

Senate Study Bill 107

Bill Text

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1 1 Section 1. Section [502.102](#), subsection 3, Code 1997, is
1 2 amended to read as follows:

1 3 3. "Agent" means any individual other than a broker-dealer
1 4 who represents a broker-dealer or issuer in effecting or
1 5 attempting to effect purchases or sales of securities.
1 6 "Agent" does not include an individual who represents

~~an~~

~~;~~

1 7 a. An issuer in doing any of the following:

1 8

~~a.~~

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

~~;~~

~~+~~

1 12

~~b.~~

- (2) Effecting transactions exempted by section 502.203

~~;~~

~~-~~

1 13

~~or~~

~~+~~

1 14 (3) Effecting transactions in a federal covered security
1 15 as described in sections 18(b)(3) and 18(b)(4)(D) of the
1 16 Securities Act of 1933 as amended in Pub. L. No. 104-290.

1 17

~~c.~~

- (4) Effecting transactions with an existing

~~employees~~

~~-~~

1 18 employee,

~~partners~~

- partner, or

~~directors~~

- director of the

1 19 issuer if no commission or other remuneration is paid or given
1 20 directly or indirectly for soliciting any person in this
1 21 state.

1 22 b. A broker-dealer in effecting a transaction in this
1 23 state which is limited to a transaction provided in section
1 24 15(h)(2) of the Securities Exchange Act of 1934.

1 25 "Agent" also does not include any other

~~—individuale~~

1 26 individual who

~~—are~~

- is not within the intent of this subsection

1 27 whom the administrator by rule or order designates. A
1 28 partner, officer, or director of a broker-dealer or issuer, or
1 29 a person occupying a similar status or performing similar
1 30 functions, is an agent only if such person otherwise comes
1 31 within this definition.

1 32 Sec. 2. Section 502.102, Code 1997, is amended by adding
1 33 the following new subsection:

1 34 NEW SUBSECTION. 5A. "Federal covered security" means any
1 35 security that is a covered security under section 18(b) of the
2 1 Securities Act of 1933 or rules or regulations adopted under
2 2 the Securities Act of 1933, except that up through October 10,
2 3 1999, a federal covered security for which a fee has not been
2 4 paid and promptly remedied following written notification from
2 5 the administrator to the issuer of the nonpayment or
2 6 underpayment of the fee, as required by this chapter, shall
2 7 not be a federal covered security.

2 8 Sec. 3. Section 502.102, Code 1997, is amended by adding
2 9 the following new subsection:

2 10 NEW SUBSECTION. 13A. "Securities and exchange commission"
2 11 means the United States securities and exchange commission as
2 12 established pursuant to 15 U.S.C. } 78(d).

2 13 Sec. 4. Section 502.102, subsection 14, Code 1997, is
2 14 amended to read as follows:

2 15 14. "Security" means any note; stock; treasury stock;
2 16 bond; debenture; evidence of indebtedness; certificate of
2 17 interest or participation in a profit sharing agreement;
2 18 collateral trust certificate; preorganization certificate or
2 19 subscription; transferable share; investment contract; voting
2 20 trust certificate; certificate of deposit for a security;
2 21 fractional undivided interest in an oil, gas, or other mineral
2 22 lease or in payments out of production under such a lease,
2 23 right, or royalty; an interest in a limited liability company
2 24 or in a limited liability partnership or any class or series
2 25 of such interest, including any fractional or other interest
2 26 in such interest; or, in general, any interest or instrument
2 27 commonly known as a "security", or any certificate of interest
2 28 or participation in, temporary or interim certificate for,
2 29 receipt for, guarantee of, or warrant or right to subscribe to
2 30 or purchase, any of the foregoing. "Security" does not
2 31 include an insurance or endowment policy or annuity contract
2 32 under which an insurance company promises to pay money either
2 33 in a lump sum or periodically for life or for some other
2 34 specified period. "Security" also does not include an
2 35 interest in a limited liability company or a limited liability
3 1 partnership if the person claiming that such an interest is
3 2 not a security proves that all of the members of the limited
3 3 liability company or limited liability partnership are
3 4 actively engaged in the management of the limited liability
3 5 company or limited liability partnership; provided that the
3 6 evidence that members vote or have the right to vote, or the
3 7 right to information concerning the business and affairs of
3 8 the limited liability company or limited liability
3 9 partnership, or the right to participate in management, shall
3 10 not establish, without more, that all members are actively
3 11 engaged in the management of the limited liability company or
3 12 limited liability partnership.

3 13 Sec. 5. Section 502.201, Code 1997, is amended to read as
3 14 follows:

3 15 502.201 REGISTRATION REQUIREMENT.

3 16 It is unlawful for any person to offer or sell any security
3 17 in this state unless one of the following applies:

3 18 1. It is registered under this chapter

~~;~~ or

3 19 2. The security or transaction is exempted under section
3 20 502.202 or 502.203.

3 21 3. It is a federal covered security.

3 22 Sec. 6. Section 502.202, subsection 7, Code 1997, is
3 23 amended to read as follows:

3 24 7. Any security issued or guaranteed by

~~any railroad,~~

3 25

~~other common carrier,~~

~~a public utility~~

~~or holding company~~

3 26 which is any of the following:

3 27

~~a. Subject to the jurisdiction of the interstate commerce~~

3 28

~~commission;~~

3 29

~~b.~~

~~a. A registered holding company under the Public~~

3 30 Utility Holding Company Act of 1935 or a subsidiary of such a
3 31 company within the meaning of that Act

~~;~~ or

3 32 b. Regulated in respect of its rates and charges by a
3 33 governmental authority of the United States or any state.

3 34 c. Regulated in respect of the issuance or guarantee of
3 35 the security by a governmental authority of the United States,
4 1 any state, Canada, or any Canadian province.

4 2 Sec. 7. NEW SECTION. 502.206A FEDERAL COVERED
4 3 SECURITIES.

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

4 8 a. Prior to the initial offer of a federal covered
4 9 security in this state, all documents that are part of a
4 10 current federal registration statement filed with the United
4 11 States securities and exchange commission under the Securities
4 12 Act of 1933, together with a consent to service of process
4 13 signed by the issuer and a filing fee calculated as specified
4 14 in section 502.208, subsections 2 and 13.

4 15 b. After the initial offer of a federal covered security
4 16 in this state, all documents that are part of an amendment to
4 17 a current federal registration statement filed with the United
4 18 States securities and exchange commission under the Securities
4 19 Act of 1933.

4 20 c. An annual or periodic report of the value of the
4 21 federal covered securities offered or sold in this state
4 22 together with the applicable filing fee, if any, calculated as
4 23 specified in section 502.208, subsections 2 and 13.

4 24 2. With respect to any security that is a federal covered
4 25 security under section 18(b)(4)(D) of the Securities Act of

4 26 1933, the administrator, by rule or otherwise, may require the
4 27 issuer to file a notice on Form D as promulgated by the
4 28 securities and exchange commission and a consent to service of
4 29 process signed by the issuer not later than fifteen days after
4 30 the first sale of the federal covered security in this state
4 31 together with a filing fee, as established by rule adopted by
4 32 the administrator.

4 33 3. The administrator, by rule or otherwise, may require
4 34 the filing of any document filed with the securities and
4 35 exchange commission under the Securities Act of 1933 with
5 1 respect to a federal covered security under section 18(b)(3)
5 2 or (4) of the Securities Act of 1933, together with a filing
5 3 fee established by rule adopted by the administrator which
5 4 shall not be more than one hundred dollars.

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

5 10 a. The order is in the public interest.

5 11 b. The person against whom the stop order is issued has
5 12 failed to comply with a requirement provided in this section.

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

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

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

~~For the~~

~~6 1~~

~~purposes of registration of agents under this section, the~~

~~6 2~~

~~issuer and agent are not required to post bond.~~

~~An agent~~

~~6 3 registered solely pursuant to this section is entitled to sell
6 4 only securities registered under this section.~~

~~6 5 Sec. 9. Section [502.302](#), subsection 4, Code 1997, is
6 6 amended to read as follows:~~

~~6 7 4. The administrator may by rule or order require a
6 8 minimum capital for broker-dealers~~

~~and establish limitations~~

~~6 9~~

~~on aggregate indebtedness of broker dealers in relation to net~~

6 10

~~capital and may classify broker dealers for purposes of such~~

6 11

~~requirements~~

~~subject to the limitations of section 15 of the~~

6 12 Securities Exchange Act of 1934.

~~The administrator may not,~~

6 13

~~however, with respect to any broker dealer who is a member of~~

6 14

~~the national association of securities dealers, inc., or who~~

6 15

~~is registered with the securities and exchange commission,~~

6 16

~~require a higher minimum capital or lower ratio of aggregate~~

6 17

~~indebtedness to net capital than is contained in the rules and~~

6 18

~~regulations adopted by such association or commission.~~

6 19 Sec. 10. Section [502.303](#), subsections 1 and 2, Code 1997,

6 20 are amended to read as follows:

6 21 1. Every registered broker-dealer shall make and keep

~~such~~

6 22 accounts, correspondence, memoranda, papers, books, and other

6 23 records as the administrator

~~by rule prescribes~~

~~may prescribe~~

6 24 by rule or order, except as provided by section 15 of the

6 25 Securities Exchange Act of 1934.

~~All records so required shall~~

6 26

~~be preserved for three years unless the administrator by rule~~

6 27

~~prescribes otherwise for particular types of records. All~~

6 28

~~required records shall be kept within this state or shall, at~~

6 29

~~the request of the administrator, be made available at any~~

6 30

~~time for examination at the administrator's option either in~~

6 31

~~the principal office of the registrant or by production of~~

6 32

~~exact copies thereof in this state.~~

6 33 2. Every registered broker-dealer shall file such
6 34 financial reports as the administrator

~~by rule~~

~~prescribes by~~

6 35 rule or order, not to exceed the limitations provided in
7 1 section 15 of the Securities Exchange Act of 1934.

7 2 Sec. 11. Section [502.304](#), subsection 1, paragraph e, Code
7 3 1997, is amended to read as follows:

7 4 e. Is the subject of an order of the administrator
7 5 denying, suspending, or revoking registration as a broker-
7 6 dealer, agent, or insurance agent;

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

7 9 a. Violates section 502.201, subsection 1 or 2, or section
7 10 502.208, subsection 12, or section 502.406, subsection 2,
7 11 paragraph "b", or

7 12 Sec. 13. Section [502.602](#), Code 1997, is amended to read as
7 13 follows:

7 14 502.602 FILING OF SALES AND ADVERTISING LITERATURE.

7 15 The administrator may by rule or order require the filing
7 16 of any prospectus, pamphlet, circular, form letter,
7 17 advertisement, or other sales literature or advertising
7 18 communication addressed or intended for distribution to
7 19 prospective investors, unless the security or transaction is a
7 20 federal covered security or is exempted by section 502.202 or
7 21 502.203. The administrator may by rule or order prohibit the
7 22 publication, circulation or use of any advertising deemed
7 23 false or misleading.

7 24 Sec. 14. EFFECTIVE DATE. This Act, being deemed of
7 25 immediate importance, takes effect upon enactment.

7 26 EXPLANATION

7 27 This bill amends a number of provisions included in chapter
7 28 502, regulating securities. The bill adds provisions relating
7 29 to federal covered securities regulated under the federal
7 30 Securities Act of 1933 or rules or regulations promulgated by
7 31 the securities and exchange commission. Under the federal
7 32 Act, these securities are exempted from registration
7 33 requirements. The bill revises the definition of "agent" to
7 34 include a person who deals in federal covered securities. The
7 35 bill provides that the administrator may require the filing of
8 1 documents relating to federal covered securities, including a
8 2 current federal registration statement, amendments to a
8 3 current federal registration statement, reports concerning the
8 4 value of federal covered securities, and any other documents
8 5 required to be filed with the securities and exchange
8 6 commission. The bill provides that the administrator may
8 7 issue a stop order suspending the offer and sale of certain
8 8 federal covered securities. It provides that the
8 9 administrator may also waive the filing requirements of the
8 10 bill for federal covered securities.

8 11 The bill adds limited liability partnerships to the types

8 12 of entities dealing in securities regulated under the chapter.
8 13 The bill eliminates a reference to the interstate commerce
8 14 commission which has been abolished by Congress. The bill
8 15 eliminates a reference, for purposes of registration of agents
8 16 under Code section 502.207A, to a surety bond required when an
8 17 offering is made. The bill provides for minimum capital
8 18 requirements for brokers. The bill allows the minimum capital
8 19 requirement to be set by order of the administrator as well as
8 20 by rule. The bill provides that the capital requirements are
8 21 subject to limitations of the federal Securities Exchange Act
8 22 of 1934 and eliminates provisions basing capital requirements
8 23 on rules and regulations adopted by the national association
8 24 of securities dealers, inc., or the United States securities
8 25 and exchange commission. The bill provides for the
8 26 application of disciplinary action against persons licensed as
8 27 insurance agents who are subject to sanctions.
8 28 The bill takes effect upon enactment.
8 29 LSB 1274DP 77
8 30 da/sc/14