

*Substituted for  
by H. Z. 553*

FILED MAR 11 1997

SENATE FILE 393  
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO SSE 107)

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

A BILL FOR

1 An Act amending the uniform securities Act relating to the  
2 registration of securities and the registration of broker-  
3 dealers and agents, establishing fees, and providing an  
4 effective date.

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

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**S.F. 393**

1 Section 1. Section 502.102, subsection 3, Code 1997, is  
2 amended to read as follows:

3 3. "Agent" means any individual other than a broker-dealer  
4 who represents a broker-dealer or issuer in effecting or  
5 attempting to effect purchases or sales of securities.

6 "Agent" does not include an individual who represents an:

7 a. An issuer in doing any of the following:

8 or (1) Effecting transactions in a security exempted by  
9 section 502.202, subsection 1, 2, 3, 4, 6, 10, 11, 12, 13, or  
10 17, or a security issued by an industrial loan company  
11 licensed under chapter 536A.

12 b. (2) Effecting transactions exempted by section 502.203;  
13 or.

14 (3) Effecting transactions in a federal covered security  
15 as described in sections 18(b)(3) and 18(b)(4)(D) of the  
16 Securities Act of 1933 as amended in Pub. L. No. 104-290.

17 c. (4) Effecting transactions with an existing employees  
18 employee, partners partner, or directors director of the  
19 issuer if no commission or other remuneration is paid or given  
20 directly or indirectly for soliciting any person in this  
21 state.

22 d. A broker-dealer in effecting a transaction in this  
23 state which is limited to a transaction provided in section  
24 15(h)(2) of the Securities Exchange Act of 1934.

25 "Agent" also does not include any other individuals  
26 individual who are is not within the intent of this subsection  
27 whom the administrator by rule or order designates. A  
28 partner, officer, or director of a broker-dealer or issuer, or  
29 a person occupying a similar status or performing similar  
30 functions, is an agent only if such person otherwise comes  
31 within this definition.

32 Sec. 2. Section 502.102, Code 1997, is amended by adding  
33 the following new subsection:

34 NEW SUBSECTION. 5A. "Federal covered security" means any  
35 security that is a covered security under section 18(b) of the

1 Securities Act of 1933 or rules or regulations adopted under  
2 the Securities Act of 1933, except that up through October 10,  
3 1999, a federal covered security for which a fee has not been  
4 paid and promptly remedied following written notification from  
5 the administrator to the issuer of the nonpayment or  
6 underpayment of the fee, as required by this chapter, shall  
7 not be a federal covered security.

8 Sec. 3. Section 502.102, Code 1997, is amended by adding  
9 the following new subsection:

10 NEW SUBSECTION. 13A. "Securities and exchange commission"  
11 means the United States securities and exchange commission as  
12 established pursuant to 15 U.S.C. § 78(d).

13 Sec. 4. Section 502.102, subsection 14, Code 1997, is  
14 amended to read as follows:

15 14. "Security" means any note; stock; treasury stock;  
16 bond; debenture; evidence of indebtedness; certificate of  
17 interest or participation in a profit sharing agreement;  
18 collateral trust certificate; preorganization certificate or  
19 subscription; transferable share; investment contract; voting  
20 trust certificate; certificate of deposit for a security;  
21 fractional undivided interest in an oil, gas, or other mineral  
22 lease or in payments out of production under such a lease,  
23 right, or royalty; an interest in a limited liability company  
24 or in a limited liability partnership or any class or series  
25 of such interest, including any fractional or other interest  
26 in such interest; or, in general, any interest or instrument  
27 commonly known as a "security", or any certificate of interest  
28 or participation in, temporary or interim certificate for,  
29 receipt for, guarantee of, or warrant or right to subscribe to  
30 or purchase, any of the foregoing. "Security" does not  
31 include an insurance or endowment policy or annuity contract  
32 under which an insurance company promises to pay money either  
33 in a lump sum or periodically for life or for some other  
34 specified period. "Security" also does not include an  
35 interest in a limited liability company or a limited liability

1 partnership if the person claiming that such an interest is  
2 not a security proves that all of the members of the limited  
3 liability company or limited liability partnership are  
4 actively engaged in the management of the limited liability  
5 company or limited liability partnership; provided that the  
6 evidence that members vote or have the right to vote, or the  
7 right to information concerning the business and affairs of  
8 the limited liability company or limited liability  
9 partnership, or the right to participate in management, shall  
10 not establish, without more, that all members are actively  
11 engaged in the management of the limited liability company or  
12 limited liability partnership.

13 Sec. 5. Section 502.201, Code 1997, is amended to read as  
14 follows:

15 502.201 REGISTRATION REQUIREMENT.

16 It is unlawful for any person to offer or sell any security  
17 in this state unless one of the following applies:

- 18 1. It is registered under this chapter; or,
- 19 2. The security or transaction is exempted under section  
20 502.202 or 502.203.
- 21 3. It is a federal covered security.

22 Sec. 6. Section 502.202, subsection 7, Code 1997, is  
23 amended to read as follows:

24 7. Any security issued or guaranteed by any railroad;  
25 other common carrier; a public utility; or holding company  
26 which is any of the following:

27 ~~a. Subject to the jurisdiction of the interstate commerce~~  
28 ~~commission;~~

29 ~~b. a.~~ A registered holding company under the Public  
30 Utility Holding Company Act of 1935 or a subsidiary of such a  
31 company within the meaning of that Act; or,

32 b. Regulated in respect of its rates and charges by a  
33 governmental authority of the United States or any state.

34 c. Regulated in respect of the issuance or guarantee of  
35 the security by a governmental authority of the United States.

1 any state, Canada, or any Canadian province.

2 Sec. 7. NEW SECTION. 502.206A FEDERAL COVERED  
3 SECURITIES.

4 1. The administrator, by rule or order, may require the  
5 filing of any or all of the following documents with respect  
6 to a federal covered security under section 18(b)(2) of the  
7 Securities Act of 1933:

8 a. Prior to the initial offer of a federal covered  
9 security in this state, all documents that are part of a  
10 current federal registration statement filed with the United  
11 States securities and exchange commission under the Securities  
12 Act of 1933, together with a consent to service of process  
13 signed by the issuer and a filing fee calculated as specified  
14 in section 502.208, subsections 2 and 13.

15 b. After the initial offer of a federal covered security  
16 in this state, all documents that are part of an amendment to  
17 a current federal registration statement filed with the United  
18 States securities and exchange commission under the Securities  
19 Act of 1933.

20 c. An annual or periodic report of the value of the  
21 federal covered securities offered or sold in this state  
22 together with the applicable filing fee, if any, calculated as  
23 specified in section 502.208, subsections 2 and 13.

24 2. With respect to any security that is a federal covered  
25 security under section 18(b)(4)(D) of the Securities Act of  
26 1933, the administrator, by rule or otherwise, may require the  
27 issuer to file a notice on Form D as promulgated by the  
28 securities and exchange commission and a consent to service of  
29 process signed by the issuer not later than fifteen days after  
30 the first sale of the federal covered security in this state  
31 together with a filing fee, as established by rule adopted by  
32 the administrator.

33 3. The administrator, by rule or otherwise, may require  
34 the filing of any document filed with the securities and  
35 exchange commission under the Securities Act of 1933 with

1 respect to a federal covered security under section 18(b)(3)  
2 or (4) of the Securities Act of 1933, together with a filing  
3 fee established by rule adopted by the administrator which  
4 shall not be more than one hundred dollars.

5 4. The administrator may issue a stop order suspending the  
6 offer and sale of a federal covered security, except a federal  
7 covered security under section 18(b)(1) of the Securities Act  
8 of 1933, if the administrator finds that both of the following  
9 apply:

- 10 a. The order is in the public interest.
- 11 b. The person against whom the stop order is issued has  
12 failed to comply with a requirement provided in this section.

13 5. The administrator, by rule or otherwise, may waive any  
14 requirement of this section if the administrator finds good  
15 cause that the requirement is not necessary in order to carry  
16 out the purposes of the section.

17 Sec. 8. Section 502.207A, subsection 5, Code 1997, is  
18 amended to read as follows:

19 5. In connection with an offering registered under this  
20 section, a person may be registered as an agent of the issuer  
21 under section 502.301 by the filing of an application by the  
22 issuer with the administrator for the registration of the  
23 person as an agent of the issuer and the paying of a fee of  
24 ten dollars. Notwithstanding any other provision of this  
25 chapter, the registration of the agent shall be effective  
26 until withdrawn by the issuer or until the securities  
27 registered pursuant to the registration statement have all  
28 been sold, whichever occurs first. The registration of an  
29 agent shall become effective when ordered by the administrator  
30 or on the fifth business day after the agent's application has  
31 been filed with the administrator, whichever occurs first, and  
32 the administrator shall not impose further conditions upon the  
33 registration of the agent. However, the administrator may  
34 deny, revoke, suspend, or withdraw the registration of the  
35 agent at any time as provided in section 502.304. Per-the

1 purposes-of-registration-of-agents-under-this-section, the  
2 issuer-and-agent-are-not-required-to-post-bonds. An agent  
3 registered solely pursuant to this section is entitled to sell  
4 only securities registered under this section.

5 Sec. 9. Section 502.302, subsection 4, Code 1997, is  
6 amended to read as follows:

7 4. The administrator may by rule or order require a  
8 minimum capital for broker-dealers ~~and-establish-limitations~~  
9 ~~on-aggregate-indebtedness-of-broker-dealers-in-relation-to-net~~  
10 ~~capital-and-may-classify-broker-dealers-for-purposes-of-such~~  
11 ~~requirements~~ subject to the limitations of section 15 of the  
12 Securities Exchange Act of 1934. ~~The-administrator-may-not~~  
13 ~~however, with-respect-to-any-broker-dealer-who-is-a-member-of~~  
14 ~~the-national-association-of-securities-dealers, inc., or who~~  
15 ~~is-registered-with-the-securities-and-exchange-commission,~~  
16 ~~require-a-higher-minimum-capital-or-lower-ratio-of-aggregate~~  
17 ~~indebtedness-to-net-capital-than-is-contained-in-the-rules-and~~  
18 ~~regulations-adopted-by-such-association-or-commission.~~

19 Sec. 10. Section 502.303, subsections 1 and 2, Code 1997,  
20 are amended to read as follows:

21 1. Every registered broker-dealer shall make and keep such  
22 accounts, correspondence, memoranda, papers, books, and other  
23 records as the administrator by-rule-prescribes may prescribe  
24 by rule or order, except as provided by section 15 of the  
25 Securities Exchange Act of 1934. ~~All-records-so-required-shall~~  
26 ~~be-preserved-for-three-years-unless-the-administrator-by-rule~~  
27 ~~prescribes-otherwise-for-particular-types-of-records.--All~~  
28 ~~required-records-shall-be-kept-within-this-state-or-shall, at~~  
29 ~~the-request-of-the-administrator, be-made-available-at-any~~  
30 ~~time-for-examination-at-the-administrator's-option-either-in~~  
31 ~~the-principal-office-of-the-registrant-or-by-production-of~~  
32 ~~exact-copies-thereof-in-this-state.~~

33 2. Every registered broker-dealer shall file such  
34 financial reports as the administrator by-rule prescribes by  
35 rule or order, not to exceed the limitations provided in

1 section 15 of the Securities Exchange Act of 1934.

2 Sec. 11. Section 502.304, subsection 1, paragraph e, Code  
3 1997, is amended to read as follows:

4 e. Is the subject of an order of the administrator  
5 denying, suspending, or revoking registration as a broker-  
6 dealer, agent, or insurance agent;

7 Sec. 12. Section 502.501, subsection 1, paragraph a, Code  
8 1997, is amended to read as follows:

9 a. Violates section 502.201, subsection 1 or 2, or section  
10 502.208, subsection 12, or section 502.406, subsection 2,  
11 paragraph "b", or

12 Sec. 13. Section 502.602, Code 1997, is amended to read as  
13 follows:

14 502.602 FILING OF SALES AND ADVERTISING LITERATURE.

15 The administrator may by rule or order require the filing  
16 of any prospectus, pamphlet, circular, form letter,  
17 advertisement, or other sales literature or advertising  
18 communication addressed or intended for distribution to  
19 prospective investors, unless the security or transaction is a  
20 federal covered security or is exempted by section 502.202 or  
21 502.203. The administrator may by rule or order prohibit the  
22 publication, circulation or use of any advertising deemed  
23 false or misleading.

24 Sec. 14. EFFECTIVE DATE. This Act, being deemed of  
25 immediate importance, takes effect upon enactment.

26 EXPLANATION

27 This bill amends a number of provisions included in chapter  
28 502, regulating securities. The bill adds provisions relating  
29 to federal covered securities regulated under the federal  
30 Securities Act of 1933 or rules or regulations promulgated by  
31 the securities and exchange commission. Under the federal  
32 Act, these securities are exempted from registration  
33 requirements. The bill revises the definition of "agent" to  
34 include a person who deals in federal covered securities. The  
35 bill provides that the administrator may require the filing of

1 documents relating to federal covered securities, including a  
2 current federal registration statement, amendments to a  
3 current federal registration statement, reports concerning the  
4 value of federal covered securities, and any other documents  
5 required to be filed with the securities and exchange  
6 commission. The bill provides that the administrator may  
7 issue a stop order suspending the offer and sale of certain  
8 federal covered securities. It provides that the  
9 administrator may also waive the filing requirements of the  
10 bill for federal covered securities.

11 The bill adds limited liability partnerships to the types  
12 of entities dealing in securities regulated under the chapter.  
13 The bill eliminates a reference to the interstate commerce  
14 commission which has been abolished by Congress. The bill  
15 eliminates a reference, for purposes of registration of agents  
16 under Code section 502.207A, to a surety bond required when an  
17 offering is made. The bill provides for minimum capital  
18 requirements for brokers. The bill allows the minimum capital  
19 requirement to be set by order of the administrator as well as  
20 by rule. The bill provides that the capital requirements are  
21 subject to limitations of the federal Securities Exchange Act  
22 of 1934 and eliminates provisions basing capital requirements  
23 on rules and regulations adopted by the national association  
24 of securities dealers, inc., or the United States securities  
25 and exchange commission. The bill provides for the  
26 application of disciplinary action against persons licensed as  
27 insurance agents who are subject to sanctions.

28 The bill takes effect upon enactment.

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SENATE FILE 393  
FISCAL NOTE

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A fiscal note for Senate File 393 is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

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Senate File 393 amends the Iowa Uniform Securities Act to conform with the National Securities Market Improvement Act (NSMIA) adopted by the United States Congress in October 1996.

ASSUMPTIONS

1. The NSMIA preempts State registration of investment company offerings, but preserves the ability of the State to require notice filings and fees.
2. In the absence of State legislation specifying the intent of the State to require notice filings and fees, the State is prohibited from collecting fees for registered offerings.
3. Senate File 393 specifies the intent of the State to require notice filings and fees.
4. The fees specified are equal to those collected by the State prior to the NSMIA's preemption of State security laws.

FISCAL IMPACT

Senate File 393 restores the authority of the Commissioner of Insurance to charge filing fees equal to those collected prior to federal preemption. The estimated fiscal impact to the General Fund for FY 1998 is \$4.0 million and for FY 1999 is \$4.2 million.

SOURCES

Department of Commerce

(LSB 1274SV, DAA)

FILED MARCH 13, 1997

BY DENNIS PROUTY, FISCAL DIRECTOR

## SENATE FILE 393

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1 Amend Senate File 393 as follows:

2 1. Page 2, by striking lines 2 through 7 and  
3 inserting the following: "the Securities Act of  
4 1933."

5 2. Page 4, line 14, by striking the words and  
6 figures "subsections 2 and 13" and inserting the  
7 following: "subsection 2".

8 3. Page 4, line 20, by striking the word "An" and  
9 inserting the following: "To the extent necessary to  
10 compute fees, an".

11 4. Page 4, line 23, by striking the words  
12 "subsections 2 and 13" and inserting the following:  
13 "subsection 2".

14 5. Page 6, by inserting after line 4 the  
15 following:

16 "Sec. \_\_\_\_ . Section 502.208, subsections 1, 2, 4,  
17 5, 8, 9, 11, and 13, Code 1997, are amended to read as  
18 follows:

19 1. A registration statement or a notice filing  
20 made pursuant to section 502.206A may be filed by the  
21 issuer, any other person on whose behalf the offering  
22 is to be made, or a registered broker-dealer.

23 2. a. Except as provided in subsection 13 and  
24 section 502.207A, subsection 3, paragraph "g", a  
25 person who files a registration statement or a notice  
26 filing shall pay a filing fee of one-tenth of one  
27 percent of the proposed aggregate sales price of the  
28 securities to be offered to persons in this state  
29 pursuant to the registration statement or notice  
30 filing. However, except as provided in paragraph "c"  
31 of this subsection, subsection 13, and section  
32 502.207A, subsection 3, paragraph "g", the annual  
33 filing fee shall not be less than fifty dollars or  
34 more than one thousand dollars.

35 b. The administrator shall retain the filing fee  
36 even if the notice filing is withdrawn or the  
37 registration is withdrawn, denied, suspended, revoked,  
38 or abandoned.

39 c. A person who is ~~a-face-amount-certificate~~  
40 ~~company, open-end-management-investment-company, or a~~  
41 ~~unit-investment-trust, as defined in the Investment~~  
42 ~~Company Act of 1940,~~ the issuer of a federal covered  
43 security under section 18(b)(2) of the Securities Act  
44 of 1933 shall initially register make a notice filing  
45 and annually renew a registration-statement notice  
46 filing in this state for an indefinite amount or a  
47 fixed amount. The fixed amount must be for two  
48 hundred fifty thousand dollars. A registrant notice  
49 filer shall pay a filing fee when the statement notice  
50 is filed. If the ~~registration-statement~~ amount

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1 covered by the notice is indefinite, the registrant  
2 notice filer shall pay a filing fee of one thousand  
3 dollars. If the registration-statement amount covered  
4 by the notice is fixed, the registrant notice filer  
5 shall pay a filing fee of two hundred fifty dollars,  
6 and the following shall apply:

7 (1) The registrant notice filer shall file a sales  
8 report with the administrator or pay an additional  
9 filing fee of one thousand two hundred fifty dollars  
10 within ninety days after the registration-statement's  
11 notice filing's annual renewal date. If the  
12 registrant notice filer files a sales report with the  
13 administrator, the registrant notice filer shall pay  
14 an additional filing fee of one-tenth of one percent  
15 of the amount of securities sold in excess of two  
16 hundred fifty thousand dollars. The additional filing  
17 fee must be paid within ninety days after the  
18 registration-statement's notice filing's annual  
19 renewal date.

20 (2) The ~~administrator shall order the registration~~  
21 ~~of notice filing covering~~ the additional securities  
22 ~~shall be effective retroactively as of the effective~~  
23 ~~date of the registration-statement~~ notice filing that  
24 is being amended.

25 4. Any document filed under this chapter or a  
26 predecessor act within five years preceding the filing  
27 of a registration statement or notice filing may be  
28 incorporated by reference in the registration  
29 statement or notice filing to the extent that the  
30 document is currently accurate.

31 5. The administrator may by rule or otherwise  
32 permit the omission of any item of information or  
33 document from any registration statement or notice  
34 filing.

35 8. The administrator may by rule require that  
36 registered securities of designated classes shall be  
37 issued under a trust indenture containing such  
38 provisions as the administrator determines.

39 9. a. A registration statement or notice filing  
40 shall remain effective for one year from its effective  
41 date unless it is renewed, extended, or amended by  
42 rule or order of the administrator. An initial notice  
43 filing or a renewal or amendment of a notice filing  
44 becomes effective on the date received by the  
45 administrator, or, if requested by the issuer, on the  
46 date that the initial notice filing, renewal, or  
47 amendment is effective with the securities and  
48 exchange commission. All outstanding securities of  
49 the same class as a registered security or a security  
50 for which a notice filing has been made are considered

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1 to be registered or covered by a notice filing for the  
2 purpose of any transaction by or on behalf of a person  
3 who is not the issuer, and who is not in control of  
4 the issuer or controlled by the issuer or under common  
5 control with the issuer, so long as the registration  
6 statement or notice filing is effective, unless  
7 otherwise prescribed by order. A registration  
8 statement may or notice filing shall not be withdrawn  
9 after its effective date if any of the securities has  
10 been sold in this state, unless permitted by rule or  
11 order of the administrator. A registration statement  
12 is not effective during the time a stop order is in  
13 effect under section 502.209. A notice filing is not  
14 effective during the time that a stop order issued  
15 pursuant to section 502.206A is in effect. A  
16 registration statement which never became effective  
17 may be withdrawn without prejudice to the issuer upon  
18 request and for good cause as determined at the  
19 discretion of the administrator.

20 b. During the effective period of a registration  
21 statement, the administrator may by rule or order  
22 require the person who filed the registration  
23 statement to file reports, not more often than  
24 quarterly, to keep reasonably current the information  
25 contained in the registration statement and to  
26 disclose the progress of the offering. If any of the  
27 securities registered has been sold in this state, the  
28 administrator may by rule or order extend the period  
29 for filing the reports for an additional period not  
30 exceeding two years from the date the registration  
31 became effective or from the date of its last  
32 amendment or extension.

33 ~~11. Except-for-face-amount-certificate-companies,~~  
34 ~~open-end-management-investment-companies,-and-unit~~  
35 ~~investment-trusts,-as-defined-by-the-Investment~~  
36 ~~Company-Act-of-1940,-registration~~ Registration  
37 statements may be amended during the registration  
38 period to increase the amount of registered securities  
39 to be offered for sale to persons in this state.

40 a. The amendment to the registration statement  
41 becomes effective on the date ordered by the  
42 administrator.

43 b. Filing fees shall be calculated as specified by  
44 subsection 2, paragraph "a", and subsection 13.

45 ~~13. a.--With-the-exception-of-face-amount~~  
46 ~~certificate-companies,-open-end-management-investment~~  
47 ~~companies,-and-unit-investment-trusts,-a~~ A registrant  
48 who sold securities to persons in this state in excess  
49 of the amount of securities registered in this state  
50 at the time of the sale may file an amendment to its

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Page 4

1 registration statement to register the additional  
2 securities. The following requirements shall apply:  
3 ~~(1)~~ a. If a registrant proposes to sell securities  
4 to persons in this state pursuant to a registration  
5 statement that is currently effective in this state in  
6 an amount that exceeds the amount registered in this  
7 state, the registrant must do both of the following:

8 ~~(a)~~ (1) File an amendment to register the  
9 additional securities.

10 ~~(b)~~ (2) Pay an additional filing fee in the same  
11 amount as specified by subsection 2, paragraph "a", as  
12 though the amendment constitutes a separate issue.

13 ~~(2)~~ b. If a registrant sold securities to persons  
14 in this state in excess of the amount registered in  
15 this state at that time, the registrant must do both  
16 of the following:

17 ~~(a)~~ (1) File an amendment to register the  
18 additional securities.

19 ~~(b)~~ (2) Pay an additional filing fee that is three  
20 times the amount specified in subsection 2, paragraph  
21 "a", as though the amendment constitutes a separate  
22 issue.

23 ~~(3)~~ c. The administrator may order the amendment  
24 effective retroactively as of the effective date of  
25 the registration statement that is being amended."

26 6. Page 7, by inserting after line 6 the  
27 following:

28 "Sec. \_\_\_\_\_. Section 502.406, subsection 2,  
29 paragraph a, Code 1997, is amended to read as follows:

30 a. ~~Neither the~~ The fact that a registration  
31 statement ~~or a notice~~ filing has been filed under this  
32 chapter ~~nor or the fact that~~ such the statement has  
33 become effective ~~constitutes~~ does not constitute a  
34 finding by the administrator that any document filed  
35 under this chapter is true, complete or not  
36 misleading. ~~Neither any~~ Any such fact ~~nor or the fact~~  
37 that an exemption is available for a security or a  
38 transaction ~~means~~ does not mean that the administrator  
39 has passed in any way upon the merits or  
40 qualifications of, or has recommended or given  
41 approval to, any person, security or transaction."

42 7. Page 7, by striking lines 19 and 20 and  
43 inserting the following: "prospective investors,  
44 unless the security is a federal covered security or  
45 the transaction relates to a federal covered security  
46 or the security or transaction is exempted by section  
47 502.202 or".

48 8. Page 7, by inserting after line 23 the  
49 following:

50 "Sec. \_\_\_\_\_. Section 502.607, subsection 1, Code

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Page 5

1 1997, is amended to read as follows:

2 1. Pursuant to the ~~Iowa administrative procedure~~  
3 Act chapter 17A, the administrator may from time to  
4 time make, amend, and rescind such rules, forms, and  
5 orders as are necessary to carry out the provisions of  
6 this chapter, including rules and forms governing  
7 registration statements, notice filings, applications,  
8 and reports, and defining any terms, whether or not  
9 used in this chapter, insofar as the definitions are  
10 not inconsistent with the provisions of this chapter.  
11 For the purpose of rules and forms, the administrator  
12 may classify securities, persons, and other relevant  
13 matters, and prescribe different requirements for  
14 different classes.

15 Sec. \_\_\_\_ . Section 502.608, subsections 2 and 3,  
16 Code 1997, are amended to read as follows:

17 2. The administrator shall keep a register of all  
18 applications for registration, notice filings, and  
19 registration statements which are or have been  
20 effective under this chapter and predecessor laws, and  
21 all censure, denial, suspension, or revocation orders  
22 which have been entered under this chapter and  
23 predecessor laws. The register shall be open for  
24 public inspection.

25 3. The information contained in or filed with any  
26 registration statement, application, notice filing, or  
27 report may be made available to the public under such  
28 rules as the administrator prescribes.

29 Sec. \_\_\_\_ . Section 502.609, subsection 1,  
30 unnumbered paragraph 1, Code 1997, is amended to read  
31 as follows:

32 Every applicant for registration under this  
33 chapter, and every issuer which proposes to offer a  
34 security in this state, shall file with the  
35 administrator, in such form as the administrator by  
36 rule prescribes, an irrevocable consent appointing the  
37 administrator or the administrator's successor in  
38 office to be such person's attorney to receive service  
39 of any lawful process in any noncriminal suit, action  
40 or proceeding against such person or the successor,  
41 executor or administrator of such person which arises  
42 under this chapter or any rule or order hereunder  
43 after the consent has been filed, with the same  
44 validity as if served personally on the person filing  
45 the consent. The consent need not be filed by a  
46 person who has filed a consent in connection with a  
47 previous registration or notice filing which is then  
48 in effect. Service may be made by leaving a copy of  
49 the process in the office of the administrator, but it  
50 is not effective unless the plaintiff, including the

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1 administrator when acting as such,".

2 9. By renumbering as necessary.

By NEAL SCHUERER  
JOHN W. JENSEN

S-3250 FILED MARCH 26, 1997

*Adopted 4-17-97 (p. 1235)*

Schuerer

SSB 107

Delaney  
Bartz

Commerce  
Succeeded by  
SF HF 393

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 relating to the  
2 registration of securities and the registration of broker-  
3 dealers and agents, establishing fees, and providing an  
4 effective date.

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

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1 Section 1. Section 502.102, subsection 3, Code 1997, is  
2 amended to read as follows:

3 3. "Agent" means any individual other than a broker-dealer  
4 who represents a broker-dealer or issuer in effecting or  
5 attempting to effect purchases or sales of securities.

6 "Agent" does not include an individual who represents an:

7 a. An issuer in doing any of the following:

8 a. (1) Effecting transactions in a security exempted by  
9 section 502.202, subsection 1, 2, 3, 4, 6, 10, 11, 12, 13, or  
10 17, or a security issued by an industrial loan company  
11 licensed under chapter 536A.

12 b. (2) Effecting transactions exempted by section 502.203;  
13 or.

14 (3) Effecting transactions in a federal covered security  
15 as described in sections 18(b)(3) and 18(b)(4)(D) of the  
16 Securities Act of 1933 as amended in Pub. L. No. 104-290.

17 c. (4) Effecting transactions with an existing employees  
18 employee, partners partner, or directors director of the  
19 issuer if no commission or other remuneration is paid or given  
20 directly or indirectly for soliciting any person in this  
21 state.

22 b. A broker-dealer in effecting a transaction in this  
23 state which is limited to a transaction provided in section  
24 15(h)(2) of the Securities Exchange Act of 1934.

25 "Agent" also does not include any other individuals  
26 individual who are is not within the intent of this subsection  
27 whom the administrator by rule or order designates. A  
28 partner, officer, or director of a broker-dealer or issuer, or  
29 a person occupying a similar status or performing similar  
30 functions, is an agent only if such person otherwise comes  
31 within this definition.

32 Sec. 2. Section 502.102, Code 1997, is amended by adding  
33 the following new subsection:

34 NEW SUBSECTION. 5A. "Federal covered security" means any  
35 security that is a covered security under section 18(b) of the

1 Securities Act of 1933 or rules or regulations adopted under  
 2 the Securities Act of 1933, except that up through October 10,  
 3 1999, a federal covered security for which a fee has not been  
 4 paid and promptly remedied following written notification from  
 5 the administrator to the issuer of the nonpayment or ~~fe~~  
 6 underpayment of the fee, as required by this chapter, shall  
 7 not be a federal covered security.

8 Sec. 3. Section 502.102, Code 1997, is amended by adding  
 9 the following new subsection:

10 NEW SUBSECTION. 13A. "Securities and exchange commission"  
 11 means the United States securities and exchange commission as  
 12 established pursuant to 15 U.S.C. § 78(d).

13 Sec. 4. Section 502.102, subsection 14, Code 1997, is  
 14 amended to read as follows:

15 14. "Security" means any note; stock; treasury stock;  
 16 bond; debenture; evidence of indebtedness; certificate of  
 17 interest or participation in a profit sharing agreement;  
 18 collateral trust certificate; preorganization certificate or  
 19 subscription; transferable share; investment contract; voting  
 20 trust certificate; certificate of deposit for a security;  
 21 fractional undivided interest in an oil, gas, or other mineral  
 22 lease or in payments out of production under such a lease,  
 23 right, or royalty; an interest in a limited liability company  
 24 or in a limited liability partnership or any class or series  
 25 of such interest, including any fractional or other interest  
 26 in such interest; or, in general, any interest or instrument  
 27 commonly known as a "security", or any certificate of interest  
 28 or participation in, temporary or interim certificate for,  
 29 receipt for, guarantee of, or warrant or right to subscribe to  
 30 or purchase, any of the foregoing. "Security" does not  
 31 include an insurance or endowment policy or annuity contract  
 32 under which an insurance company promises to pay money either  
 33 in a lump sum or periodically for life or for some other  
 34 specified period. "Security" also does not include an  
 35 interest in a limited liability company or a limited liability

1 partnership if the person claiming that such an interest is  
2 not a security proves that all of the members of the limited  
3 liability company or limited liability partnership are  
4 actively engaged in the management of the limited liability  
5 company or limited liability partnership; provided that the  
6 evidence that members vote or have the right to vote, or the  
7 right to information concerning the business and affairs of  
8 the limited liability company or limited liability  
9 partnership, or the right to participate in management, shall  
10 not establish, without more, that all members are actively  
11 engaged in the management of the limited liability company or  
12 limited liability partnership.

13 Sec. 5. Section 502.201, Code 1997, is amended to read as  
14 follows:

15 502.201 REGISTRATION REQUIREMENT.

16 It is unlawful for any person to offer or sell any security  
17 in this state unless one of the following applies:

18 1. It is registered under this chapter; ~~or.~~

19 2. The security or transaction is exempted under section  
20 502.202 or 502.203.

21 3. It is a federal covered security.

22 Sec. 6. Section 502.202, subsection 7, Code 1997, is  
23 amended to read as follows:

24 7. Any security issued or guaranteed by ~~any-railroad;~~  
25 ~~other-common-carrier;~~ a public utility; or holding company  
26 which is any of the following:

27 ~~a.---Subject-to-the-jurisdiction-of-the-interstate-commerce~~  
28 ~~commission;~~

29 ~~b. a.~~ A registered holding company under the Public  
30 Utility Holding Company Act of 1935 or a subsidiary of such a  
31 company within the meaning of that Act; ~~or.~~

32 b. Regulated in respect of its rates and charges by a  
33 governmental authority of the United States or any state.

34 c. Regulated in respect of the issuance or guarantee of  
35 the security by a governmental authority of the United States,

1 any state, Canada, or any Canadian province.

2 Sec. 7. NEW SECTION. 502.206A FEDERAL COVERED  
3 SECURITIES.

4 1. The administrator, by rule or order, may require the  
5 filing of any or all of the following documents with respect  
6 to a federal covered security under section 18(b)(2) of the  
7 Securities Act of 1933:

8 a. Prior to the initial offer of a federal covered  
9 security in this state, all documents that are part of a  
10 current federal registration statement filed with the United  
11 States securities and exchange commission under the Securities  
12 Act of 1933, together with a consent to service of process  
13 signed by the issuer and a filing fee calculated as specified  
14 in section 502.208, subsections 2 and 13.

15 b. After the initial offer of a federal covered security  
16 in this state, all documents that are part of an amendment to  
17 a current federal registration statement filed with the United  
18 States securities and exchange commission under the Securities  
19 Act of 1933.

20 c. An annual or periodic report of the value of the  
21 federal covered securities offered or sold in this state  
22 together with the applicable filing fee, if any, calculated as  
23 specified in section 502.208, subsections 2 and 13.

24 2. With respect to any security that is a federal covered  
25 security under section 18(b)(4)(D) of the Securities Act of  
26 1933, the administrator, by rule or otherwise, may require the  
27 issuer to file a notice on Form D as promulgated by the  
28 securities and exchange commission and a consent to service of  
29 process signed by the issuer not later than fifteen days after  
30 the first sale of the federal covered security in this state  
31 together with a filing fee, as established by rule adopted by  
32 the administrator.

33 3. The administrator, by rule or otherwise, may require  
34 the filing of any document filed with the securities and  
35 exchange commission under the Securities Act of 1933 with

1 respect to a federal covered security under section 18(b)(3)  
2 or (4) of the Securities Act of 1933, together with a filing  
3 fee established by rule adopted by the administrator which  
4 shall not be more than one hundred dollars.

5 4. The administrator may issue a stop order suspending the  
6 offer and sale of a federal covered security, except a federal  
7 covered security under section 18(b)(1) of the Securities Act  
8 of 1933, if the administrator finds that both of the following  
9 apply:

10 a. The order is in the public interest.

11 b. The person against whom the stop order is issued has  
12 failed to comply with a requirement provided in this section.

13 5. The administrator, by rule or otherwise, may waive any  
14 requirement of this section if the administrator finds good  
15 cause that the requirement is not necessary in order to carry  
16 out the purposes of the section.

17 Sec. 8. Section 502.207A, subsection 5, Code 1997, is  
18 amended to read as follows:

19 5. In connection with an offering registered under this  
20 section, a person may be registered as an agent of the issuer  
21 under section 502.301 by the filing of an application by the  
22 issuer with the administrator for the registration of the  
23 person as an agent of the issuer and the paying of a fee of  
24 ten dollars. Notwithstanding any other provision of this  
25 chapter, the registration of the agent shall be effective  
26 until withdrawn by the issuer or until the securities  
27 registered pursuant to the registration statement have all  
28 been sold, whichever occurs first. The registration of an  
29 agent shall become effective when ordered by the administrator  
30 or on the fifth business day after the agent's application has  
31 been filed with the administrator, whichever occurs first, and  
32 the administrator shall not impose further conditions upon the  
33 registration of the agent. However, the administrator may  
34 deny, revoke, suspend, or withdraw the registration of the  
35 agent at any time as provided in section 502.304. Per-the

1 purposes-of-registration-of-agents-under-this-section, the  
2 issuer-and-agent-are-not-required-to-post-bond. An agent  
3 registered solely pursuant to this section is entitled to sell  
4 only securities registered under this section.

5 Sec. 9. Section 502.302, subsection 4, Code 1997, is  
6 amended to read as follows:

7 4. The administrator may by rule or order require a  
8 minimum capital for broker-dealers and ~~establish limitations~~  
9 ~~on aggregate indebtedness of broker-dealers in relation to net~~  
10 ~~capital and may classify broker-dealers for purposes of such~~  
11 ~~requirements~~ subject to the limitations of section 15 of the  
12 Securities Exchange Act of 1934. ~~The administrator may not,~~  
13 ~~however, with respect to any broker-dealer who is a member of~~  
14 ~~the national association of securities dealers, inc., or who~~  
15 ~~is registered with the securities and exchange commission,~~  
16 ~~require a higher minimum capital or lower ratio of aggregate~~  
17 ~~indebtedness to net capital than is contained in the rules and~~  
18 ~~regulations adopted by such association or commission.~~

19 Sec. 10. Section 502.303, subsections 1 and 2, Code 1997,  
20 are amended to read as follows:

21 1. Every registered broker-dealer shall make and keep such  
22 accounts, correspondence, memoranda, papers, books, and other  
23 records as the administrator ~~by rule prescribes~~ may prescribe  
24 by rule or order, except as provided by section 15 of the  
25 Securities Exchange Act of 1934. ~~All records so required shall~~  
26 ~~be preserved for three years unless the administrator by rule~~  
27 ~~prescribes otherwise for particular types of records. All~~  
28 ~~required records shall be kept within this state or shall, at~~  
29 ~~the request of the administrator, be made available at any~~  
30 ~~time for examination at the administrator's option either in~~  
31 ~~the principal office of the registrant or by production of~~  
32 ~~exact copies thereof in this state.~~

33 2. Every registered broker-dealer shall file such  
34 financial reports as the administrator ~~by rule prescribes~~ by  
35 rule or order, not to exceed the limitations provided in

1 section 15 of the Securities Exchange Act of 1934.

2 Sec. 11. Section 502.304, subsection 1, paragraph e, Code  
3 1997, is amended to read as follows:

4 e. Is the subject of an order of the administrator  
5 denying, suspending, or revoking registration as a broker-  
6 dealer, agent, or insurance agent;

7 Sec. 12. Section 502.501, subsection 1, paragraph a, Code  
8 1997, is amended to read as follows:

9 a. Violates section 502.201, subsection 1 or 2, or section  
10 502.208, subsection 12, or section 502.406, subsection 2,  
11 paragraph "b", or

12 Sec. 13. Section 502.602, Code 1997, is amended to read as  
13 follows:

14 502.602 FILING OF SALES AND ADVERTISING LITERATURE.

15 The administrator may by rule or order require the filing  
16 of any prospectus, pamphlet, circular, form letter,  
17 advertisement, or other sales literature or advertising  
18 communication addressed or intended for distribution to  
19 prospective investors, unless the security or transaction is a  
20 federal covered security or is exempted by section 502.202 or  
21 502.203. The administrator may by rule or order prohibit the  
22 publication, circulation or use of any advertising deemed  
23 false or misleading.

24 Sec. 14. EFFECTIVE DATE. This Act, being deemed of  
25 immediate importance, takes effect upon enactment.

26 EXPLANATION

27 This bill amends a number of provisions included in chapter  
28 502, regulating securities. The bill adds provisions relating  
29 to federal covered securities regulated under the federal  
30 Securities Act of 1933 or rules or regulations promulgated by  
31 the securities and exchange commission. Under the federal  
32 Act, these securities are exempted from registration  
33 requirements. The bill revises the definition of "agent" to  
34 include a person who deals in federal covered securities. The  
35 bill provides that the administrator may require the filing of

1 documents relating to federal covered securities, including a  
 2 current federal registration statement, amendments to a  
 3 current federal registration statement, reports concerning the  
 4 value of federal covered securities, and any other documents  
 5 required to be filed with the securities and exchange  
 6 commission. The bill provides that the administrator may  
 7 issue a stop order suspending the offer and sale of certain  
 8 federal covered securities. It provides that the  
 9 administrator may also waive the filing requirements of the  
 10 bill for federal covered securities.

11 The bill adds limited liability partnerships to the types  
 12 of entities dealing in securities regulated under the chapter.  
 13 The bill eliminates a reference to the interstate commerce  
 14 commission which has been abolished by Congress. The bill  
 15 eliminates a reference, for purposes of registration of agents  
 16 under Code section 502.207A, to a surety bond required when an  
 17 offering is made. The bill provides for minimum capital  
 18 requirements for brokers. The bill allows the minimum capital  
 19 requirement to be set by order of the administrator as well as  
 20 by rule. The bill provides that the capital requirements are  
 21 subject to limitations of the federal Securities Exchange Act  
 22 of 1934 and eliminates provisions basing capital requirements  
 23 on rules and regulations adopted by the national association  
 24 of securities dealers, inc., or the United States securities  
 25 and exchange commission. The bill provides for the  
 26 application of disciplinary action against persons licensed as  
 27 insurance agents who are subject to sanctions.

28 The bill takes effect upon enactment.

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SSB/07



TERRY E. BRANSTAD, GOVERNOR

INSURANCE DIVISION  
IOWA DEPARTMENT OF COMMERCE

## MEMORANDUM

To: Members of the 77th General Assembly

From: Craig A. Goettsch  
Superintendent of Securities

Re: Securities Legislation

Date: January 31, 1997

The Insurance Division/ Securities Bureau has filed legislation which is largely technical corrections to chapter 502, the Iowa Uniform Securities Act (IUSA). The bulk of this proposal is intended to conform IUSA to the National Securities Markets Improvement Act of 1996 ("NSMIA"), which became law in October, 1996. In NSMIA, the Congress has tried to divide regulatory responsibilities between the states and the federal Securities and Exchange Commission.

Most of the language in the bill is taken from a draft developed by the North American Securities Administrators Association ("NASAA"). NASAA determined that it's approach would be to conform to the intent of the Congress, and to stress to the greatest extent possible, uniformity. Clearly, the Congress has put a premium on states being as uniform as possible. Drafts of this legislation were shared with the Iowa Bar Securities Committee and some industry representatives. We expect this bill to be noncontroversial.

Sections 1, 2, 4, 6, 8, 9, 10, 13, 14, and 15 relate to the NSMIA. In section 3 we propose to add the term limited liability partnership to the LLC definition change from last year. The Bureau has three open enforcement cases involving LLPs. Section 5 deletes the reference to the Interstate Commerce Commission in existing section 502.202(7)(a), since the ICC no longer exists. Section 7 contains a deletion of an outdated reference to the surety bond. Sections 11 and 12 add the fact that the person has been the subject of an administrative action affecting an insurance license (e.g., an insurance agent whose license is revoked for converting premiums would be subject to a securities licensing action as well) to the reasons for sanctioning an agent.

Please do not hesitate to contact me if you have any questions.

SECURITIES BUREAU

INSURANCE DIVISION / LUCAS BUILDING / DES MOINES, IOWA 50319 / 515-281-4441