

preferred stock of ineligible members shall be carried out to the extent and in the manner specified in the bylaws of the association.

Sec. 4. This Act is effective January first following its enactment.

Approved May 3, 1979

CHAPTER 120
SECURITIES TRANSACTIONS

S. F. 463

AN ACT relating to the regulation of securities transactions.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section five hundred two point one hundred two (502.102), subsection two (2), Code 1979, is amended to read as follows:

2. "Agent" means any individual other than a broker-dealer who represents a broker-dealer or issuer* in effecting or attempting to effect purchases or sales of securities. "Agent" does not include an individual who represents an issuer in:

a. Effecting transactions in a security exempted by section 502.202, subsections 1, 2, 3, 4, 6, 10, 11, or a security issued by an industrial loan company licensed under chapter 536A, Code 1977;

b. Effecting transactions exempted by section 502.203; or

c. Effecting transactions with existing employees, partners or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state. "Agent" also does not include other individuals who are not within the intent of this subsection whom the administrator by rule or order designates. A partner, officer, or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions, is an agent only if such person otherwise comes within this definition.

Sec. 2. Section five hundred two point one hundred two (502.102), subsection four (4), paragraphs a, b and c, and paragraph d, subparagraph two (2), Code 1979, are amended to read as follows:

a. An agent-;

b. An issuer-;

c. An institutional investor, including an insurance company or bank, except where the insurance company or bank is engaged in the business of selling interests (other than through a subsidiary) in a separate account that are securities-;

(2) During any period of twelve consecutive months does not direct more than fifteen offers to sell or buy into this state in any manner to persons other than those specified in subparagraph (1) of this paragraph, whether or not the offeror or any of the offerees is then present in this state-;

*According to enrolled Act

Sec. 3. Section five hundred two point one hundred two (502.102), subsection ten (10), paragraph f, subparagraph two (2), Code 1979, is amended to read as follows:

(2) Any stock split, other than a reverse stock split, or security dividend payable with respect to the securities of a corporation in the same or any other class of securities of such corporation, provided nothing of value, including the surrender of a right or an option to receive a cash or property dividend, is given by security holders for the security dividend.

Sec. 4. Section five hundred two point one hundred two (502.102), Code 1979, is amended by adding the following new subsection:

NEW SUBSECTION. "Interest at the legal rate" means the interest rate for judgments specified in section five hundred thirty-five point three (535.3) of the Code.

Sec. 5. Section five hundred two point two hundred two (502.202), subsection twelve (12), paragraphs a and b, Code 1979, are amended to read as follows:

a. A co-operative association as defined in the Agricultural Marketing Act, or a federation of such co-operative associations that possesses no greater powers or purposes than co-operative associations so defined, if such stock or similar security:

(1) Qualifies its holder for membership in the co-operative association or federation, or in the case of patronage refund certificate, is issuable only to members; and

(2) Is transferable only to the issuer or to a successor in interest of the transferor that qualifies for membership in the co-operative association or federation;

b. A co-operative housing corporation described in paragraph 1 of subsection "b" of section 216, of the Internal Revenue Code of 1954, if its activities are limited to the ownership, leasing, management, or construction of residential properties for its members, and activities incidental thereto; or

Sec. 6. Section five hundred two point two hundred two (502.202), Code 1979, is amended by adding the following new subsection:

NEW SUBSECTION. Any security issued by a corporation formed under chapter four hundred ninety-six B (496B) of the Code.

Sec. 7. Section five hundred two point two hundred three (502.203), subsection two (2), paragraphs a, b and c, Code 1979, are amended to read as follows:

a. A recognized securities manual approved by the administrator contains the names of the issuer's officers and directors, a balance sheet of the issuer as of a date within eighteen months, and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations;

b. The security was issued by an issuer which has a class of securities currently registered under the Securities Exchange Act of 1934;

c. The security was issued by an issuer which has a class of securities registered under this chapter, or under chapter 502 of the Code as it existed prior to January 1, 1976; or

Sec. 8. Section five hundred two point two hundred three (502.203), subsection nine (9), paragraph a, unnumbered subparagraph one (1), Code 1979, is amended to read as follows:

9. a. The sale, as part of a single issue, of securities other than fractional undivided interests in oil, gas or other mineral leases, rights or royalties, and interests in a limited or general partnership organized under the laws of or having its principal place of business in a foreign jurisdiction, except as may be permitted by the administration by rule or by order, by the issuer thereof within any period of twelve consecutive months to not more than thirty-five purchasers in this state, exclusive of purchases by bona fide institutional investors for their own account for investment, provided that the issuer reasonably believes that all the buyers in this state are purchasing for investment, and that both of the following are complied with:

Sec. 9. Section five hundred two point two hundred three (502.203), subsection eleven (11), Code 1979, is amended by adding the following new paragraph:

NEW PARAGRAPH.

d. The sale, for cash, in connection with a stock dividend, of less than full shares of stock to avoid the issuance of fractional shares, by rounding up the stock dividend payable to any holder to the next higher full share.

Sec. 10. Section five hundred two point two hundred three (502.203), subsection thirteen (13), paragraphs a, b and c, Code 1979, are amended to read as follows:

a. A party to such transaction files proxy or informational materials pursuant to subsection "a" of section 14, or subsection "c" of section 14 of the Securities Exchange Act of 1934, or pursuant to section 20 of the Investment Company Act of 1940, provided that such materials are, at least ten days prior to the meeting of security holders called for the purpose of approving such transactions-:

(1) Filed with the administrator, and

(2) Distributed to each of the security holders of each party to such transaction-;

b. A party to such transaction is excused from registration under section 12 of the Securities Exchange Act of 1934 pursuant to subparagraph (G) of paragraph 2 of subsection "g" of section 12 of that Act, and such party is required by the laws of its domiciliary state to file proxy materials with an agency of said state provided that such proxy materials are, at least ten days prior to the meeting of security holders called for the purpose of approving such transaction-:

(1) Filed with the administrator, and

(2) Distributed to each of the security holders of each party to such transaction-;

c. One party to a merger owns not less than ninety percent of the outstanding shares of each class of stock of each other party to the merger-; or

Sec. 11. Section five hundred two point two hundred seven (502.207), subsection two (2), paragraph p, Code 1979, is amended to read as follows:

p. A balance sheet of the issuer as of a date within four months prior to the filing of the registration statement; a profit and loss statement and analysis-of-surplus statement of changes in financial position for each of the three fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessor's existence if less than three years, and, if any part of the proceeds of the offering is to be applied to the purchase of any business, the same financial statements which would be required if that business were the registrant, or such other financial statements as may be required pursuant to section 502.607, subsection 3.

Sec. 12. Section five hundred two point two hundred eight (502.208), Code 1979, is amended by adding the following new subsection:

NEW SUBSECTION. If a registrant sells securities in excess of the aggregate amount registered for sale in this state, the registrant may file an amendment to the registration statement to include the excess sales. Every person filing such an amendment shall pay a filing fee of three times the amount calculated in the manner specified in subsection two (2) of this section as though the additional securities sold constituted a separate issue. The administrator may order the amendment effective retroactively as of the effective date of the registration statement being amended.

Sec. 13. Section five hundred two point two hundred nine (502.209), subsection one (1), paragraphs a, b, c, d, e, f, g and h, Code 1979, are amended to read as follows:

a. The registration statement as of its effective date or as of any earlier date in the case of an order denying effectiveness, or any amendment filed under either subsection 9 or subsection 11 of section 502.208 as of its effective date, or any financial statement or report required under section 502.208, subsection 9 is incomplete in any material respect or contains any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

b. Any provision of this chapter or any rule, order or condition lawfully imposed under this chapter has been willfully violated, in connection with the offering, by:

- (1) The person filing the registration statement;
- (2) The issuer;
- (3) Any partner, officer or director of the issuer, or any person occupying a similar status or performing similar functions;
- (4) Any affiliate of the issuer, but only if the person filing the registration statement is an affiliate of the issuer; or
- (5) Any broker-dealer;

c. The securities registered or sought to be registered are the subject of an administrative stop order or similar order or a permanent or temporary injunction of any court of competent jurisdiction entered under any other federal or state Act applicable to the offering; but the administrator may not institute a proceeding against an effective registration statement under this section more than one year from the date of the order or injunction relied on, and the administrator may not enter an order under this section on

the basis of an order or injunction entered under any other state Act unless that order or injunction was based on facts which would currently constitute a ground for a stop order under this section-;

d. The issuer's enterprise or method of business includes or would include activities which are illegal where performed-;

e. The issuance or sale of the securities is or would be unfair or inequitable to purchasers or has worked or tended to work a fraud upon purchasers or would so operate-;

f. The offering has been or would be made with unreasonable amounts of underwriters' and sellers' discounts, commissions, or other compensation, or promoters' profits or participation, or unreasonable amounts or kinds of options-;

g. Advertising has been used in connection with the offering contrary to the provisions of section 502.602-;

h. The financial condition of the issuer affects or would affect the soundness of the securities-; or

Sec. 14. Section five hundred two point four hundred three (502.403), subsection one (1), paragraph b, and subsection two (2), Code 1979, are amended to read as follows:

b. To enter any order or orders for the purchase (or sale) of the security with the knowledge that an order or orders of substantially the same size, at substantially the same time, and at substantially the same price for the sale (or purchase) of the security have been or will be entered by or for the same or affiliated persons-;

2. To effect, alone or with one or more other persons, a series of transactions in any security creating actual or apparent active trading in the security or raising or depressing the price of the security for the purpose of inducing the purchase or sale of the security by others-; or

Sec. 15. Section five hundred two point five hundred two (502.502), Code 1979, is amended to read as follows:

502.502 FRAUDULENT PRACTICES.

1. Any person, other than an underwriter, who offers or sells a security in connection with an offering of securities (i) registered under section five hundred two point two hundred seven (502.207) of the Code or under the Securities Act of 1933, or (ii) pursuant to an exemption from registration under section 3(b) of the Securities Act of 1933, in violation of section five hundred two point four hundred one (502.401) of the Code, the purchaser not knowing of the violation, shall be liable to the purchaser, who may sue either at law or in equity to recover the consideration paid for the security, together with interest at the legal rate from the date of payment, costs and reasonable attorneys' fees, less the amount of any income or distributions, in cash or in kind, received on the security, upon the tender of the security, or for damages if the purchaser no longer owns the security. Damages shall be the amount that would be recoverable upon a tender less:

a. The value of the security when the purchaser disposed of it; and

b. Interest on said value at the legal rate from the date of disposition.

The persons on whose behalf an offering is made shall be jointly and severally liable under this subsection. Tender requires only notice of

willingness to exchange the security for the amount specified. Any notice may be given by service as in civil actions or by certified mail addressed to the last known address of the person liable.

1 2. Any ~~person~~ underwriter and any person, other than a person on whose behalf an offering described in subsection one (1) of this section is made, who offers or sells a security in violation of ~~sections section~~ section 502.401 ~~or 502-404~~, the purchaser not knowing of the violation, and who fails to sustain the burden of proof that he, she or it did not know and in the exercise of reasonable care could not have known of the violation, shall be liable to the purchaser, who may sue either at law or in equity to recover the consideration paid for the security, together with interest at the legal rate from the date of payment, costs and reasonable attorneys' fees, less the amount of any income or distributions, in cash or in kind, received on the security, upon the tender of the security, or for damages if the purchaser no longer owns the security. Damages shall be the amount that would be recoverable upon a tender less:

- a. The value of the security when the purchaser disposed of it; and
- b. Interest on said value at the legal rate from the date of disposition.

PARAGRAPH DIVIDED. Any person liable under this subsection on whose behalf an offering is made and any underwriter of the offering, whether on a best efforts or a firm commitment basis, shall be jointly and severally liable under this ~~section~~ subsection, but in no event shall any underwriter be liable in any suit or suits authorized under this ~~section~~ subsection for damages in excess of the total price at which the securities underwritten by it and distributed to the public were offered to the public. Tender requires only notice of willingness to exchange the security for the amount specified. Any notice may be given by service as in civil actions or by certified mail addressed to the last known address of the person liable.

2 3. Any person who offers to purchase or purchases a security in violation of ~~sections section~~ section 502.401 ~~or 502-404~~, the seller not knowing of the violation, and who fails to sustain the burden of proof that he, she or it did not know and in the exercise of reasonable care could not have known of the violation, shall be liable to the seller, who may sue either at law or in equity to recover the security, costs, and reasonable attorney's fees, plus any income or distributions, in cash or in kind, received by the purchaser thereon, upon tender of the consideration received, or for damages if the purchaser no longer owns the security. Damages shall be the excess of the value of the security when the purchaser disposed of it, plus interest at the legal rate from the date of disposition, over the consideration paid for the security. Tender requires only notice of willingness to pay the amount specified in exchange for the security. Any notice may be given by service as in civil actions or by certified mail to the last known address of the person liable.

3 4. Any person who willfully and knowingly participates in any act or transaction in violation of sections 502.403, five hundred two point four hundred four (502.404) of the Code, 502.405 or 502.407 shall be liable to any other person who purchases or sells any security (but not a mere holder thereof) at a price which was affected by the act or transaction for the

damages sustained as a result of such act or transaction. Damages shall not exceed the difference between the price at which the other person purchased or sold securities and the market value which the securities would have had at the time of such purchase or sale in the absence of the act or transaction, plus interest at the legal rate, costs and reasonable attorneys' fees.

4 5. Any person, referred to in this subsection as the "defendant", who violates section 502.402 shall be deemed to be unjustly enriched and liable to any person, referred to in this subsection as the "plaintiff", who purchased or may have purchased a security from, or sold or may have sold a security to, the defendant in connection with such violation, for damages equal to the difference between the price at which such security was purchased or sold and the market value which such security would have had at the time of the purchase or sale if the information known to the defendant had been publicly disseminated prior to that time and a reasonable time had elapsed for the market to absorb the information, plus interest at the legal rate, costs and reasonable attorneys' fees, unless the defendant proves that the plaintiff knew the information or that the plaintiff would have purchased or sold at the same price even if the information had been revealed to the plaintiff.

5 6. Any person who is aggrieved by a violation of section 502.407 may bring an action in the district court to enjoin the acts complained of and, upon proper showing, to require that correcting material be disseminated, and such person may be awarded costs and reasonable attorney's fees.

Sec. 16. Section five hundred two point five hundred three (502.503), subsection one (1), Code 1979, is amended to read as follows:

1. Affiliates of a person liable under either section 502.501 or 502.502, partners, principal executive officers or directors of such person, persons occupying a similar status or performing similar functions for such person, ~~employees--of--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 ~~any--person liable--hereunder--proves--that--he--she--or--it--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--:~~

a. With respect to section five hundred two point five hundred one (502.501) of the Code and section five hundred two point five hundred two (502.502), subsections one (1) and five (5) of the Code, any person liable hereunder proves that he, she or it 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

b. With respect to section five hundred two point five hundred two (502.502), subsections two (2) and three (3) of the Code, any person liable hereunder proves that he, she or it did not know, and was not grossly negligent in failing to know, of the existence of the facts by reason of which the liability is alleged to exist.

Sec. 17. Section five hundred two point six hundred four (502.604), subsection one (1), Code 1979, is amended to read as follows:

1. Issue an order directed at any such person requiring such person to cease and desist from engaging in such act or practice; or

Sec. 18. Section four hundred ninety-six B point eighteen (496B.18), Code 1979, is repealed. Chapter five hundred one (501), Code 1979, is repealed.

Approved April 20, 1979

CHAPTER 121 MEMBERSHIP SALES

S. F. 425

AN ACT relating to chapter five hundred three (503) of the Code.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section five hundred three point two (503.2), unnumbered paragraph one (1), Code 1979, is amended to read as follows:

The term "association" when used in this chapter shall mean any person, firm, company, partnership, association, or corporation other than building and loan associations, state and national banks, insurance companies and associations, and corporations and co-operative associations subject to the provisions of chapters 497, 498 and 501, which sell, or offer for sale ~~or issue~~ to the public generally memberships or certificates of membership entitling the holder thereof to purchase merchandise, materials, equipment or services on a discount or cost-plus basis.

Sec. 2. Section five hundred three point two (503.2), unnumbered paragraph two (2), Code 1979, is amended by striking that paragraph.

Sec. 3. Section five hundred three point three (503.3), Code 1979, is amended to read as follows:

503.3 NONAPPLICABILITY. This chapter shall not apply to any ~~corporation or association organized upon the assessment plan, for the purpose of insuring the lives of individuals or furnishing benefits to the widows, heirs, orphans, or legatees of deceased members, or insuring the health of persons, or furnishing accident indemnity, nor to any benevolent associations or societies.~~ of the following:

1. A corporation or association organized upon the assessment plan for the purpose of insuring the lives of individuals or furnishing benefits to the widows, heirs, orphans or legatees of deceased members.

2. A benevolent association or society.

3. An association which sells or offers for sale memberships to an individual or to a family unit for consideration which is fifty dollars or less for a one-year period.