administrator may by rule or order prohibit the publication, circulation or use of any advertising deemed false or misleading.

Sec. 21. Section 502.608, subsection 2, Code Supplement 1997, is amended to read as follows:

2. The administrator shall keep a register of all applications for registration, notice filings, and registration statements which are or have been effective under this chapter and predecessor laws, and all censure, denial, suspension, or revocation orders which have been entered under this chapter and predecessor laws. All records may be maintained in an electronic or microfilm format or any other form of data storage. The register shall be open for public inspection.

Sec. 22. Section 502.610, Code 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 5. Section 502.301, subsection 3, and section 502.408, and section 502.406 so far as investment advisers and investment adviser representatives are concerned, apply when any act instrumental in effecting prohibited conduct is done in this state, whether or not either party is then present in this state.

Sec. 23. RULEMAKING. The securities bureau of the insurance division of the department of commerce shall adopt rules as soon as is practicable in order to administer the provisions of this Act.

Sec. 24. EFFECTIVE DATES.

1. Except as provided in subsection 2, this Act takes effect January 1, 1999.
2. This section and section 23 of this Act, being deemed of immediate importance, take effect upon enactment.

MARY E. KRAMER
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 2325, Seventy-seventh General Assembly.

MARY PAT GUNDERSON
Secretary of the Senate

Approved April 16, 1998

TERRY E. BRANSTAD
Governor