

Report Title:

Uniform Securities Act

Description:

Adopts the 2002 Uniform Securities Act and makes conforming amendments. Effective July 1, 2009. (SB743 HD2)



A BILL FOR AN ACT

RELATING TO THE UNIFORM SECURITIES ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The Hawaii Revised Statutes is amended by
2 adding a new chapter to be appropriately designated and to read
3 as follows:

4 "CHAPTER

5 UNIFORM SECURITIES ACT

6 PART I. GENERAL PROVISIONS

7 § -101 **Short title.** This chapter shall be known and may
8 be cited as the Uniform Securities Act (2002).

9 § -102 **Definitions.** As used in this chapter, unless the
10 context otherwise requires:

11 "Agent" means an individual, other than a broker-dealer,
12 who represents a broker-dealer in effecting or attempting to
13 effect purchases or sales of securities or represents an issuer
14 in effecting or attempting to effect purchases or sales of the
15 issuer's securities. A partner, officer, or director of a
16 broker-dealer or issuer, or an individual having a similar
17 status or performing similar functions, is an agent only if the
18 individual otherwise falls within this definition. The



1 definition shall not include an individual excluded by rule
2 adopted or order issued under this chapter.

3 "Bank" means:

4 (1) A banking institution organized under the laws of the
5 United States;

6 (2) A member bank of the Federal Reserve System;

7 (3) Any other banking institution, whether incorporated or
8 not, doing business under the laws of a state or of
9 the United States, a substantial portion of the
10 business of which consists of receiving deposits or
11 exercising fiduciary powers similar to those permitted
12 to be exercised by national banks under the authority
13 of the Comptroller of the Currency pursuant to Section
14 1 of Public Law 87-722 (12 U.S.C. 92a), and which is
15 supervised and examined by a state or federal agency
16 having supervision over banks, and which is not
17 operated for the purpose of evading this chapter; or

18 (4) A receiver, conservator, or other liquidating agent of
19 any institution or firm included in paragraph (1),
20 (2), or (3).



1 "Broker-dealer" means a person engaged in the business of
2 effecting transactions in securities for the accounts of others
3 or for the person's own account. The term shall not include:

4 (1) An agent;

5 (2) An issuer;

6 (3) A depository institution;

7 (4) Any person licensed as a real estate broker or real
8 estate salesperson under the laws of this State while
9 effecting transactions in a security exempted by
10 sections 202(24) and 202(25);

11 (5) An international banking institution; or

12 (6) A person excluded by rule adopted or order issued
13 under this chapter.

14 "Commissioner" means the commissioner of securities of this
15 State.

16 "Depository institution" means:

17 (1) A bank; or

18 (2) A savings institution, trust company, credit union, or
19 similar institution that is organized or chartered
20 under the laws of a state or of the United States,
21 authorized to receive deposits, and supervised and
22 examined by an official or agency of a state or the



1 United States if its deposits or share accounts are
2 insured to the maximum amount authorized by statute by
3 the Federal Deposit Insurance Corporation, the
4 National Credit Union Share Insurance Fund, or a
5 successor authorized by federal law. The term shall
6 not include:

- 7 (A) An insurance company or other organization
8 primarily engaged in the business of insurance;
9 (B) A Morris Plan bank; or
10 (C) An industrial loan company.

11 "Director" means the director of commerce and consumer
12 affairs.

13 "Federal covered investment adviser" means a person
14 registered under the Investment Advisers Act of 1940.

15 "Federal covered security" means a security that is, or upon
16 completion of a transaction will be, a covered security under
17 Section 18(b) of the Securities Act of 1933 (15 U.S.C. 77r(b)),
18 or rules or regulations adopted pursuant to that provision.

19 "Filing" means the receipt of a record required under this
20 chapter by the commissioner or a designee of the commissioner.

21 "Fraud", "deceit", and "defraud" are not limited to common
22 law deceit.



1 "Guaranteed" means guaranteed as to payment of all
2 principal and all interest.

3 "Institutional investor" means any of the following,
4 whether acting for itself or for others in a fiduciary capacity:

- 5 (1) A depository institution or international banking
6 institution;
- 7 (2) An insurance company;
- 8 (3) A separate account of an insurance company;
- 9 (4) An investment company as defined in the Investment
10 Company Act of 1940;
- 11 (5) A broker-dealer registered under the Securities
12 Exchange Act of 1934;
- 13 (6) An employee pension, profit-sharing, or benefit plan
14 if the plan has total assets in excess of \$10,000,000
15 or its investment decisions are made by a named
16 fiduciary, as defined in the Employee Retirement
17 Income Security Act of 1974, that is a broker-dealer
18 registered under the Securities Exchange Act of 1934,
19 an investment adviser registered or exempt from
20 registration under the Investment Advisers Act of
21 1940, an investment adviser registered under this



1 chapter, a depository institution, or an insurance
2 company;

3 (7) A plan established and maintained by a state, a
4 political subdivision of a state, or an agency or
5 instrumentality of a state or a political subdivision
6 of a state for the benefit of its employees, if the
7 plan has total assets in excess of \$10,000,000 or its
8 investment decisions are made by a duly designated
9 public official or by a named fiduciary, as defined in
10 the Employee Retirement Income Security Act of 1974,
11 that is a broker-dealer registered under the
12 Securities Exchange Act of 1934, an investment adviser
13 registered or exempt from registration under the
14 Investment Advisers Act of 1940, an investment adviser
15 registered under this chapter, a depository
16 institution, or an insurance company;

17 (8) A trust, if it has total assets in excess of
18 \$10,000,000, its trustee is a depository institution,
19 and its participants are exclusively plans of the
20 types identified in paragraph (6) or (7), regardless
21 of the size of their assets, except a trust that



- 1 includes as participants self-directed individual
2 retirement accounts or similar self-directed plans;
- 3 (9) An organization described in Section 501(c)(3) of the
4 Internal Revenue Code (26 U.S.C. 501(c)(3)),
5 corporation, Massachusetts trust or similar business
6 trust, limited liability company, or partnership, not
7 formed for the specific purpose of acquiring the
8 securities offered, with total assets in excess of
9 \$10,000,000;
- 10 (10) A small business investment company licensed by the
11 Small Business Administration under Section 301(c) of
12 the Small Business Investment Act of 1958 (15 U.S.C.
13 681(c)) with total assets in excess of \$10,000,000;
- 14 (11) A private business development company as defined in
15 Section 202(a)(22) of the Investment Advisers Act of
16 1940 (15 U.S.C. 80b-2(a)(22)) with total assets in
17 excess of \$10,000,000;
- 18 (12) A federal covered investment adviser acting for its
19 own account;
- 20 (13) A "qualified institutional buyer" as defined in Rule
21 144A(a)(1), other than Rule 144A(a)(1)(i)(H), adopted
22 under the Securities Act of 1933 (17 C.F.R. 230.144A);



1 (14) A "major U.S. institutional investor" as defined in
2 Rule 15a-6(b)(4)(i) adopted under the Securities
3 Exchange Act of 1934 (17 C.F.R. 240.15a-6);

4 (15) Any other person, other than an individual, of
5 institutional character with total assets in excess of
6 \$10,000,000, not organized for the specific purpose of
7 evading this chapter; or

8 (16) Any other person specified by rule adopted or order
9 issued under this chapter.

10 "Insurance company" means a company organized as an
11 insurance company whose primary business is writing insurance or
12 reinsuring risks underwritten by insurance companies and which
13 is subject to supervision by the insurance commissioner or a
14 similar official or agency of a state.

15 "Insured" means insured as to payment of all principal and
16 all interest.

17 "International banking institution" means an international
18 financial institution of which the United States is a member and
19 whose securities are exempt from registration under the
20 Securities Act of 1933.

21 "Investment adviser" means a person that, for compensation,
22 engages in the business of advising others, either directly or



1 through publications or writings, as to the value of securities
2 or the advisability of investing in, purchasing, or selling
3 securities or that, for compensation and as a part of a regular
4 business, issues or promulgates analyses or reports concerning
5 securities. The term includes a financial planner or other
6 person that, as an integral component of other financially
7 related services, provides investment advice to others for
8 compensation as part of a business or that holds itself out as
9 providing investment advice to others for compensation. The
10 term shall not include:

- 11 (1) An investment adviser representative;
- 12 (2) A lawyer, accountant, engineer, or teacher whose
13 performance of investment advice is solely incidental
14 to the practice of the person's profession;
- 15 (3) A broker-dealer or its agents whose performance of
16 investment advice is solely incidental to the conduct
17 of business as a broker-dealer and that does not
18 receive special compensation for the investment
19 advice;
- 20 (4) A publisher of a bona fide newspaper, news magazine,
21 or business or financial publication of general and
22 regular circulation;



- 1 (5) A federal covered investment adviser;
- 2 (6) A bank or savings institution;
- 3 (7) Any other person that is excluded by the Investment
- 4 Advisers Act of 1940 from the definition of investment
- 5 adviser; or
- 6 (8) Any other person excluded by rule adopted or order
- 7 issued under this chapter.

8 "Investment adviser representative" means an individual

9 employed by or associated with an investment adviser or federal

10 covered investment adviser and who makes any recommendations or

11 otherwise gives investment advice regarding securities, manages

12 accounts or portfolios of clients, determines which

13 recommendation or advice regarding securities should be given,

14 provides investment advice or holds oneself out as providing

15 investment advice, receives compensation to solicit, offer, or

16 negotiate for the sale of or for selling investment advice, or

17 supervises employees who perform any of the foregoing. The term

18 shall not include an individual who:

- 19 (1) Performs only clerical or ministerial acts;
- 20 (2) Is an agent whose performance of investment advice is
- 21 solely incidental to the individual acting as an agent



- 1 and who does not receive special compensation for
2 investment advisory services;
- 3 (3) Is employed by or associated with a federal covered
4 investment adviser, unless the individual has a "place
5 of business" in this State as that term is defined by
6 rule adopted under Section 203A of the Investment
7 Advisers Act of 1940 (15 U.S.C. 80b-3a) and is:
- 8 (A) An "investment adviser representative" as that
9 term is defined by rule adopted under Section
10 203A of the Investment Advisers Act of 1940 (15
11 U.S.C. 80b-3a); or
- 12 (B) Not a "supervised person" as that term is defined
13 in Section 202(a)(25) of the Investment Advisers
14 Act of 1940 (15 U.S.C. 80b-2(a)(25)); or
- 15 (4) Is excluded by rule adopted or order issued under this
16 chapter.

17 "Issuer" means a person that issues or proposes to issue a
18 security, subject to the following:

- 19 (1) The issuer of a voting trust certificate, collateral
20 trust certificate, certificate of deposit for a
21 security, or share in an investment company without a
22 board of directors or individuals performing similar



1 functions is the person performing the acts and
2 assuming the duties of a depositor or manager pursuant
3 to the trust or other agreement or instrument under
4 which the security is issued;

5 (2) The issuer of an equipment trust certificate or
6 similar security serving the same purpose is the
7 person by which the property is or will be used or to
8 which the property or equipment is or will be leased
9 or conditionally sold or that is otherwise
10 contractually responsible for assuring payment of the
11 certificate; and

12 (3) The issuer of a fractional undivided interest in an
13 oil, gas, or other mineral lease or in payments out of
14 production under a lease, right, or royalty is the
15 owner of an interest in the lease or in payments out
16 of production under a lease, right, or royalty,
17 whether whole or fractional, that creates fractional
18 interests for the purpose of sale.

19 "Nonissuer transaction" or "nonissuer distribution" means a
20 transaction or distribution not directly for the benefit of the
21 issuer.



1 "Offer to purchase" includes an attempt or offer to obtain,
2 or solicitation of an offer to sell, a security or interest in a
3 security for value. The term shall not include a tender offer
4 that is subject to Section 14(d) of the Securities Exchange Act
5 of 1934 (15 U.S.C. 78n(d)).

6 "Person" means an individual; corporation; business trust;
7 estate; trust; partnership; limited liability company;
8 association; joint venture; government; governmental
9 subdivision, agency, or instrumentality; public corporation; or
10 any other legal or commercial entity.

11 "Place of business" of a broker-dealer, an investment
12 adviser, or a federal covered investment adviser means:

13 (1) An office at which the broker-dealer, investment
14 adviser, or federal covered investment adviser
15 regularly provides brokerage or investment advice or
16 solicits, meets with, or otherwise communicates with
17 customers or clients; or

18 (2) Any other location that is held out to the general
19 public as a location at which the broker-dealer,
20 investment adviser, or federal covered investment
21 adviser provides brokerage or investment advice or



1 solicits, meets with, or otherwise communicates with
2 customers or clients.

3 "Predecessor act" means chapter 485, Hawaii Revised
4 Statutes.

5 "Price amendment" means the amendment to a registration
6 statement filed under the Securities Act of 1933 or, if an
7 amendment is not filed, the prospectus or prospectus supplement
8 filed under the Securities Act of 1933 that includes a statement
9 of the offering price, underwriting and selling discounts or
10 commissions, amount of proceeds, conversion rates, call prices,
11 and other matters dependent upon the offering price.

12 "Principal place of business" of a broker-dealer or an
13 investment adviser means the executive office of the
14 broker-dealer or investment adviser from which the officers,
15 partners, or managers of the broker-dealer or investment adviser
16 direct, control, and coordinate the activities of the
17 broker-dealer or investment adviser.

18 "Record" except in the phrases "of record", "official
19 record", and "public record", means information that is
20 inscribed on a tangible medium or that is stored in an
21 electronic or other medium and is retrievable in perceivable
22 form.



1 "Sale" includes every contract of sale, contract to sell,
2 or disposition of, a security or interest in a security for
3 value; and "offer to sell" includes every attempt or offer to
4 dispose of, or solicitation of an offer to purchase, a security
5 or interest in a security for value. Both terms include:

- 6 (1) A security given or delivered with, or as a bonus on
7 account of, a purchase of securities or any other
8 thing constituting part of the subject of the
9 purchase, and having been offered and sold for value;
- 10 (2) A gift of assessable stock involving an offer and
11 sale; and
- 12 (3) A sale or offer of a warrant or right to purchase or
13 subscribe to another security of the same or another
14 issuer and a sale or offer of a security that gives
15 the holder a present or future right or privilege to
16 convert the security into another security of the same
17 or another issuer, including an offer of the other
18 security.

19 "Securities and Exchange Commission" means the United
20 States Securities and Exchange Commission.

21 "Security" means a note; stock; treasury stock; security
22 future; bond; debenture; evidence of indebtedness; certificate



1 of interest or participation in a profit-sharing agreement;
2 collateral trust certificate; preorganization certificate or
3 subscription; transferable share; investment contract; variable
4 annuity contract; voting trust certificate; certificate of
5 deposit for a security; fractional undivided interest in oil,
6 gas, or other mineral rights; put, call, straddle, option, or
7 privilege on a security, certificate of deposit, or group or
8 index of securities, including an interest therein or based on
9 the value thereof; put, call, straddle, option, or privilege
10 entered into on a national securities exchange relating to
11 foreign currency; in general, an interest or instrument commonly
12 known as a "security"; or a certificate of interest or
13 participation in, temporary or interim certificate for, receipt
14 for, guarantee of, or warrant or right to subscribe to or
15 purchase, any of the foregoing. The term:

- 16 (1) Includes both a certificated and an uncertificated
17 security;
- 18 (2) Does not include an insurance or endowment policy or
19 annuity contract under which an insurance company
20 promises to pay a fixed sum of money either in a lump
21 sum or periodically for life or other specified
22 period;



- 1 (3) Does not include an interest in a contributory or
2 noncontributory pension or welfare plan subject to the
3 Employee Retirement Income Security Act of 1974;
- 4 (4) Includes any contractual or quasi-contractual
5 arrangement pursuant to which:
- 6 (A) A person furnishes value, other than services, to
7 an offeror;
- 8 (B) A portion of that value is subjected to the risk
9 of the offeror's enterprise;
- 10 (C) The furnishing of that value is induced by the
11 representations of an offeror which gives rise to
12 a reasonable understanding that a valuable
13 benefit will accrue to the offeree as a result of
14 the operation of the enterprise; and
- 15 (D) The offeree does not intend to be actively
16 involved in the management of the enterprise in a
17 meaningful way;
- 18 and
- 19 (5) Includes as an "investment contract", among other
20 contracts, an interest in a limited partnership and a
21 limited liability company and an investment in a
22 viatical settlement or similar agreement.



1 "Self-regulatory organization" means a national securities
2 exchange registered under the Securities Exchange Act of 1934, a
3 national securities association of broker-dealers registered
4 under the Securities Exchange Act of 1934, a clearing agency
5 registered under the Securities Exchange Act of 1934, or the
6 Municipal Securities Rulemaking Board established under the
7 Securities Exchange Act of 1934.

8 "Sign" means, with present intent to authenticate or adopt
9 a record:

- 10 (1) To execute or adopt a tangible symbol; or
11 (2) To attach or logically associate with the record an
12 electronic symbol, sound, or process.

13 "State" means a state of the United States, the District of
14 Columbia, Puerto Rico, the United States Virgin Islands, or any
15 territory or insular possession subject to the jurisdiction of
16 the United States.

17 **§ -103 References to federal statutes.** "Securities Act
18 of 1933" (15 U.S.C. 77a et seq.), "Securities Exchange Act of
19 1934" (15 U.S.C. 78a et seq.), "Public Utility Holding Company
20 Act of 1935" (15 U.S.C. 79 et seq.), "Investment Company Act of
21 1940" (15 U.S.C. 80a-1 et seq.), "Investment Advisers Act of
22 1940" (15 U.S.C. 80b-1 et seq.), "Employee Retirement Income



1 Security Act of 1974" (29 U.S.C. 1001 et seq.), "National
2 Housing Act" (12 U.S.C. 1701 et seq.), "Commodity Exchange Act"
3 (7 U.S.C. 1 et seq.), "Internal Revenue Code" (26 U.S.C. 1 et
4 seq.), "Securities Investor Protection Act of 1970" (15 U.S.C.
5 78aaa et seq.), "Securities Litigation Uniform Standards Act of
6 1998" (112 Stat. 3227), "Small Business Investment Act of 1958"
7 (15 U.S.C. 661 et seq.), "National Securities Markets
8 Improvement Act of 1996" (Pub. L. No. 104-290, 110 Stat. 3416
9 (1996)), and "Electronic Signatures in Global and National
10 Commerce Act" (15 U.S.C. 7001 et seq.) mean those statutes and
11 the rules and regulations adopted under those statutes, as in
12 effect on the date of enactment of this chapter, or as later
13 amended.

14 **§ -104 References to federal agencies.** A reference in
15 this chapter to an agency or department of the United States is
16 also a reference to a successor agency or department.

17 **§ -105 Electronic records and signatures.** This chapter
18 modifies, limits, and supersedes the federal Electronic
19 Signatures in Global and National Commerce Act, but does not
20 modify, limit, or supersede Section 101(c) of that act (15
21 U.S.C. 7001(c)) or authorize electronic delivery of any of the
22 notices described in Section 103(b) of that act (15 U.S.C.



1 7003(b)). This chapter authorizes the filing of records and
2 signatures, when specified by provisions of this chapter or by a
3 rule adopted or order issued under this chapter, in a manner
4 consistent with Section 104(a) of that act (15 U.S.C. 7004(a)).

5 **PART II. EXEMPTIONS FROM REGISTRATION OF SECURITIES**

6 **§ -201 Exempt securities.** The following securities are
7 exempt from the requirements of sections -301 to -305 and
8 -504:

- 9 (1) A security, including a revenue obligation or a
10 separate security as defined in Rule 131 (17 C.F.R.
11 230.131) adopted under the Securities Act of 1933,
12 issued, insured, or guaranteed by the United States;
13 by a state; by a political subdivision of a state; by
14 a public authority, agency, or instrumentality of one
15 or more states; by a political subdivision of more
16 than one state; or by a person controlled or
17 supervised by and acting as an instrumentality of the
18 United States under authority granted by Congress; or
19 a certificate of deposit for any of the foregoing;
- 20 (2) A security issued, insured, or guaranteed by a foreign
21 government with which the United States maintains
22 diplomatic relations, or any of its political



1 subdivisions, if the security is recognized as a valid
2 obligation by the issuer, insurer, or guarantor;

3 (3) A security issued by and representing or that will
4 represent an interest in or a direct obligation of, or
5 be guaranteed by:

6 (A) An international banking institution;

7 (B) A bank organized under the law of the United
8 States, or any bank, savings institution or trust
9 company organized and supervised under the laws
10 of any state or territory or any investment
11 certificate issued by a financial services loan
12 company duly licensed under the financial
13 services loan law of the State; any savings and
14 loan association or any building and loan or
15 similar association organized under the laws of
16 any state or territory and authorized to do
17 business in this State; any banking institution
18 organized under the laws of the United States; a
19 member bank of the Federal Reserve System; or a
20 depository institution a substantial portion of
21 its business consists or will consist of
22 receiving deposits or share accounts that are



- 1 insured to the maximum amount authorized by
2 statute by the Federal Deposit Insurance
3 Corporation, the National Credit Union Share
4 Insurance Fund, or a successor authorized by
5 federal law or exercising fiduciary powers that
6 are similar to those permitted for national banks
7 under the authority of the Comptroller of
8 Currency pursuant to Section 1 of Public Law
9 87-722 (12 U.S.C. 92a); or
- 10 (C) Any other depository institution, unless by rule
11 or order, the commissioner proceeds under section
12 -204;
- 13 (4) A security issued by and representing an interest in,
14 or a debt of, or insured or guaranteed by, an
15 insurance company authorized to do business in this
16 State;
- 17 (5) A security issued or guaranteed by a railroad, other
18 common carrier, public utility, or public utility
19 holding company that is:
- 20 (A) Regulated in respect to its rates and charges by
21 the United States or a state;



- 1 (B) Regulated in respect to the issuance or guarantee
2 of the security by the United States, a state,
3 Canada, or a Canadian province or territory; or
4 (C) A public utility holding company registered under
5 the Public Utility Holding Company Act of 1935 or
6 a subsidiary of a registered holding company
7 within the meaning of that act;
- 8 (6) A federal covered security specified in Section
9 18(b)(1) of the Securities Act of 1933 (15 U.S.C.
10 77r(b)(1)) or by rule adopted under that provision, or
11 a security listed or approved for listing on any
12 exchange registered or exempted under the Securities
13 Exchange Act of 1934 or on another securities market
14 specified by rule under this chapter (including any
15 security of the same issuer which is of senior or
16 substantially equal rank, any security called for by
17 subscription rights or warrants so listed or approved,
18 or any warrant or right to purchase or subscribe for
19 any of the foregoing); a put or a call option
20 contract; a warrant; a subscription right on or with
21 respect to such securities; an option or similar
22 derivative security on a security or an index of



1 securities or foreign currencies issued by a clearing
2 agency registered under the Securities Exchange Act of
3 1934 and listed or designated for trading on a
4 national securities exchange, a facility of a national
5 securities exchange, or a facility of a national
6 securities association registered under the Securities
7 Exchange Act of 1934 or an offer or sale, of the
8 underlying security in connection with the offer,
9 sale, or exercise of an option or other security that
10 was exempt when the option or other security was
11 written or issued; or an option or a derivative
12 security designated by the Securities and Exchange
13 Commission under Section 9(b) of the Securities
14 Exchange Act of 1934 (15 U.S.C. 78i(b));

- 15 (7) A security issued by a person organized and operated
16 exclusively for religious, educational, benevolent,
17 fraternal, charitable, social, athletic, or
18 reformatory purposes, or as a chamber of commerce, and
19 not for pecuniary profit, where no part of the net
20 earnings inures to the benefit of a private
21 stockholder or other person, or a security of a
22 company that is excluded from the definition of an



1 investment company under Section 3(c)(10)(B) of the
2 Investment Company Act of 1940 (15 U.S.C.
3 80a-3(c)(10)(B)); except that with respect to the
4 offer or sale of a note, bond, debenture, or other
5 evidence of indebtedness issued by such a person, a
6 rule may be adopted under this chapter limiting the
7 availability of this exemption by classifying
8 securities, persons, and transactions, imposing
9 different requirements for different classes,
10 specifying with respect to subparagraph (B), the scope
11 of the exemption and the grounds for denial or
12 suspension, and requiring an issuer to:

13 (A) File a notice specifying the material terms of
14 the proposed offer or sale and copies of any
15 proposed sales and advertising literature to be
16 used and provide that the exemption becomes
17 effective if the commissioner does not disallow
18 the exemption within the period established by
19 the rule;

20 (B) File a request for exemption authorization for
21 which a rule under this chapter may specify the
22 scope of the exemption, the requirement of an



1 offering statement, the filing of sales and
2 advertising literature, the filing of consent to
3 service of process under section -610, and
4 grounds for denial or suspension of the
5 exemption; or
6 (C) Register under section -303;

7 (8) A member's or owner's interest in, or a retention
8 certificate or like security given in lieu of a cash
9 patronage dividend issued by, a cooperative organized
10 and operated as a nonprofit membership cooperative
11 under the cooperative laws of a state, but not a
12 member's or owner's interest, retention certificate,
13 or like security sold to persons other than bona fide
14 members of the cooperative; except any cooperative
15 association membership stock, membership certificates
16 or shares, or membership capital, pursuant to section
17 421C-36 and chapters 421 and 421C; and

18 (9) An equipment trust certificate with respect to
19 equipment leased or conditionally sold to a person, if
20 any security issued by the person would be exempt
21 under this section or would be a federal covered



1 security under Section 18(b)(1) of the Securities Act
2 of 1933 (15 U.S.C. 77r(b)(1)); or

3 (10) Any security for which a registration statement has
4 been filed under the Securities Act of 1933; provided
5 that no sale shall be made until the registration
6 statement has become effective.

7 **§ -202 Exempt transactions.** (a) The following
8 transactions are exempt from the requirements of sections
9 -301 to -305 and -504:

10 (1) An isolated nonissuer transaction, whether or not
11 effected by or through a broker-dealer;

12 (2) A nonissuer transaction by or through a broker-dealer
13 registered, or exempt from registration under this
14 chapter, and a resale transaction by a sponsor of a
15 unit investment trust registered under the Investment
16 Company Act of 1940, in a security of a class that has
17 been outstanding in the hands of the public for at
18 least ninety days, if, at the date of the transaction:

19 (A) The issuer of the security is engaged in
20 business, the issuer is not in the organizational
21 stage or in bankruptcy or receivership, and the
22 issuer is not a blank check, blind pool, or shell



- 1 company that has no specific business plan or
2 purpose or has indicated that its primary
3 business plan is to engage in a merger or
4 combination of the business with, or an
5 acquisition of, an unidentified person;
- 6 (B) The security is sold at a price reasonably
7 related to its current market price;
- 8 (C) The security does not constitute the whole or
9 part of an unsold allotment to, or a subscription
10 or participation by, the broker-dealer as an
11 underwriter of the security or a redistribution;
- 12 (D) A nationally recognized securities manual or its
13 electronic equivalent designated by rule adopted
14 or order issued under this chapter or a record
15 filed with the Securities and Exchange Commission
16 that is publicly available and contains:
- 17 (i) A description of the business and operations
18 of the issuer;
- 19 (ii) The names of the issuer's executive officers
20 and the names of the issuer's directors, if
21 any;



- 1 (iii) An audited balance sheet of the issuer as of
2 a date within eighteen months before the
3 date of the transaction or, in the case of a
4 reorganization or merger when the parties to
5 the reorganization or merger each had an
6 audited balance sheet, a pro forma balance
7 sheet for the combined organization; and
- 8 (iv) An audited income statement for each of the
9 issuer's two immediate previous fiscal years
10 or for the period of existence of the
11 issuer, whichever is shorter, or, in the
12 case of a reorganization or merger when each
13 party to the reorganization or merger had
14 audited income statements, a pro forma
15 income statement;
- 16 and
- 17 (E) Any one of the following requirements is met:
- 18 (i) The issuer of the security has a class of
19 equity securities listed on a national
20 securities exchange registered under Section
21 6 of the Securities Exchange Act of 1934 or
22 designated for trading on the National



- 1 Association of Securities Dealers' Automated
2 Quotation System;
- 3 (ii) The issuer of the security is a unit
4 investment trust registered under the
5 Investment Company Act of 1940;
- 6 (iii) The issuer of the security, including its
7 predecessors, has been engaged in continuous
8 business for at least three years; or
- 9 (iv) The issuer of the security has total assets
10 of at least \$2,000,000 based on an audited
11 balance sheet as of a date within eighteen
12 months before the date of the transaction
13 or, in the case of a reorganization or
14 merger when the parties to the
15 reorganization or merger each had such an
16 audited balance sheet, a pro forma balance
17 sheet for the combined organization;
- 18 (3) A nonissuer transaction by or through a broker-dealer
19 registered or exempt from registration under this
20 chapter in a security of a foreign issuer that is a
21 margin security defined in regulations or rules



- 1 adopted by the Board of Governors of the Federal
2 Reserve System;
- 3 (4) A nonissuer transaction by or through a broker-dealer
4 registered or exempt from registration under this
5 chapter in an outstanding security if the guarantor of
6 the security files reports with the Securities and
7 Exchange Commission under the reporting requirements
8 of Section 13 or 15(d) of the Securities Exchange Act
9 of 1934 (15 U.S.C. 78m or 78o(d));
- 10 (5) A nonissuer transaction by or through a broker-dealer
11 registered or exempt from registration under this
12 chapter in a security that:
- 13 (A) Is rated at the time of the transaction by a
14 nationally recognized statistical rating
15 organization in one of its four highest rating
16 categories; or
- 17 (B) Has a fixed maturity or a fixed interest or
18 dividend, if:
- 19 (i) A default has not occurred during the
20 current fiscal year or within the three
21 previous fiscal years or during the
22 existence of the issuer and any predecessor



- 1 if less than three fiscal years, in the
2 payment of principal, interest, or dividends
3 on the security; and
- 4 (ii) The issuer is engaged in business, is not in
5 the organizational stage or in bankruptcy or
6 receivership, and is not and has not been
7 within the previous twelve months a blank
8 check, blind pool, or shell company that has
9 no specific business plan or purpose or has
10 indicated that its primary business plan is
11 to engage in a merger or combination of the
12 business with, or an acquisition of, an
13 unidentified person;
- 14 (6) A nonissuer transaction by or through a broker-dealer
15 registered or exempt from registration under this
16 chapter effecting an unsolicited order or offer to
17 purchase;
- 18 (7) A nonissuer transaction executed by a bona fide
19 pledgee without the purpose of evading this chapter;
- 20 (8) A nonissuer transaction by a federal covered
21 investment adviser with investments under management
22 in excess of \$100,000,000, acting in the exercise of



- 1 discretionary authority in a signed record for the
2 account of others;
- 3 (9) A transaction between the issuer or other person on
4 whose behalf the offering is made and an underwriter,
5 or among underwriters;
- 6 (10) A transaction in a note, bond, debenture, or other
7 evidence of indebtedness secured by a mortgage or
8 other security agreement if:
- 9 (A) The note, bond, debenture, or other evidence of
10 indebtedness is offered and sold with the
11 mortgage or other security agreement as a unit;
- 12 (B) A general solicitation or general advertisement
13 of the transaction is not made; and
- 14 (C) A commission or other remuneration is not paid or
15 given, directly or indirectly, to a person not
16 registered under this chapter as a broker-dealer
17 or as an agent;
- 18 (11) A transaction by an executor, administrator of an
19 estate, personal representative, sheriff, marshal,
20 receiver, trustee in bankruptcy, guardian, or
21 conservator;
- 22 (12) A sale or offer to sell to:



- 1 (A) An institutional investor;
- 2 (B) A federal covered investment adviser; or
- 3 (C) Any other person exempted by rule adopted or
- 4 order issued under this chapter;
- 5 (13) Any transaction pursuant to a sale or an offer to sell
- 6 securities of an issuer, if the transaction is part of
- 7 an issue in which:
- 8 (A) There are no more than twenty-five purchasers
- 9 (other than those designated in paragraph (12)),
- 10 wherever located, during any twelve consecutive
- 11 months;
- 12 (B) The issuer reasonably believes that all
- 13 purchasers (other than those designated in
- 14 paragraph (12)), wherever located, are purchasing
- 15 for investment purposes and not with the view to,
- 16 or for sales in connection with, a distribution
- 17 of the security. The purchase shall be presumed
- 18 to be made with a view to distribute and not to
- 19 invest if any resale of a security sold in
- 20 reliance on this exemption is within twelve
- 21 months of sale, except a resale pursuant to a
- 22 registration statement effective under section



1 -301, or to an accredited investor pursuant to
2 an exemption available under this chapter;

3 (C) No commission, discount, or other remuneration is
4 paid or given, directly or indirectly, to a
5 person, other than a broker-dealer or agent
6 registered under this chapter, for soliciting a
7 prospective purchaser in this State; and

8 (D) The securities of the issuer are not offered or
9 sold by general solicitation or any general
10 advertisement or other advertising medium;

11 (14) A transaction under an offer to existing security
12 holders of the issuer, including persons that at the
13 date of the transaction are holders of convertible
14 securities, options, or warrants, if a commission or
15 other remuneration, other than a standby commission,
16 is not paid or given, directly or indirectly, for
17 soliciting a security holder in this State;

18 (15) (A) A transaction involving the offer or sale of a
19 security by an issuer to an accredited investor
20 that meets the following requirements:

21 (i) The issuer reasonably believes that the sale
22 is to persons who are accredited investors;



- 1 (ii) The issuer is not in the development stage,
2 without specific business plan or purpose;
- 3 (iii) The issuer has not indicated that the
4 issuer's business plan is to engage in a
5 merger or acquisition with an unidentified
6 company or companies, or other entity or
7 person; and
- 8 (iv) The issuer reasonably believes that all
9 purchasers are purchasing for investment
10 purposes and not with the view to, or for
11 sales in connection with, a distribution of
12 the security. The purchase shall be
13 presumed to be made with a view to
14 distribute and not to invest if any resale
15 of a security sold in reliance on this
16 exemption is within twelve months of sale,
17 except a resale pursuant to a registration
18 statement effective under section -301,
19 or to an accredited investor pursuant to an
20 exemption available under this chapter;
- 21 (B) The exemption under this paragraph shall not
22 apply to an issuer if the issuer; any affiliated



1 issuer; any beneficial owner of ten per cent or
2 more of any class of the issuer's equity
3 securities; any issuer's predecessor, director,
4 officer, general partner, or promoter presently
5 connected in any capacity with the issuer; and
6 any underwriter or partner, director, or officer
7 of the underwriter of the securities to be
8 offered:

9 (i) Within the last five years has filed a
10 registration statement that is the subject
11 of a currently effective registration stop
12 order entered by any state securities
13 administrator or the Securities and Exchange
14 Commission;

15 (ii) Within the last five years has been
16 convicted of any criminal offense in
17 connection with the offer, purchase, or sale
18 of any security, or involving fraud or
19 deceit;

20 (iii) Is currently subject to any state or federal
21 administrative enforcement order or judgment
22 entered within the last five years, finding



- 1 fraud or deceit in connection with the
2 purchase or sale of any security; or
- 3 (iv) Is currently subject to any order, judgment,
4 or decree of any court of competent
5 jurisdiction, entered within the last five
6 years, temporarily, preliminarily, or
7 permanently restraining or enjoining such
8 party from engaging in or continuing to
9 engage in any conduct or practice involving
10 fraud or deceit in connection with the
11 purchase or sale of any security;
- 12 (C) Subparagraph (B) shall not apply if:
- 13 (i) The party subject to the disqualification is
14 licensed or registered to conduct
15 securities-related business in the state in
16 which the order, judgment, or decree
17 creating the disqualification was entered
18 against such party;
- 19 (ii) Before the first offer under this exemption,
20 the commissioner, or the court or regulatory
21 authority that entered the order, judgment,
22 or decree waives the disqualifications; or



1 (iii) The issuer establishes that the issuer did
2 not know and in the exercise of reasonable
3 care, based on a factual inquiry, could not
4 have known that a disqualification existed
5 under this paragraph;

6 and

7 (D) An issuer claiming the exemption under this
8 paragraph, within fifteen days after the first
9 sale in this State, shall file with the
10 commissioner a notice of transaction, a consent
11 to service of process, a copy of the offering
12 circular or similar document provided to the
13 accredited investor and a \$200 filing fee.

14 For the purposes of this paragraph, "accredited
15 investor" shall have the same meaning as provided in
16 Rule 501(a) adopted under the Securities Act of 1933
17 (17 C.F.R 230.501(a));

18 (16) An offer to sell, but not a sale, of a security not
19 exempt from registration under the Securities Act of
20 1933 if:

21 (A) A registration or offering statement or similar
22 record as required under the Securities Act of



1 1933 has been filed, but is not effective, or the
2 offer is made in compliance with Rule 165 adopted
3 under the Securities Act of 1933 (17 C.F.R.
4 230.165); and

5 (B) A stop order of which the offeror is aware has
6 not been issued against the offeror by the
7 commissioner or the Securities and Exchange
8 Commission, and an audit, inspection, or
9 proceeding that is public and that may culminate
10 in a stop order is not known by the offeror to be
11 pending;

12 (17) An offer to sell, but not a sale, of a security exempt
13 from registration under the Securities Act of 1933 if:

14 (A) A registration statement has been filed under
15 this chapter, but is not effective;

16 (B) A solicitation of interest is provided in a
17 record to offerees in compliance with a rule
18 adopted by the commissioner under this chapter;
19 and

20 (C) A stop order of which the offeror is aware has
21 not been issued by the commissioner under this
22 chapter and an audit, inspection, or proceeding



1 that may culminate in a stop order is not known
2 by the offeror to be pending;

3 (18) A transaction involving the distribution of the
4 securities of an issuer to the security holders of
5 another person in connection with a merger,
6 consolidation, exchange of securities, sale of assets,
7 or other reorganization to which the issuer, or its
8 parent or subsidiary and the other person, or its
9 parent or subsidiary, are parties;

10 (19) A rescission offer, sale, or purchase under section
11 -510;

12 (20) An offer or sale of a security to a person not a
13 resident of this State and not present in this State
14 if the offer or sale does not constitute a violation
15 of the laws of the state or foreign jurisdiction in
16 which the offeree or purchaser is present and is not
17 part of an unlawful plan or scheme to evade this
18 chapter;

19 (21) Employees' stock purchase, savings, option, profit-
20 sharing, pension, or similar employees' benefit plan,
21 including any securities, plan interests, and
22 guarantees issued under a compensatory benefit plan or



1 compensation contract, contained in a record,
2 established by the issuer, its parents, its
3 majority-owned subsidiaries, or the majority-owned
4 subsidiaries of the issuer's parent for the
5 participation of their employees, including offers or
6 sales of such securities to:

- 7 (A) Directors; general partners; trustees, if the
8 issuer is a business trust; officers;
9 consultants; and advisors;
- 10 (B) Family members who acquire the securities from
11 those persons through gifts or domestic relations
12 orders;
- 13 (C) Former employees, directors, general partners,
14 trustees, officers, consultants, and advisors if
15 those individuals were employed by or providing
16 services to the issuer when the securities were
17 offered; and
- 18 (D) Insurance agents who are exclusive insurance
19 agents of the issuer, or the issuer's
20 subsidiaries or parents, or who derive more than
21 fifty per cent of their annual income from those
22 organizations;



- 1 (22) A transaction involving:
- 2 (A) A stock dividend or equivalent equity
- 3 distribution, whether or not the corporation or
- 4 other business organization distributing the
- 5 dividend or equivalent equity distribution is the
- 6 issuer, if nothing of value is given by
- 7 stockholders or other equity holders for the
- 8 dividend or equivalent equity distribution other
- 9 than the surrender of a right to a cash or
- 10 property dividend if each stockholder or other
- 11 equity holder may elect to take the dividend or
- 12 equivalent equity distribution in cash, property,
- 13 or stock;
- 14 (B) An act incident to a judicially approved
- 15 reorganization in which a security is issued in
- 16 exchange for one or more outstanding securities,
- 17 claims, or property interests, or partly in such
- 18 exchange and partly for cash; or
- 19 (C) The solicitation of tenders of securities by an
- 20 offeror in a tender offer in compliance with Rule
- 21 162 adopted under the Securities Act of 1933 (17
- 22 C.F.R. 230.162);



1 (23) A nonissuer transaction in an outstanding security by
2 or through a broker-dealer registered or exempt from
3 registration under this chapter, if the issuer is a
4 reporting issuer in a foreign jurisdiction designated
5 by this paragraph or by rule adopted or order issued
6 under this chapter; has been subject to continuous
7 reporting requirements in the foreign jurisdiction for
8 not less than one hundred eighty days before the
9 transaction; and the security is listed on the foreign
10 jurisdiction's securities exchange that has been
11 designated by this paragraph or by rule adopted or
12 order issued under this chapter, or is a security of
13 the same issuer that is of senior or substantially
14 equal rank to the listed security or is a warrant or
15 right to purchase or subscribe to any of the
16 foregoing. For purposes of this paragraph, Canada,
17 together with its provinces and territories, is a
18 designated foreign jurisdiction and the Toronto Stock
19 Exchange, Inc., is a designated securities exchange.
20 After an administrative hearing in accordance with
21 chapter 91, the commissioner, by rule adopted or order
22 issued under this chapter, may revoke the designation



1 of a securities exchange under this paragraph, if the
2 commissioner finds that revocation is necessary or
3 appropriate in the public interest and for the
4 protection of investors;

5 (24) Any offer or sale by or through a real estate broker
6 or real estate salesperson licensed under the laws of
7 this State, of a security issued on or after
8 July 1, 1961, by a corporation organized under the
9 laws of this State, the holder of which is entitled
10 solely by reason of the holder's ownership thereof, to
11 occupy for dwelling purposes a house, or an apartment
12 in a building, owned or leased by such corporation;
13 provided that the issuer of the security shall apply
14 for the exemption to the commissioner on such form and
15 containing such information as the commissioner may
16 prescribe. If the commissioner finds that the
17 business applicant's proposed plan and the proposed
18 issuance of securities are fair, just, and equitable,
19 that the applicant intends to transact its business
20 fairly and honestly, and that the securities that the
21 applicant proposes to issue and the method to be used
22 by the applicant in issuing or disposing of the



1 securities will not, in the opinion of the
2 commissioner, work a fraud upon the purchaser thereof,
3 the commissioner shall issue to the applicant a permit
4 authorizing the applicant to issue and dispose of the
5 securities in this State in the manner provided herein
6 and in such amounts and for such consideration as the
7 commissioner may provide in the permit. Otherwise,
8 the commissioner shall deny the application and refuse
9 the permit and notify the applicant of the decision in
10 writing, subject to appeal as provided in section

11 -609. In any permit issued under this paragraph,
12 the commissioner may require the deposit in escrow or
13 impoundment of any or all securities, the proceeds
14 from the sale thereof, approval of advertising
15 material, and any of the conditions as set forth in
16 section -304(f). The commissioner may act as
17 escrow holder for securities required to be deposited
18 in escrow by the commissioner's order or as a
19 necessary signatory on any account in which impounded
20 proceeds from the sale of escrowed securities are
21 deposited;



1 (25) Any offer or sale by or through a real estate broker
2 or real estate salesperson licensed under the laws of
3 this State of an apartment in a condominium project,
4 and a rental management contract relating to the
5 apartment, including an interest in a partnership
6 formed for the purpose of managing the rental of
7 apartments if the rental management contract or the
8 interest in the partnership is offered at the same
9 time as the apartment is offered.

10 For the purposes of this paragraph, the terms
11 "apartment", "condominium", and "project" shall have
12 the meanings prescribed in section 514A-3; and

13 (26) Any transaction not involving a public offering within
14 the meaning of Section 4(2) of the Securities Act of
15 1933 (15 U.S.C. 77d), but not including any
16 transaction specified in the rules and regulations
17 thereunder.

18 (b) With respect to the exemption under paragraph (a)13:

19 (1) The exemption shall not apply to an issuer if the
20 issuer; any affiliated issuer; any beneficial owner of
21 ten per cent or more of any class of the issuer's
22 equity securities; any issuer's predecessor, director,



1 officer, general partner, or promoter presently
2 connected in any capacity with the issuer; and any
3 underwriter or partner, director, or officer of the
4 underwriter of the securities to be offered:

5 (A) Within the last five years has filed a
6 registration statement that is the subject of a
7 currently effective registration stop order
8 entered by any state securities administrator or
9 the United States Securities and Exchange
10 Commission;

11 (B) Within the last five years has been convicted of
12 any criminal offense in connection with the
13 offer, purchase, or sale of any security, or
14 involving fraud or deceit;

15 (C) Is currently subject to any state or federal
16 administrative enforcement order or judgment
17 entered within the last five years, finding fraud
18 or deceit in connection with the purchase or sale
19 of any security; or

20 (D) Is currently subject to any order, judgment, or
21 decree of any court of competent jurisdiction,
22 entered within the last five years, temporarily,



1 preliminarily, or permanently restraining or
2 enjoining such party from engaging in or
3 continuing to engage in any conduct or practice
4 involving fraud or deceit in connection with the
5 purchase or sale of any security;

6 and

7 (2) Paragraph (1) shall not apply if:

8 (A) The party subject to the disqualification is
9 licensed or registered to conduct securities-
10 related business in the state in which the order,
11 judgment, or decree creating the disqualification
12 was entered against such party;

13 (B) Before the first offer under this exemption, the
14 commissioner, or the court or regulatory
15 authority that entered the order, judgment, or
16 decree waives the disqualifications; or

17 (C) The issuer establishes that the issuer did not
18 know and in the exercise of reasonable care,
19 based on a factual inquiry, could not have known
20 that a disqualification existed under this
21 paragraph.



1 **§ -203 Additional exemptions and waivers.** A rule
2 adopted or order issued under this chapter may exempt a
3 security, transaction, or offer; a rule under this chapter may
4 exempt a class of securities, transactions, or offers from any
5 or all of the requirements of sections -301 to -305 and
6 -504; and an order under this chapter may waive, in whole or
7 in part, any or all of the conditions for an exemption or offer
8 under sections -201 and -202.

9 **§ -204 Denial, suspension, revocation, condition, or**
10 **limitation of exemptions.** Except with respect to a federal
11 covered security or a transaction involving a federal covered
12 security, an order under this chapter may deny, suspend
13 application of, condition, limit, or revoke an exemption created
14 under section -201(3)(C), -201(7), -201(8), or -202,
15 or an exemption or waiver created under section -203 with
16 respect to a specific security, transaction, or offer. An order
17 under this section may be issued only pursuant to the procedures
18 in section -305(d) or -604, and only prospectively.

19 **PART III. REGISTRATION OF SECURITIES AND NOTICE**

20 **FILING OF FEDERAL COVERED SECURITIES**



1 **§ -301 Securities registration requirement.** It is
2 unlawful for a person to offer or sell a security in this State
3 unless:

- 4 (1) The security is a federal covered security;
- 5 (2) The security, transaction, or offer is exempted from
6 registration under sections -201 to -203; or
- 7 (3) The security is registered under this chapter.

8 **§ -302 Notice filing.** (a) With respect to a federal
9 covered security, as defined in Section 18(b)(2) of the
10 Securities Act of 1933 (15 U.S.C. 77r(b)(2)), that is not
11 otherwise exempt under sections -201 to -203, the
12 following records shall be filed with the commissioner:

13 (1) Initial offers.

14 (A) Before the initial offer of a federal covered
15 security in this State, all records that are part
16 of a federal registration statement filed with
17 the Securities and Exchange Commission under the
18 Securities Act of 1933 and a consent to service
19 of process complying with section -610 signed
20 by the issuer; or

21 (B) After the initial offer of the federal covered
22 security in this State, all records that are part



1 of an amendment to a federal registration
2 statement filed with the Securities and Exchange
3 Commission under the Securities Act of 1933;

4 and

5 (2) Report. To the extent necessary or appropriate to
6 compute fees, the commissioner may by rule or order
7 require a report of the value of the federal covered
8 securities sold or offered to persons present in this
9 State, if the sales data are not included in records
10 filed with the Securities and Exchange Commission, and
11 payment of a fee of \$50.

12 (b) The fee for an initial notice filing for investment
13 company securities shall be \$200 per portfolio or series.

14 (c) A notice filing under subsection (a) is effective for
15 one year commencing on the later of the notice filing or the
16 effectiveness of the offering filed with the Securities and
17 Exchange Commission. On or before expiration, the issuer may
18 renew a notice filing by filing a copy of those records filed by
19 the issuer with the Securities and Exchange Commission that are
20 required by rule or order under this chapter to be filed and by
21 paying a renewal fee of \$50. A previously filed consent to
22 service of process complying with section -610 may be



1 incorporated by reference in a renewal. A renewed notice filing
2 becomes effective upon the expiration of the filing being
3 renewed.

4 (d) With respect to a security that is a federal covered
5 security under Section 18(b)(4)(D) of the Securities Act of 1933
6 (15 U.S.C. 77r(b)(4)(D)), a rule adopted under this chapter may
7 require a notice filing by or on behalf of an issuer to include
8 a copy of Form D, including the Appendix, as promulgated by the
9 Securities and Exchange Commission, and a consent to service of
10 process complying with section -610 signed by the issuer not
11 later than fifteen days after the first sale of the federal
12 covered security in this State, and the payment of a fee of
13 \$200.

14 (e) Except with respect to a federal security under
15 Section 18(b)(1) of the Securities Act of 1933 (15 U.S.C.
16 77r(b)(1)), if the commissioner finds that there is a failure to
17 comply with a notice or fee requirement of this section, the
18 commissioner may issue a stop order suspending the offer and
19 sale of a federal covered security in this State. If the
20 deficiency is corrected, the stop order is void as of the time
21 of its issuance and no penalty may be imposed by the
22 commissioner.



1 **§ -303 Securities registration by qualification.**

2 (a) A security may be registered by qualification under
3 this section.

4 (b) A registration statement under this section shall
5 contain the information or records specified in section -304,
6 a consent to service of process complying with section -610,
7 and, if required by rule adopted or order issued under this
8 chapter, the following information or records:

9 (1) With respect to the issuer and any significant
10 subsidiary, its name, address, and form of
11 organization; the state or foreign jurisdiction and
12 date of its organization; the general character and
13 location of its business; a description of its
14 physical properties and equipment; and a statement of
15 the general competitive conditions in the industry or
16 business in which it is or will be engaged;

17 (2) With respect to each director and officer of the
18 issuer, and other person having a similar status or
19 performing similar functions, the person's name,
20 address, and principal occupation for the previous
21 five years; the amount of securities of the issuer
22 held by the person as of the thirtieth day before the



1 filing of the registration statement; the amount of
2 the securities covered by the registration statement
3 to which the person has indicated an intention to
4 subscribe; and a description of any material interest
5 of the person in any material transaction with the
6 issuer or a significant subsidiary effected within the
7 previous three years or proposed to be effected;

8 (3) With respect to persons covered by paragraph (2), the
9 aggregate sum of the remuneration paid to those
10 persons during the previous twelve months and
11 estimated to be paid during the next twelve months,
12 directly or indirectly, by the issuer, and all
13 predecessors, parents, subsidiaries, and affiliates of
14 the issuer;

15 (4) With respect to a person owning of record or owning
16 beneficially, if known, ten per cent or more of the
17 outstanding shares of any class of equity security of
18 the issuer, the information specified in paragraph (2)
19 other than the person's occupation;

20 (5) With respect to a promoter, if the issuer was
21 organized within the previous three years, the
22 information or records specified in paragraph (2), any



- 1 amount paid to the promoter within that period or
2 intended to be paid to the promoter, and the
3 consideration for the payment;
- 4 (6) With respect to a person on whose behalf any part of
5 the offering is to be made in a nonissuer
6 distribution, the person's name and address; the
7 amount of securities of the issuer held by the person
8 as of the date of the filing of the registration
9 statement; a description of any material interest of
10 the person in any material transaction with the issuer
11 or any significant subsidiary effected within the
12 previous three years or proposed to be effected; and a
13 statement of the reasons for making the offering;
- 14 (7) The capitalization and long-term debt, on both a
15 current and pro forma basis, of the issuer and any
16 significant subsidiary, including a description of
17 each security outstanding or being registered or
18 otherwise offered, and a statement of the amount and
19 kind of consideration, whether in the form of cash,
20 physical assets, services, patents, goodwill, or
21 anything else of value, for which the issuer or any
22 subsidiary has issued its securities within the



1 previous two years or is obligated to issue its
2 securities;

3 (8) The kind and amount of securities to be offered; the
4 proposed offering price or the method by which it is
5 to be computed; any variation at which a proportion of
6 the offering is to be made to a person or class of
7 persons other than the underwriters, with a
8 specification of the person or class; the basis on
9 which the offering is to be made if otherwise than for
10 cash; the estimated aggregate underwriting and selling
11 discounts or commissions and finder's fees, including
12 separately cash, securities, contracts, or anything
13 else of value to accrue to the underwriters or finders
14 in connection with the offering or, if the selling
15 discounts or commissions are variable, the basis of
16 determining them and their maximum and minimum
17 amounts; the estimated amounts of other selling
18 expenses, including legal, engineering, and accounting
19 charges; the name and address of each underwriter and
20 each recipient of a finder's fee; a copy of any
21 underwriting or selling group agreement under which
22 the distribution is to be made or the proposed form of



1 any such agreement whose terms have not yet been
2 determined; and a description of the plan of
3 distribution of any securities that are to be offered
4 otherwise than through an underwriter;

5 (9) The estimated monetary proceeds to be received by the
6 issuer from the offering; the purposes for which the
7 proceeds are to be used by the issuer; the estimated
8 amount to be used for each purpose; the order or
9 priority in which the proceeds will be used for the
10 purposes stated; the amounts of any funds to be raised
11 from other sources to achieve the purposes stated; the
12 sources of the funds; and, if a part of the proceeds
13 is to be used to acquire property, including goodwill,
14 otherwise than in the ordinary course of business, the
15 names and addresses of the vendors, the purchase
16 price, the names of any persons that have received
17 commissions in connection with the acquisition, and
18 the amounts of the commissions and other expenses in
19 connection with the acquisition, including the cost of
20 borrowing money to finance the acquisition;

21 (10) A description of any stock options or other security
22 options outstanding, or to be created in connection



1 with the offering, and the amount of those options
2 held or to be held by each person required to be named
3 in paragraph (2), (4), (5), (6), or (8) and by any
4 person that holds or will hold ten per cent or more in
5 the aggregate of those options;

6 (11) The dates of, parties to, and general effect concisely
7 stated of each managerial or other material contract
8 made or to be made otherwise than in the ordinary
9 course of business to be performed in whole or in part
10 at or after the filing of the registration statement
11 or that was made within the previous two years, and a
12 copy of the contract;

13 (12) A description of any pending litigation, action, or
14 proceeding to which the issuer is a party and that
15 materially affects its business or assets, and any
16 litigation, action, or proceeding known to be
17 contemplated by governmental authorities;

18 (13) A copy of any prospectus, pamphlet, circular, form
19 letter, advertisement, or other sales literature
20 intended as of the effective date to be used in
21 connection with the offering and any solicitation of



1 interest used in compliance with section -202(17)(B);
2 provided that the prospectus required for registration
3 by qualification under paragraph (13) may be satisfied
4 by the Small Corporate Offerings Registration Form
5 (Form U-7) adopted by the North American Securities
6 Administrators Association; provided further that all
7 of the qualifications in the instructions for use of
8 the form are fulfilled;

9 (14) A specimen or copy of the security being registered,
10 unless the security is uncertificated; a copy of the
11 issuer's articles of incorporation and bylaws or their
12 substantial equivalents, in effect; and a copy of any
13 indenture or other instrument covering the security to
14 be registered;

15 (15) A signed or conformed copy of an opinion of counsel
16 concerning the legality of the security being
17 registered, with an English translation if it is in a
18 language other than English, which states whether the
19 security when sold will be validly issued, fully paid,
20 and nonassessable and, if a debt security, a binding
21 obligation of the issuer;



- 1 (16) A signed or conformed copy of a consent of any
2 accountant, engineer, appraiser, or other person whose
3 profession gives authority for a statement made by the
4 person, if the person is named as having prepared or
5 certified a report or valuation, other than an
6 official record, that is public, which is used in
7 connection with the registration statement;
- 8 (17) A balance sheet of the issuer as of a date within four
9 months before the filing of the registration
10 statement; a statement of income and a statement of
11 cash flows for each of the three fiscal years
12 preceding the date of the balance sheet and for any
13 period between the close of the immediately previous
14 fiscal year and the date of the balance sheet, or for
15 the period of the issuer's and any predecessor's
16 existence if less than three years; and, if any part
17 of the proceeds of the offering is to be applied to
18 the purchase of a business, the financial statements
19 that would be required if that business were the
20 registrant; and
- 21 (18) Any additional information or records required by rule
22 adopted or order issued under this chapter;



1 (c) A registration statement under this section becomes
2 effective forty-five days, or any shorter period provided by
3 rule adopted or order issued under this chapter, after the date
4 the registration statement or the last amendment other than a
5 price amendment is filed, if:

6 (1) A stop order is not in effect and a proceeding is not
7 pending under section -305;

8 (2) The commissioner has not issued an order under section
9 -305 delaying effectiveness; or

10 (3) The applicant or registrant has not requested that
11 effectiveness be delayed.

12 (d) The commissioner may delay effectiveness once for not
13 more than ninety days if the commissioner determines the
14 registration statement is not complete in all material respects
15 and promptly notifies the applicant or registrant of that
16 determination. The commissioner may also delay effectiveness
17 for a further period of not more than thirty days if the
18 commissioner determines that the delay is necessary or
19 appropriate.

20 (e) A rule adopted or order issued under this chapter may
21 require as a condition of registration under this section that a
22 prospectus containing a specified part of the information or



1 record specified in subsection (b) be sent or given to each
2 person to which an offer is made, before or concurrently, with
3 the earliest of:

- 4 (1) The first offer made in a record to the person
5 otherwise than by means of a public advertisement, by
6 or for the account of the issuer or another person on
7 whose behalf the offering is being made or by an
8 underwriter or broker-dealer that is offering part of
9 an unsold allotment or subscription taken by the
10 person as a participant in the distribution;
- 11 (2) The confirmation of a sale made by or for the account
12 of the person;
- 13 (3) Payment pursuant to a sale under paragraph (2); or
- 14 (4) Delivery of the security pursuant to a sale under
15 paragraph (2).

16 **§ -304 Securities registration filings.** (a) A
17 registration statement may be filed by the issuer, a person on
18 whose behalf the offering is to be made, or a broker-dealer
19 registered under this chapter.

20 (b) A person filing a registration statement shall pay a
21 filing fee of one-tenth of one per cent of the aggregate



1 offering price of the securities to be offered in the State with
2 a minimum fee of \$250 and a maximum fee of \$2,500.

3 (c) A registration statement filed under section -303
4 shall specify:

5 (1) The amount of securities to be offered in this State;

6 (2) The states in which a registration statement or
7 similar record in connection with the offering has
8 been or is to be filed; and

9 (3) Any adverse order, judgment, or decree issued in
10 connection with the offering by a state securities
11 regulator, the Securities and Exchange Commission, or
12 any court.

13 (d) A record filed under this chapter or the predecessor
14 act within five years preceding the filing of a registration
15 statement may be incorporated by reference in the registration
16 statement to the extent that the record is currently accurate.

17 (e) In the case of a nonissuer distribution, information
18 or a record may not be required under subsection (i) or section
19 -303, unless it is known to the person filing the
20 registration statement or to the person on whose behalf the
21 distribution is to be made or unless it can be furnished by
22 those persons without unreasonable effort or expense.



1 (f) A rule adopted or order issued under this chapter may
2 require as a condition of registration that a security issued
3 within the previous five years or to be issued to a promoter for
4 a consideration substantially less than the public offering
5 price or to a person for a consideration other than cash be
6 deposited in escrow; and that the proceeds from the sale of the
7 registered security in this State be impounded until the issuer
8 receives a specified amount from the sale of the security either
9 in this State or elsewhere. The conditions of any escrow or
10 impoundment required under this subsection may be established by
11 rule adopted or order issued under this chapter, but the
12 commissioner may not reject a depository institution solely
13 because of its location in another state.

14 (g) A rule adopted or order issued under this chapter may
15 require as a condition of registration that a security
16 registered under this chapter be sold only on a specified form
17 of subscription or sale contract and that a signed or conformed
18 copy of each contract be filed under this chapter or preserved
19 for a period specified by the rule or order, which may not be
20 longer than five years.

21 (h) Except while a stop order is in effect under section
22 -305, a registration statement is effective for one year



1 after its effective date, or for any longer period designated in
2 an order under this chapter during which the security is being
3 offered or distributed in a nonexempted transaction by or for
4 the account of the issuer or other person on whose behalf the
5 offering is being made or by an underwriter or broker-dealer
6 that is still offering part of an unsold allotment or
7 subscription taken as a participant in the distribution. For
8 the purposes of a nonissuer transaction, all outstanding
9 securities of the same class identified in the registration
10 statement as a security registered under this chapter are
11 considered to be registered while the registration statement is
12 effective. If any securities of the same class are outstanding,
13 a registration statement may not be withdrawn until one year
14 after its effective date. A registration statement may be
15 withdrawn only with the approval of the commissioner.

16 (i) While a registration statement is effective, a rule
17 adopted or order issued under this chapter may require the
18 person that filed the registration statement to file reports,
19 not more often than quarterly, to keep the information or other
20 record in the registration statement reasonably current and to
21 disclose the progress of the offering.



1 (j) A registration statement shall be amended after its
2 effective date if there are material changes in information or
3 documents in the registration statement, or if there is an
4 increase in the aggregate amount of securities offered or sold
5 in this State. The posteffective amendment becomes effective
6 when the commissioner provides written notice that the amendment
7 has been accepted. If a posteffective amendment is made to
8 increase the number of securities specified to be offered or
9 sold, the person filing the amendment shall pay a registration
10 fee based upon the increase in such price calculated in
11 accordance with the rate and fee specified in subsection (b).
12 If a posteffective amendment for registration of additional
13 securities and payment of additional fees is not filed in a
14 timely manner, there shall be no penalty assessed if the
15 amendment is filed and the additional registration fee is paid
16 within one year after the date the additional securities are
17 sold in this State.

18 **§ -305 Denial, suspension, and revocation of securities**
19 **registration.** (a) The commissioner may issue a stop order
20 denying effectiveness to, or suspending or revoking the
21 effectiveness of, a registration statement if the commissioner
22 finds that the order is in the public interest and that:



- 1 (1) The registration statement as of its effective date or
2 before the effective date in the case of an order
3 denying effectiveness, an amendment under section
4 -304(j) as of its effective date, or a report under
5 section -304(i), is incomplete in a material
6 respect or contains a statement that, in the light of
7 the circumstances under which it was made, was false
8 or misleading with respect to a material fact;
- 9 (2) This chapter, or a rule adopted or order issued under
10 this chapter, or a condition imposed under this
11 chapter has been wilfully violated in connection with
12 the offering by the person filing the registration
13 statement; by the issuer, a partner, officer, or
14 director of the issuer or a person having a similar
15 status or performing a similar function; by a promoter
16 of the issuer; or by a person directly or indirectly
17 controlling or controlled by the issuer, but only if
18 the person filing the registration statement is
19 directly or indirectly controlled by or acting for the
20 issuer, by an underwriter;
- 21 (3) The security registered or sought to be registered is
22 the subject of a permanent or temporary injunction of



1 a court of competent jurisdiction or an administrative
2 stop order or similar order issued under any federal,
3 foreign, or state law other than this chapter
4 applicable to the offering; provided that the
5 commissioner may not institute a proceeding against an
6 effective registration statement under this paragraph:

7 (A) More than one year after the date of the order or
8 injunction on which it is based; or

9 (B) On the basis of an order or injunction issued
10 under the securities act of another state unless
11 the order or injunction was based on conduct that
12 would constitute, as of the date of the order, a
13 ground for a stop order under this section;

14 (4) The issuer's enterprise or method of business includes
15 or would include activities that are unlawful where
16 performed;

17 (5) The applicant or registrant has not paid the filing
18 fee; provided that the commissioner shall void the
19 order if the deficiency is corrected; or

20 (6) The offering:

21 (A) Will work or tend to work a fraud upon
22 purchasers;



1 (B) Has been or would be made with unreasonable
2 amounts of underwriters' and sellers' discounts,
3 commissions, or other compensation, or promoters'
4 profits or participations, or unreasonable
5 amounts or kinds of options; or

6 (C) Is being made on terms that are unfair, unjust,
7 or inequitable.

8 (b) The commissioner may not institute a stop order
9 proceeding against an effective registration statement on the
10 basis of conduct or a transaction known to the commissioner when
11 the registration statement became effective unless the
12 proceeding is instituted within thirty days after the
13 registration statement became effective.

14 (c) The commissioner may summarily revoke, deny, postpone,
15 or suspend the effectiveness of a registration statement pending
16 final determination of an administrative proceeding. Upon the
17 issuance of the order, the commissioner shall promptly notify
18 each person specified in subsection (d) that the order has been
19 issued, the reasons for the revocation, denial, postponement, or
20 suspension, and that within fifteen days after the receipt of a
21 request in a record from the person, the matter will be
22 scheduled for a hearing. If a hearing is not requested and none



1 is ordered by the commissioner within thirty days after the date
2 of service of the order, the order becomes final. If a hearing
3 is requested or ordered, the commissioner, after notice of and
4 opportunity for hearing for each person subject to the order,
5 may modify or vacate the order or extend the order until final
6 determination. During the pendency of any hearing requested
7 under this subsection, the order shall remain in effect unless
8 vacated or modified by the commissioner; provided that any
9 penalty shall not take effect until the final order is issued.

10 (d) A stop order shall not be issued under this section
11 without:

12 (1) Appropriate notice to the applicant or registrant, the
13 issuer, and the person on whose behalf the securities
14 are to be or have been offered;

15 (2) An opportunity for hearing; and

16 (3) Findings of fact and conclusions of law in a record in
17 accordance with chapter 91.

18 (e) The commissioner may modify or vacate a stop order
19 issued under this section if the commissioner finds that the
20 conditions that caused its issuance have changed or that it is
21 necessary or appropriate in the public interest or for the



1 protection of investors. The modification or vacation shall not
2 be subject to a hearing or chapter 91.

3 **§ -306 Waiver and modification.** The commissioner, in
4 the commissioner's sole discretion, may waive or modify, in
5 whole or in part, any or all of the requirements of sections
6 -302 and -303(b) or the requirement of any information or
7 record in a registration statement or in a periodic report filed
8 pursuant to section -304(i).

9 **PART IV. BROKER-DEALERS, AGENTS, INVESTMENT ADVISERS,**
10 **INVESTMENT ADVISER REPRESENTATIVES, AND**
11 **FEDERAL COVERED INVESTMENT ADVISERS**

12 **§ -401 Broker-dealer registration requirement and**
13 **exemptions.** (a) It is unlawful for a person to transact
14 business in this State as a broker-dealer unless the person is
15 registered under this chapter as a broker-dealer or is exempt
16 from registration as a broker-dealer under subsection (b) or
17 (d).

18 (b) The following persons are exempt from the registration
19 requirement of subsection (a):

20 (1) A broker-dealer without a place of business in this
21 State if its only transactions effected in this State
22 are with:



- 1 (A) The issuer of the securities involved in the
2 transactions;
- 3 (B) A broker-dealer registered as a broker-dealer
4 under this chapter or not required to be
5 registered as a broker-dealer under this chapter;
- 6 (C) An institutional investor;
- 7 (D) A nonaffiliated federal covered investment
8 adviser with investments under management in
9 excess of \$100,000,000 acting for the account of
10 others pursuant to discretionary authority in a
11 signed record;
- 12 (E) A bona fide preexisting customer whose principal
13 place of residence is not in this State and the
14 person is registered as a broker-dealer under the
15 Securities Exchange Act of 1934, or not required
16 to be registered under the Securities Exchange
17 Act of 1934, and is registered under the
18 securities act of the state in which the customer
19 maintains a principal place of residence;
- 20 (F) A bona fide preexisting customer whose principal
21 place of residence is in this State but was not



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present in this State when the customer relationship was established, if:

- (i) The broker-dealer is registered under the Securities Exchange Act of 1934, or not required to be registered under the Securities Exchange Act of 1934 and is registered under the securities laws of the state in which the customer relationship was established and where the customer had maintained a principal place of residence; and
- (ii) Within forty-five days after the customer's first transaction in this State, the person files an application for registration as a broker-dealer in this State and a further transaction is not effected more than the earlier of seventy-five days after the date on which the application is filed, or the date on which the commissioner notifies the person that the commissioner has denied the application for registration or has stayed

1 the pendency of the application for good
2 cause;

3 (G) Not more than three customers in this State
4 during the previous twelve months, in addition to
5 those customers specified in subparagraphs (A) to
6 (F) and (H), if the broker-dealer is registered
7 under the Securities Exchange Act of 1934, or not
8 required to be registered under the Securities
9 Exchange Act of 1934, and is registered under the
10 securities act of the state in which the
11 broker-dealer has its principal place of
12 business; or

13 (H) Any other person exempted by rule adopted or
14 order issued under this chapter;

15 and

16 (2) A person that deals solely in United States government
17 securities and is supervised as a dealer in government
18 securities by the Board of Governors of the Federal
19 Reserve System, the Comptroller of the Currency, the
20 Federal Deposit Insurance Corporation, or the Office
21 of Thrift Supervision.



1 (c) It is unlawful for a broker-dealer, or for an issuer
2 engaged in offering, offering to purchase, purchasing, or
3 selling securities in this State, directly or indirectly, to
4 employ or associate with an individual to engage in an activity
5 related to securities transactions in this State if the
6 registration of the individual is suspended or revoked or the
7 individual is barred from employment or association with a
8 broker-dealer, an issuer, an investment adviser, or a federal
9 covered investment adviser by an order of the commissioner under
10 this chapter, the Securities and Exchange Commission, or a
11 self-regulatory organization. A broker-dealer or issuer does
12 not violate this subsection if the broker-dealer or issuer did
13 not know and in the exercise of reasonable care could not have
14 known, of the suspension, revocation, or bar. Upon request from
15 a broker-dealer or issuer and for good cause, an order under
16 this chapter may modify or waive, in whole or in part, the
17 application of the prohibitions of this subsection to the
18 broker-dealer.

19 (d) A broker-dealer that is registered in Canada and has
20 no office or other physical presence in this State may effect
21 transactions in securities with or for, or attempt to effect the



1 purchase or sale of any securities by an individual who is a
2 resident of Canada, and:

- 3 (1) Only effects or attempts to effect transactions in
4 securities with or through the issuers of securities
5 involved in the transactions, broker-dealers, banks,
6 savings institutions, trust companies, insurance
7 companies, investment companies (as defined in the
8 Investment Company Act of 1940), pension or
9 profit-sharing trusts, or other financial institutions
10 or institutional buyers, whether acting for themselves
11 or as trustees; with or for a person from Canada who
12 is present temporarily in this State and with whom a
13 bona fide business relationship existed before the
14 person entered this State; or with or for a person
15 from Canada who is present in this State, whose
16 transactions are in a self-directed tax advantaged
17 retirement plan in Canada of which the person is the
18 holder or contributor;
- 19 (2) Is a member of a duly authorized self-regulatory
20 organization or stock exchange in Canada;



1 (3) Maintains the provincial or territorial registration
2 and membership in a self-regulatory organization or
3 stock exchange of the person in good standing; and

4 (4) Discloses to the person's clients in this State that
5 the person is not subject to the full regulatory
6 requirements of this chapter; provided that a notice
7 is filed with the commissioner in the form of the
8 individual's current securities registration together
9 with a consent to service of process.

10 (e) A rule adopted or order issued under this chapter may
11 permit:

12 (1) A broker-dealer that is registered in any other
13 foreign jurisdiction and that has no office or other
14 physical presence in this State to effect transactions
15 in securities with or for, or attempt to effect the
16 purchase or sale of any securities by:

17 (A) An individual from any other foreign jurisdiction
18 who is temporarily present in this State and with
19 whom the broker-dealer had a bona fide customer
20 relationship before the individual entered the
21 United States;



1 (B) An individual from any other foreign jurisdiction
2 who is present in this State and whose
3 transactions are in a self-directed tax
4 advantaged retirement plan of which the
5 individual is the holder or contributor in that
6 foreign jurisdiction; or

7 (C) An individual who is present in this State, with
8 whom the broker-dealer customer relationship
9 arose while the individual was temporarily or
10 permanently resident in the other foreign
11 jurisdiction.

12 An agent who represents a broker-dealer that is exempt
13 under this subsection may effect transactions in securities or
14 attempt to effect the purchase or sale of securities in this
15 State as permitted for a broker-dealer described in this
16 subsection.

17 **§ -402 Agent registration requirement and exemptions.**

18 (a) It is unlawful for an individual to transact business in
19 this State as an agent unless the individual is registered under
20 this chapter as an agent or is exempt from registration as an
21 agent under subsection (b).



- 1 (b) The following individuals are exempt from the
2 registration requirement of subsection (a):
- 3 (1) An individual who represents a broker-dealer in
4 effecting transactions in this State limited to those
5 described in Section 15(h)(2) of the Securities
6 Exchange Act of 1934 (15 U.S.C. 78(o)(2));
- 7 (2) An individual who represents a broker-dealer that is
8 exempt under section -401(b) or -401(d);
- 9 (3) An individual who represents an issuer with respect to
10 an offer or sale of the issuer's own securities or
11 those of the issuer's parent company or any of the
12 issuer's subsidiaries, and who is not compensated in
13 connection with the individual's participation by the
14 payment of commissions or other remuneration based,
15 directly or indirectly, on transactions in those
16 securities;
- 17 (4) An individual who represents an issuer and who effects
18 transactions in the issuer's securities exempted by
19 section -202, other than section -202(11) and
20 (14);
- 21 (5) An individual who represents an issuer that effects
22 transactions solely in federal covered securities of



1 the issuer; provided that an individual who effects
2 transactions in a federal covered security under
3 Section 18(b)(3) or 18(b)(4)(D) of the Securities Act
4 of 1933 (15 U.S.C. 77r(b)(3) or 77r(b)(4)(D)) is not
5 exempt if the individual is compensated in connection
6 with the agent's participation by the payment of
7 commissions or other remuneration based, directly or
8 indirectly, on transactions in those securities;

9 (6) An individual who represents a broker-dealer
10 registered in this State under section -401(a) or
11 exempt from registration under section -401(b) in
12 the offer and sale of securities for an account of a
13 nonaffiliated federal covered investment adviser with
14 investments under management in excess of \$100,000,000
15 acting for the account of others pursuant to
16 discretionary authority in a signed record;

17 (7) An individual who represents an issuer in connection
18 with the purchase of the issuer's own securities;

19 (8) An individual who represents an issuer and who
20 restricts participation to performing clerical or
21 ministerial acts; or



1 (9) Any other individual exempted by rule adopted or order
2 issued under this chapter.

3 (c) The registration of an agent is effective only while
4 the agent is employed by or associated with a broker-dealer
5 registered under this chapter or an issuer that is offering,
6 selling, or purchasing its securities in this State.

7 (d) It is unlawful for a broker-dealer, or an issuer
8 engaged in offering, selling, or purchasing securities in this
9 State, to employ or associate with an agent who transacts
10 business in this State on behalf of broker-dealers or issuers
11 unless the agent is registered under subsection (a) or exempt
12 from registration under subsection (b).

13 (e) If an individual acts as an agent for more than one
14 broker-dealer or one issuer at a time, the broker-dealers and
15 issuers for which the agent acts shall be jointly and severally
16 liable for the acts of the agent unless otherwise agreed to
17 between the agent, broker-dealers, and issuers.

18 **§ -403 Investment adviser registration requirement and**
19 **exemptions.** (a) It is unlawful for a person to transact
20 business in this State as an investment adviser unless the
21 person is registered under this chapter as an investment adviser



1 or is exempt from registration as an investment adviser under
2 subsection (b).

3 (b) The following persons are exempt from the registration
4 requirement of subsection (a):

5 (1) A person without a place of business in this State
6 that is registered under the securities act of the
7 state in which the person has its principal place of
8 business if its only clients in this State are:

9 (A) Federal covered investment advisers, investment
10 advisers registered under this chapter, or
11 broker-dealers registered under this chapter;

12 (B) Institutional investors;

13 (C) Bona fide preexisting clients whose principal
14 places of residence are not in this State if the
15 investment adviser is registered under the
16 securities act of the state in which the clients
17 maintain principal places of residence; or

18 (D) Any other client exempted by rule adopted or
19 order issued under this chapter;

20 (2) A person without a place of business in this State if
21 the person has had, during the preceding twelve
22 months, not more than five clients that are residents



1 of this State in addition to those specified under
2 paragraph (1); or

3 (3) Any other person exempted by rule adopted or order
4 issued under this chapter.

5 (c) It is unlawful for an investment adviser, directly or
6 indirectly, to employ or associate with an individual to engage
7 in an activity related to investment advice in this State if the
8 registration of the individual is suspended or revoked or the
9 individual is barred from employment or association with an
10 investment adviser, federal covered investment adviser, or
11 broker-dealer by an order under this chapter, the Securities and
12 Exchange Commission, or a self-regulatory organization, unless
13 the investment adviser did not know, and in the exercise of
14 reasonable care could not have known, of the suspension,
15 revocation, or bar. Upon request from the investment adviser
16 and for good cause, the commissioner, by order, may waive, in
17 whole or in part, the application of the prohibitions of this
18 subsection to the investment adviser.

19 (d) It is unlawful for an investment adviser to employ or
20 associate with an individual required to be registered under
21 this chapter as an investment adviser representative who
22 transacts business in this State on behalf of the investment



1 adviser unless the individual is registered under section
2 -404(a) or is exempt from registration under section
3 -404(b).

4 **§ -404 Investment adviser representative registration**
5 **requirement and exemptions.** (a) It is unlawful for an
6 individual to transact business in this State as an investment
7 adviser representative unless the individual is registered under
8 this chapter as an investment adviser representative or is
9 exempt from registration as an investment adviser representative
10 under subsection (b).

11 (b) The following individuals are exempt from the
12 registration requirement of subsection (a):

13 (1) An individual who is employed by or associated with an
14 investment adviser that is exempt from registration
15 under section -403(b) or a federal covered
16 investment adviser that is excluded from the notice
17 filing requirements of section -405; or

18 (2) Any other individual exempted by rule adopted or order
19 issued under this chapter.

20 (c) The registration of an investment adviser
21 representative is effective only while the investment adviser
22 representative is employed by or associated with an investment



1 adviser registered under this chapter or a federal covered
2 investment adviser that has made or is required to make a notice
3 filing under section -405.

4 (d) If an individual transacts business as an investment
5 adviser representative for more than one investment adviser or
6 federal covered investment adviser, the investment advisers and
7 federal covered investment advisers shall be jointly and
8 severally liable for the business transactions of the investor
9 adviser representative unless otherwise agreed to between the
10 investment adviser representative, investment-advisers, and
11 federal covered investment adviser.

12 (e) It is unlawful for an individual acting as an
13 investment adviser representative, directly or indirectly, to
14 conduct business in this State on behalf of an investment
15 adviser or a federal covered investment adviser if the
16 registration of the individual as an investment adviser
17 representative is suspended or revoked or the individual is
18 barred from employment or association with an investment adviser
19 or a federal covered investment adviser by an order under this
20 chapter, the Securities and Exchange Commission, or a
21 self-regulatory organization. Upon request from a federal
22 covered investment adviser and for good cause, the commissioner,



1 by order issued, may waive, in whole or in part, the application
2 of the requirements of this subsection to the federal covered
3 investment adviser.

4 **§ -405 Federal covered investment adviser notice filing**
5 **requirement.** (a) Except with respect to a federal covered
6 investment adviser described in subsection (b), it is unlawful
7 for a federal covered investment adviser to transact business in
8 this State as a federal covered investment adviser unless the
9 federal covered investment adviser complies with subsection (c).

10 (b) The following federal covered investment advisers are
11 not required to comply with subsection (c):

12 (1) A federal covered investment adviser without a place
13 of business in this State if its only clients in this
14 State are:

15 (A) Federal covered investment advisers, investment
16 advisers registered under this chapter, and
17 broker-dealers registered under this chapter;

18 (B) Institutional investors;

19 (C) Bona fide preexisting clients whose principal
20 places of residence are not in this State; or

21 (D) Other clients specified by rule adopted or order
22 issued under this chapter;



1 (2) A federal covered investment adviser without a place
2 of business in this State if the person has had,
3 during the preceding twelve months, not more than five
4 clients that are residents of this State in addition
5 to those specified under paragraph (1); or

6 (3) Any other person excluded by rule adopted or order
7 issued under this chapter.

8 (c) A person acting as a federal covered investment
9 adviser not excluded under subsection (b) shall file a notice on
10 a form designated by the commissioner, a consent to service of
11 process complying with section -610, and records that have
12 been filed with the Securities and Exchange Commission under the
13 Investment Advisers Act of 1940, as required by rule adopted or
14 order issued under this chapter, and pay the fees specified in
15 section -410(e).

16 (d) The notice under subsection (c) becomes effective upon
17 its filing.

18 **§ -406 Registration by broker-dealer, agent, investment**
19 **adviser, and investment adviser representative.** (a) A person
20 shall register as a broker-dealer, agent, investment adviser, or
21 investment adviser representative by filing an application and a
22 consent to service of process complying with section -610,



1 and paying the fee specified in section -410 and any
2 reasonable fees charged by the commissioner for processing the
3 filing. The application shall contain:

4 (1) The information required for the filing of a uniform
5 application; and

6 (2) Upon request by the commissioner, any other financial
7 or other information that the commissioner determines
8 is appropriate.

9 (b) If the information or record contained in an
10 application filed under subsection (a) is or becomes inaccurate
11 or incomplete in a material respect, the registrant shall
12 promptly file a correcting amendment.

13 (c) If an order is not in effect and a proceeding is not
14 pending under section -412, registration becomes effective at
15 noon on the forty-fifth day after a completed application is
16 filed, unless the registration is denied or the commissioner has
17 given written notice of deficiencies that are unresolved. A
18 rule adopted or order issued under this chapter may set an
19 earlier effective date or may defer the effective date until
20 noon on the forty-fifth day after the filing of any amendment
21 completing the application.



1 (d) A registration is effective until midnight on
2 December 31 of the year for which the application for
3 registration is filed. Unless an order is in effect under
4 section -412, a registration may be automatically renewed
5 each year by filing records that are required by rule adopted or
6 order issued under this chapter to be filed, by paying the fee
7 specified in section -410, and by paying costs charged by the
8 commissioner for processing the filings.

9 (e) A rule adopted or order issued under this chapter may
10 impose other conditions, not inconsistent with the National
11 Securities Markets Improvement Act of 1996. An order issued
12 under this chapter may waive, in whole or in part, specific
13 requirements in connection with registration as are in the
14 public interest and for the protection of investors.

15 **§ -407 Succession and change in registration of**
16 **broker-dealer or investment adviser.** (a) A broker-dealer or
17 investment adviser may succeed to the current registration of
18 another broker-dealer or investment adviser or a notice filing
19 of a federal covered investment adviser, and a federal covered
20 investment adviser may succeed to the current registration of an
21 investment adviser or notice filing of another federal covered
22 investment adviser, by filing as a successor an application for



1 registration pursuant to section -401 or -403 or a notice
2 pursuant to section -405 for the unexpired portion of the
3 current registration or notice filing.

4 (b) A broker-dealer or investment adviser that changes its
5 form of organization or state of incorporation or organization
6 may continue its registration by filing an amendment to its
7 registration if the change does not involve a material change in
8 its financial condition or management. The amendment becomes
9 effective when filed or on a date designated by the registrant
10 in its filing. The new organization shall be a successor to the
11 original registrant for the purposes of this chapter. If there
12 is a material change in financial condition or management, the
13 broker-dealer or investment adviser shall file a new application
14 for registration. A predecessor registered under this chapter
15 shall stop conducting its securities business other than winding
16 down transactions and shall file for withdrawal of broker-dealer
17 or investment adviser registration within forty-five days after
18 filing its amendment to effect succession.

19 (c) A broker-dealer or investment adviser that changes its
20 name may continue its registration by filing an amendment to its
21 registration statement and providing any other information that
22 the commissioner determines is appropriate by rule adopted or



1 order issued under this chapter. The amendment becomes
2 effective when filed or on a date designated by the registrant.

3 (d) A change of control of a broker-dealer or investment
4 adviser may be made in accordance with a rule adopted or order
5 issued under this chapter.

6 **§ -408 Termination of employment or association of agent**
7 **and investment adviser representative; transfer of employment or**
8 **association.** (a) If an agent registered under this chapter
9 terminates employment or association with a broker-dealer or
10 issuer; or if an investment adviser representative registered
11 under this chapter terminates employment or association with an
12 investment adviser or federal covered investment adviser; or if
13 either registrant terminates activities that require
14 registration as an agent or investment adviser representative,
15 the broker-dealer, issuer, investment adviser, or federal
16 covered investment adviser shall promptly file a notice of
17 termination with the commissioner. If the registrant learns
18 that the broker-dealer, issuer, investment adviser, or federal
19 covered investment adviser has not filed the notice, the
20 registrant shall promptly notify the broker-dealer, issuer,
21 investment adviser or federal covered investment adviser, to do
22 so.



1 (b) If an agent registered under this chapter terminates
2 employment or association with a broker-dealer registered under
3 this chapter and begins employment or association with another
4 broker-dealer registered under this chapter; or if an investment
5 adviser representative registered under this chapter terminates
6 employment or association with an investment adviser registered
7 under this chapter or a federal covered investment adviser that
8 has filed a notice under section -405 and begins employment
9 by or association with another investment adviser registered
10 under this chapter or a federal covered investment adviser that
11 has filed a notice under section -405; then upon the filing
12 by or on behalf of the registrant, within thirty days after the
13 termination, of an application for registration that complies
14 with the requirement of section -406(a) and payment of the
15 filing fee required under section -410, the registration of
16 the agent or investment adviser representative shall be:

17 (1) Immediately effective as of the date of the completed
18 filing, if the agent's Central Registration Depository
19 record or successor record or the investment adviser
20 representative's Investment Adviser Registration
21 Depository record or successor record does not contain



1 any new or amended disciplinary actions or proceedings
2 within the previous twelve months; or

3 (2) Temporarily effective as of the date of the completed
4 filing, if the agent's Central Registration Depository
5 record or successor record or the investment adviser
6 representative's Investment Adviser Registration
7 Depository record or successor record contains any new
8 or amended disciplinary actions or proceedings within
9 the preceding twelve months.

10 (c) The commissioner may withdraw a temporary registration
11 if there are or were grounds for discipline as specified in
12 section -412 and the commissioner does so within thirty days
13 after the filing of the application. If the commissioner does
14 not withdraw the temporary registration within the thirty day
15 period, registration becomes automatically effective on the
16 thirty-first day after filing.

17 (d) The commissioner may prevent the effectiveness of a
18 transfer of an agent or investment adviser representative under
19 subsection (b)(1) or (2) based on the public interest and the
20 protection of investors.

21 (e) If the commissioner determines that a registrant or
22 applicant for registration is no longer in existence or has



1 ceased to act as a broker-dealer, agent, investment adviser, or
2 investment adviser representative, or is the subject of an
3 adjudication of incapacity or is subject to the control of a
4 committee, conservator, or guardian, or cannot reasonably be
5 located, a rule adopted or order issued under this chapter may
6 require the registration be canceled or terminated or the
7 application denied. The commissioner may reinstate a canceled
8 or terminated registration, with or without hearing, and may
9 make the registration retroactive.

10 **§ -409 Withdrawal of registration of broker-dealer,**
11 **agent, investment adviser, and investment adviser**
12 **representative.** The withdrawal of registration by a
13 broker-dealer, agent, investment adviser, or investment adviser
14 representative becomes effective sixty days after the filing of
15 the application to withdraw or within any shorter period as
16 provided by rule adopted or order issued under this chapter
17 unless a revocation or suspension proceeding is pending when the
18 application is filed. If a revocation or suspension proceeding
19 is pending, withdrawal becomes effective when and upon such
20 conditions as required by rule adopted or order issued under
21 this chapter. The commissioner may institute a revocation or
22 suspension proceeding under section -412 within one year



1 after the withdrawal became effective and issue a revocation or
2 suspension order as of the last date on which registration was
3 effective.

4 **§ -410 Filing fees.** (a) A person shall pay a fee of
5 \$200 when initially filing an application for registration as a
6 broker-dealer and a fee of \$200 when filing a renewal of
7 registration as a broker-dealer.

8 (b) The fee for an individual is \$50 when filing an
9 application for registration as an agent, a fee of \$50 when
10 filing a renewal of registration as an agent, and a fee of \$50
11 when filing for a transfer of registration as an agent.

12 (c) A person shall pay a fee of \$100 when filing an
13 application for registration as an investment adviser and a fee
14 of \$100 when filing a renewal of registration as an investment
15 adviser.

16 (d) The fee for an individual is \$50 when filing an
17 application for registration as an investment adviser
18 representative, a fee of \$50 when filing a renewal of
19 registration as an investment adviser representative, and a fee
20 of \$50 when filing for a transfer of registration as an
21 investment adviser representative.



1 (e) A federal covered investment adviser required to file
2 a notice under section -405 shall pay an annual fee of \$100.

3 (f) A person required to pay a fee under this section may
4 transmit the fee through or to a designee of the commissioner as
5 provided in a rule adopted or order issued under this chapter.

6 (g) The fee for copies of documents filed in the office of
7 the commissioner shall be 25 cents per page.

8 **§ -411 Postregistration requirements.** (a) Subject to
9 Section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C.
10 78o(h)) or Section 222 of the Investment Advisers Act of 1940
11 (15 U.S.C. 80b-22), a rule adopted or order issued under this
12 chapter may establish minimum financial requirements for
13 broker-dealers registered or required to be registered under
14 this chapter and investment advisers registered or required to
15 be registered under this chapter.

16 (b) Subject to Section 15(h) of the Securities Exchange
17 Act of 1934 (15 U.S.C. 78o(h)) or Section 222(b) of the
18 Investment Advisers Act of 1940 (15 U.S.C. 80b-22), a
19 broker-dealer registered or required to be registered under this
20 chapter and an investment adviser registered or required to be
21 registered under this chapter shall file such financial reports
22 as are required by a rule adopted or order issued under this



1 chapter. If the information contained in a record filed under
2 this subsection is or becomes inaccurate or incomplete in a
3 material respect, the registrant shall promptly file a
4 correcting amendment.

5 (c) Subject to Section 15(h) of the Securities Exchange
6 Act of 1934 (15 U.S.C. 78o(h)) or Section 222 of the Investment
7 Advisers Act of 1940 (15 U.S.C. 80b-22):

8 (1) A broker-dealer registered or required to be
9 registered under this chapter and an investment
10 adviser registered or required to be registered under
11 this chapter shall make and maintain for a period of
12 three years after the close of the calendar or fiscal
13 year to which they pertain, the accounts,
14 correspondence, memoranda, papers, books, and other
15 records required by rule adopted or order issued under
16 this chapter;

17 (2) Broker-dealer records required to be maintained under
18 paragraph (1) may be maintained in any form of data
19 storage acceptable under Section 17(a) of the
20 Securities Exchange Act of 1934 (15 U.S.C. 78q(a)) if
21 they are readily accessible to the commissioner; and



1 (3) Investment adviser records required to be maintained
2 under paragraph (1) may be maintained in any form of
3 data storage required by rule adopted or order issued
4 under this chapter.

5 (d) The records of a broker-dealer registered or required
6 to be registered under this chapter and of an investment adviser
7 registered or required to be registered under this chapter are
8 subject to such reasonable periodic, special, or other audits or
9 inspections by a representative of the commissioner, within or
10 without this State, as the commissioner considers necessary or
11 appropriate in the public interest and for the protection of
12 investors. An audit or inspection may be made at any time and
13 without prior notice. The commissioner may copy, and remove for
14 audit or inspection copies of, all records the commissioner
15 reasonably considers necessary or appropriate to conduct the
16 audit or inspection. The commissioner may assess a reasonable
17 charge for conducting an audit or inspection under this
18 subsection.

19 (e) Subject to Section 15(h) of the Securities Exchange
20 Act of 1934 (15 U.S.C. 78o(h)) or Section 222 of the Investment
21 Advisers Act of 1940 (15 U.S.C. 80b-22), a rule adopted or order
22 issued under this chapter may require a broker-dealer or



1 investment adviser that has custody of or discretionary
2 authority over funds or securities of a customer or client to
3 obtain insurance or post a bond or other satisfactory form of
4 security. The commissioner may determine the requirements of
5 the insurance, bond, or other satisfactory form of security.
6 The insurance, bond, or other satisfactory form of security
7 shall permit an action by a person to enforce any liability on
8 the insurance, bond, or other satisfactory form of security if
9 instituted within the time limitations in section -509(j)(2).

10 (f) Subject to Section 15(h) of the Securities Exchange
11 Act of 1934 (15 U.S.C. 78o(h)) or Section 222 of the Investment
12 Advisers Act of 1940 (15 U.S.C. 80b-22), an agent may not have
13 custody of funds or securities of a customer except under the
14 supervision of a broker-dealer and an investment adviser
15 representative may not have custody of funds or securities of a
16 client except under the supervision of an investment adviser or
17 a federal covered investment adviser. A rule adopted or order
18 issued under this chapter may prohibit, limit, or impose
19 conditions on a broker-dealer regarding custody of funds or
20 securities of a customer, and on an investment adviser regarding
21 custody of securities or funds of a client.



1 (g) Except as otherwise provided in this subsection, the
2 commissioner may by rule adopted or order issued under this
3 chapter require a minimum capital requirement for registered
4 broker-dealers, which shall not be less than \$5,000 in the case
5 of broker-dealers, and prescribe a ratio between net capital and
6 aggregate indebtedness; provided that this subsection shall not
7 apply to any broker-dealer that is registered under the
8 Securities Exchange Act of 1934. The commissioner may by rule
9 adopted or order issued under this chapter require a net worth
10 requirement which shall not be less than \$5,000 for investment
11 advisers; provided that this subsection shall not apply to any
12 investment adviser that maintains its principal place of
13 business in a state other than this State, and the investment
14 adviser is registered in the state where it maintains its
15 principal place of business and is in compliance with that
16 state's net worth or net capital requirements, if any.

17 (h) With respect to an investment adviser registered or
18 required to be registered under this chapter, a rule adopted or
19 order issued under this chapter may require that information or
20 records be furnished or disseminated to clients or prospective
21 clients in this State as necessary or appropriate in the public



1 interest and for the protection of investors and advisory
2 clients.

3 (i) A rule adopted or order issued under this chapter may
4 require an individual registered under sections -402 or
5 -404 to participate in a continuing education program
6 approved by the Securities and Exchange Commission and
7 administered by a self-regulatory organization or, in the
8 absence of such a program, a rule adopted or order issued under
9 this chapter may require continuing education for an individual
10 registered under section -404.

11 **§ -412 Denial, revocation, suspension, withdrawal,**
12 **restriction, condition, or limitation of registration.** (a) If
13 the commissioner finds that it is in the public interest and
14 subsection (d) authorizes the action, the commissioner, under
15 this chapter may deny an application, or may condition or limit
16 the registration of an applicant to be a broker-dealer, agent,
17 investment adviser, or investment adviser representative, and,
18 if the applicant is a broker-dealer or investment adviser, of a
19 partner, officer, director, or person having a similar status or
20 performing similar functions, or a person directly or indirectly
21 in control, of the broker-dealer or investment adviser.



1 (b) If the commissioner finds that it is in the public
2 interest and subsection (d) authorizes the action, the
3 commissioner, under this chapter may revoke, suspend, condition,
4 or limit the registration of a registrant and, if the registrant
5 is a broker-dealer or investment adviser, of a partner, officer,
6 director, or person having a similar status or performing
7 similar functions, or a person directly or indirectly in
8 control, of the broker-dealer or investment adviser; provided
9 that the commissioner shall not:

10 (1) Institute a revocation or suspension proceeding under
11 this subsection based on an order issued under a law
12 of another state that is reported to the commissioner
13 or a designee of the commissioner more than one year
14 after the date of the order on which it is based; or

15 (2) Under subsection (d)(5)(A) or (B), issue an order on
16 the basis of an order issued under the securities act
17 of another state unless the other order was based on
18 conduct for which subsection (d) would authorize the
19 action had the conduct occurred in this State.

20 (c) If the commissioner finds that it is in the public
21 interest and subsection (d)(1), (2), (3), (4), (5), (6), (7),
22 (8), (9), (10), (12), (13), (14), or (15), authorizes the



1 action, the commissioner, under this chapter may censure, impose
2 a bar, or impose a civil penalty in an amount not to exceed a
3 maximum of \$50,000 for each violation on a registrant, and, if
4 the registrant is a broker-dealer or investment adviser, on a
5 partner, officer, director, or person having a similar status or
6 performing similar functions, or on a person directly or
7 indirectly in control, of the broker-dealer or investment
8 adviser.

9 (d) A person may be disciplined under subsections (a) to
10 (c) if the person:

11 (1) Has filed an application for registration in this
12 State under this chapter or the predecessor act within
13 the previous ten years which as of the effective date
14 of registration or as of any date after filing in the
15 case of an order denying effectiveness, was incomplete
16 in any material respect or contained a statement that,
17 in light of the circumstances under which it was made,
18 was false or misleading with respect to a material
19 fact;

20 (2) Wilfully violated or wilfully failed to comply with
21 this chapter or the predecessor act or a rule adopted



1 or order issued under this chapter or the predecessor
2 act within the previous ten years;

3 (3) Has been convicted of any felony, or within the
4 previous ten years has been convicted of a
5 misdemeanor, involving a security, a commodity future
6 or option contract, or an aspect of a business
7 involving securities, commodities, investments,
8 franchises, insurance, banking, or finance;

9 (4) Is enjoined or restrained by a court of competent
10 jurisdiction in an action instituted by the
11 commissioner under this chapter or the predecessor
12 act, a state, the Securities and Exchange Commission,
13 or the United States from engaging in or continuing an
14 act, practice, or course of business involving an
15 aspect of a business involving securities,
16 commodities, investments, franchises, insurance,
17 banking, or finance;

18 (5) Is the subject of an order, issued after notice and
19 opportunity for hearing by:

20 (A) The securities or other financial services
21 regulator of a state or the Securities and
22 Exchange Commission or other federal agency



- 1 denying, revoking, barring, or suspending
2 registration as a broker-dealer, agent,
3 investment adviser, federal covered investment
4 adviser, or investment adviser representative;
- 5 (B) The securities regulator of a state or the
6 Securities and Exchange Commission against a
7 broker-dealer, agent, investment adviser,
8 investment adviser representative, or federal
9 covered investment adviser;
- 10 (C) The Securities and Exchange Commission or a
11 self-regulatory organization suspending or
12 expelling the registrant from membership in the
13 self-regulatory organization;
- 14 (D) A court adjudicating a United States Postal
15 Service fraud order;
- 16 (E) The insurance regulator of a state denying,
17 suspending, or revoking registration as an
18 insurance agent; or
- 19 (F) A depository institution or financial services
20 regulator suspending or barring the person from
21 the depository institution or other financial
22 services business;



- 1 (6) Is the subject of an adjudication or determination,
2 after notice and opportunity for hearing, by the
3 Securities and Exchange Commission, the Commodity
4 Futures Trading Commission; the Federal Trade
5 Commission; a federal depository institution
6 regulator, or a depository institution, insurance, or
7 other financial services regulator of a state that the
8 person wilfully violated the Securities Act of 1933,
9 the Securities Exchange Act of 1934, the Investment
10 Advisers Act of 1940, the Investment Company Act of
11 1940, or the Commodity Exchange Act, the securities or
12 commodities law of a state, or a federal or state law
13 under which a business involving investments,
14 franchises, insurance, banking, or finance is
15 regulated;
- 16 (7) Is insolvent, either because the person's liabilities
17 exceed the person's assets or because the person
18 cannot meet the person's obligations as they mature;
19 provided that the commissioner may not enter an order
20 against an applicant or registrant under this
21 paragraph without a finding of insolvency as to the
22 applicant or registrant;



- 1 (8) Refuses to allow or otherwise impedes the commissioner
2 from conducting an audit or inspection under section
3 -411(d) or refuses access to a registrant's office
4 to conduct an audit or inspection under section
5 -411(d);
- 6 (9) Has failed to reasonably supervise an agent,
7 investment adviser representative, or other
8 individual, if the agent, investment adviser
9 representative, or other individual was subject to the
10 person's supervision and committed a violation of this
11 chapter or the predecessor act or a rule adopted or
12 order issued under this chapter or the predecessor act
13 within the previous ten years of the violation;
- 14 (10) Has not paid the proper filing fee within thirty days
15 after having been notified by the commissioner of a
16 deficiency; provided that the commissioner shall
17 vacate an order under this paragraph when the
18 deficiency is corrected;
- 19 (11) After notice and opportunity for a hearing, has been
20 found within the previous ten years:
- 21 (A) By a court of competent jurisdiction to have
22 wilfully violated the laws of a foreign



- 1 jurisdiction under which the business of
2 securities, commodities, investment, franchises,
3 insurance, banking, or finance is regulated;
- 4 (B) To have been the subject of an order of a
5 securities regulator of a foreign jurisdiction
6 denying, revoking, or suspending the right to
7 engage in the business of securities as a
8 broker-dealer, agent, investment adviser,
9 investment adviser representative, or other
10 similar person; or
- 11 (C) To have been suspended or expelled from
12 membership by or participation in a securities
13 exchange or securities association operating
14 under the securities laws of a foreign
15 jurisdiction;
- 16 (12) Is the subject of a cease and desist order issued by
17 the Securities and Exchange Commission or issued under
18 the securities, commodities, investment, franchise,
19 banking, finance, or insurance laws of a state;
- 20 (13) Has engaged in dishonest or unethical practices in the
21 securities, commodities, investment, franchise,



- 1 banking, finance, or insurance business within the
2 previous ten years;
- 3 (14) Has demonstrated unworthiness to transact the business
4 of broker-dealer, investment adviser, agent, or
5 investment adviser representative;
- 6 (15) Has not complied with an order of child support or has
7 failed to comply with a subpoena or warrant relating
8 to a paternity or child support order pursuant to
9 chapter 576D; or
- 10 (16) Is not qualified on the basis of factors such as
11 training, experience, and knowledge of the securities
12 business; provided that in the case of an application
13 by an agent for a broker-dealer that is a member of a
14 self-regulatory organization or by an individual for
15 registration as an investment adviser representative,
16 a denial order may not be based on this paragraph if
17 the individual has successfully completed all
18 examinations required by subsection (e). The
19 commissioner may require an applicant for registration
20 under section -402 or -404 who has not been
21 registered in a state within the two years preceding



1 the filing of an application in this State to
2 successfully complete an examination.

3 (e) A rule adopted or order issued under this chapter may
4 require that an examination, including an examination developed
5 or approved by an organization of securities regulators, be
6 successfully completed by a class of individuals or all
7 individuals to be registered under this chapter. An order
8 issued under this chapter may waive, in whole or in part, an
9 examination as to an individual and a rule adopted under this
10 chapter may waive, in whole or in part, an examination as to a
11 class of individuals if the commissioner determines that the
12 examination is not necessary or appropriate in the public
13 interest and for the protection of investors.

14 (f) The commissioner may suspend or deny an application
15 summarily; restrict, condition, limit, or suspend a
16 registration; or censure, bar, or impose a civil penalty on a
17 registrant before final determination of an administrative
18 proceeding. Upon the issuance of an order, the commissioner
19 shall promptly notify each person subject to the order that the
20 order has been issued, the reasons for the action, and that
21 within fifteen days after the receipt of a request in a record
22 from the person the matter will be scheduled for a hearing. If



1 a hearing is not requested and none is ordered by the
2 commissioner within thirty days after the date of service of the
3 order, the order shall become final by operation of law. If a
4 hearing is requested or ordered, the commissioner, after notice
5 of and opportunity for hearing to each person subject to the
6 order, may modify or vacate the order or extend the order until
7 a final determination is made. During the pendency of any
8 hearing requested under this subsection, the order shall remain
9 in effect unless vacated or modified by the commissioner;
10 provided that any penalty shall not take effect until the final
11 order is issued.

12 (g) An order issued under this section, except under
13 subsection (f), shall include:

- 14 (1) Appropriate notice to the applicant or registrant;
15 (2) Opportunity for hearing; and
16 (3) Findings of fact and conclusions of law in accordance
17 with chapter 91.

18 (h) A person that controls, directly or indirectly, a
19 person not in compliance with this section may be disciplined by
20 order of the commissioner under subsections (a) to (c) to the
21 same extent as the noncomplying person, unless the controlling
22 person did not know, and in the exercise of reasonable care



1 could not have known, of the existence of conduct that is a
2 ground for discipline under this section.

3 (i) The commissioner may not institute a proceeding under
4 subsection -412(a), -(b), or -(c) based solely on
5 material facts actually known by the commissioner unless an
6 investigation or the proceeding is instituted within one year
7 after the commissioner actually acquires knowledge of the
8 material facts.

9 **PART V. FRAUD AND LIABILITIES**

10 **§ -501 General fraud.** (a) It shall be unlawful for a
11 person, in connection with the offer, sale, or purchase of a
12 security, directly or indirectly:

- 13 (1) To employ a device, scheme, or artifice to defraud;
- 14 (2) To make an untrue statement of a material fact or to
15 fail to state a material fact necessary to make the
16 statements made, in light of the circumstances under
17 which they were made, not misleading;
- 18 (3) To engage in an act, practice, or course of business
19 that operates or would operate as a fraud or deceit
20 upon another person;
- 21 (4) To issue, circulate, or publish any prospectus,
22 circular, advertisement, printed matter, document,



1 pamphlet, leaflet, or other literature (in this
2 chapter collectively referred to as "advertising
3 matter"), which contains an untrue statement or a
4 material fact or fails to state a material fact
5 necessary to make the statements therein made, in
6 light of the circumstances under which they are made,
7 not misleading;

8 (5) To issue, circulate, or publish any advertising matter
9 or make any written representation, unless the name of
10 the person issuing, circulating, publishing, or making
11 the same and the fact that the person is issuing,
12 circulating, or making the same shall be clearly
13 indicated thereon;

14 (6) To make any statement or representation or issue,
15 circulate, or publish any advertising matter
16 containing any statement, to the effect that the
17 security has been in any way approved or endorsed by
18 the commissioner; or

19 (7) To issue, circulate, or publish any advertising matter
20 unless a copy thereof has been previously filed with
21 the office of the commissioner, or unless the
22 commissioner has by rule adopted or order issued under



1 this chapter exempted the filing of any advertising
2 material.

3 (b) Subsections (a)(5) and (7) shall not apply to any
4 advertising matter that is covered by Section 18(a) of the
5 Securities Act of 1933 (15 U.S.C. 77), and that relates to or is
6 used in connection with the offer or sale of a federal covered
7 security.

8 **§ -502 Prohibited conduct in providing investment**

9 **advice.** (a) It shall be unlawful for a person that advises
10 others for compensation, either directly or indirectly or
11 through publications or writings, as to the value of securities
12 or the advisability of investing in, purchasing, or selling
13 securities, or that, for compensation and as part of a regular
14 business, issues or promulgates analyses or reports relating to
15 securities:

16 (1) To employ a device, scheme, or artifice to defraud
17 another person; or

18 (2) To engage in an act, practice, or course of business
19 that operates or would operate as a fraud or deceit
20 upon another person.



1 (b) It shall be unlawful for any investment adviser to
2 enter into, extend, or renew any investment advisory contract,
3 if the contract, in writing:

4 (1) Provides for compensation to the investment adviser on
5 the basis of a share of capital gains upon or capital
6 appreciation of the funds or any portion of the funds
7 of the client;

8 (2) Fails to provide that no assignment, as defined in
9 Section 202(a)(1) of the Investment Advisers Act of
10 1940, of the contract shall be made by the investment
11 adviser without the consent of the other party to the
12 contract; or

13 (3) Fails to provide that the investment adviser, if a
14 partnership, will notify the other party to the
15 contract of any change in the membership of the
16 partnership within a reasonable time after the change.

17 (c) Notwithstanding subsection (b)(1), an investment
18 adviser may enter into, extend, or renew an investment advisory
19 contract that:

20 (1) Provides for compensation based upon the total value
21 of a fund averaged over a definite period, or as of
22 definite dates, or taken as of a definite date; or



1 (2) Provides for compensation to the investment adviser on
2 the basis of a share of capital gains or capital
3 appreciation of the funds of the client; provided that
4 the conditions and requirements as defined and set
5 forth in Rule 205-3 under the Investment Company Act
6 of 1940 (17 C.F.R. 275.205-3) shall be met; and
7 provided further that before entering into the
8 advisory contract, and in addition to the requirements
9 of Form ADV, the investment adviser shall disclose in
10 writing to the client or the client's independent
11 agent all material information concerning the proposed
12 advisory arrangement, including the following:

13 (A) That the fee arrangement may create an incentive
14 for the investment adviser to make investments
15 that are riskier or more speculative than would
16 be the case in the absence of a performance-based
17 fee;

18 (B) Where relevant, that the investment adviser may
19 receive increased compensation with regard to
20 unrealized appreciation as well as realized gains
21 in the client's account;



- 1 (C) The periods that will be used to measure
2 investment performance throughout the contract
3 and their significance in the computation of the
4 fee;
- 5 (D) The nature of any index that will be used as a
6 comparative measure of investment performance,
7 the significance of the index, and the reason the
8 investment adviser believes that the index is
9 appropriate; and
- 10 (E) Where the investment adviser's compensation is
11 based in part on the unrealized appreciation of
12 securities for which market quotations are not
13 readily available within the meaning of Rule
14 2a-4(a)(1) under the Investment Company Act of
15 1940 (17 C.F.R. 270.2a-4(a)(1)), how the
16 securities will be valued and the extent to which
17 the valuation will be independently determined.
- 18 (d) It shall be unlawful for any investment adviser or
19 investment adviser representative to:
- 20 (1) Fail to disclose to the client in a separate
21 disclosure statement the capacity in which the
22 investment adviser and investment adviser



1 representative are acting and the compensation to be
2 received in situations in which:

3 (A) The investment adviser is acting as principal for
4 the investment adviser's own account and
5 knowingly sells any security to or purchases any
6 security from a client for whom the investment
7 adviser is acting as investment adviser; or

8 (B) The investment adviser is acting as a
9 broker-dealer for a person other than the client
10 and knowingly effects any sale or purchase of
11 securities, real estate, insurance contracts,
12 annuities contracts, or any types of real or
13 personal property for the account of the client;

14 and

15 (2) Fail to provide the disclosure statement described in
16 paragraph (1) and obtain the written consent of the
17 client to the transactions described in the disclosure
18 statement prior to the closing of the transactions.

19 (e) A rule adopted or order issued under this chapter may
20 define an act, practice, or course of business of an investment
21 adviser or an investment adviser representative, other than a
22 supervised person of a federal covered investment adviser, as



1 fraudulent, deceptive, or manipulative, and prescribe means
2 reasonably designed to prevent investment advisers and
3 investment adviser representatives, other than supervised
4 persons of a federal covered investment adviser, from engaging
5 in acts, practices, and courses of business that are fraudulent,
6 deceptive, or manipulative.

7 (f) A rule adopted or order issued under this chapter may
8 specify the contents of an investment advisory contract entered
9 into, extended, or renewed by an investment adviser.

10 (g) It shall be unlawful for any investment adviser to use
11 any scheme, device, or artifice to circumvent or attempt to
12 circumvent the prohibitions or limitations in subsection (b).

13 (h) Nothing in this section shall be deemed to relieve any
14 person of any fiduciary or other obligation to which such person
15 may be subject under any law.

16 **§ -503 Evidentiary burden.** (a) In a civil action or
17 administrative proceeding under this chapter, a person claiming
18 an exemption, exception, preemption, or exclusion shall have the
19 burden to prove the applicability of the claim.

20 (b) In a criminal proceeding under this chapter, a person
21 claiming an exemption, exception, preemption, or exclusion shall
22 have the burden of going forward with evidence of the claim.



1 **§ -504 Filing of sales and advertising literature.** (a)
2 Except as otherwise provided in subsection (b) and
3 section -501(7), a rule adopted or order issued under this
4 chapter may require the filing of a prospectus, pamphlet,
5 circular, form letter, advertisement, sales literature, or other
6 advertising record relating to a security or investment advice,
7 addressed or intended for distribution to prospective investors,
8 including clients or prospective clients of a person registered
9 or required to be registered as an investment adviser under this
10 chapter.

11 (b) This section shall not apply to sales and advertising
12 literature specified in subsection (a) that relate to a federal
13 covered security, a federal covered investment adviser, or a
14 security or transaction exempted by section -201, -202, or
15 -203, except as required pursuant to section -201(7).

16 **§ -505 Misleading filings.** It shall be unlawful for a
17 person to make or cause to be made, in a record that is used in
18 an action or proceeding or filed under this chapter, a statement
19 that, at the time and in light of the circumstances under which
20 it is made, is false or misleading in a material respect, or, in
21 connection with the statement, to fail to state a material fact



1 necessary to make the statement made, in light of the
2 circumstances under which it was made, not false or misleading.

3 **§ -506 Misrepresentations concerning registration or**
4 **exemption.** (a) The filing of an application for registration,
5 a registration statement, a notice filing under this chapter,
6 the registration of a person, the notice filing by a person, or
7 the registration of a security under this chapter shall not
8 constitute a finding by the commissioner that the record filed
9 under this chapter is true, complete, and not misleading.

10 (b) The filing or registration or the availability of an
11 exemption, exception, preemption, or exclusion for a security or
12 a transaction does not mean that the commissioner has passed
13 upon the merits or qualifications of, or recommended or given
14 approval to, a person, security, or transaction.

15 (c) It shall be unlawful to make, or cause to be made, to
16 a purchaser, customer, client, or prospective customer or
17 client, a representation that is inconsistent with this section.

18 **§ -507 Qualified immunity.** A broker-dealer, agent,
19 investment adviser, federal covered investment adviser, or
20 investment adviser representative shall not be liable to another
21 broker-dealer, agent, investment adviser, federal covered
22 investment adviser, or investment adviser representative for



1 defamation relating to a statement that is contained in a record
2 required by or filed with the commissioner or a designee of the
3 commissioner, the Securities and Exchange Commission, or a
4 self-regulatory organization, unless the person knew, or should
5 have known at the time that the statement was made, that it was
6 false in a material respect or the person acted in reckless
7 disregard of the statement's truth or falsity.

8 **§ -508 Criminal penalties.** (a) Whoever violates this
9 chapter shall be punished as follows:

- 10 (1) An offense in which the total value of all money and
11 anything else of value paid by or lost by the victims
12 pursuant to the same scheme, plan, or representations,
13 or to the same entity, amounts to under \$5,000 shall
14 be a class C felony;
- 15 (2) An offense in which the total value of all money and
16 anything else of value paid by or lost by the victims
17 pursuant to the same scheme, plan, or representations,
18 or to the same entity, amounts to \$5,000 but less than
19 \$100,000 shall be a class B felony; and
- 20 (3) An offense in which the total value of all money and
21 anything else of value paid or lost by the victims
22 pursuant to the same scheme, plan, or representations,



1 or to the same entity, amounts to \$100,000 or more
2 shall be a class A felony.

3 In addition to the above, whoever violates this chapter shall
4 forfeit to the State any interest or property the person has
5 acquired or maintained in violation of this chapter and any
6 interest in, security of, claim against, or property or
7 contractual right of any kind affording a source of influence
8 over any enterprise which the person has established, operated,
9 controlled, conducted, or participated in the conduct of, in
10 violation of this chapter.

11 (b) The value of all money and anything else of value paid
12 or lost by various victims pursuant to the same scheme, plan, or
13 representations or to the same entity may be aggregated in
14 determining the class or grade of the offense.

15 (c) Upon conviction of a person under this chapter, the
16 circuit court shall authorize the county attorney or prosecutor,
17 or the attorney general, to seize all property or other interest
18 declared forfeited under this chapter upon such terms and
19 conditions as the court shall deem proper. The State shall
20 dispose of all property or other interest seized under this
21 chapter as soon as feasible making due provision for the rights
22 of innocent persons. If a property right or other interest is



1 not exercisable or transferable for value by the State, it shall
2 not revert to the convicted person and the commissioner shall
3 dispose of the property as deemed proper by the commissioner.

4 (d) Notwithstanding any other law to the contrary, a
5 person convicted of a felony under this chapter who has a prior
6 conviction for a felony under this chapter or a prior conviction
7 for a crime which would constitute a felony under this chapter
8 shall be sentenced to a mandatory minimum period of imprisonment
9 of one year without possibility of parole. Nothing in this
10 subsection shall be construed to in any way limit the maximum
11 term of imprisonment imposed pursuant to chapter 706.

12 (e) Notwithstanding any other law to the contrary, the
13 following period of limitations shall apply to prosecutions for
14 felony violations of this chapter:

15 (1) Prosecution for a felony under this chapter shall be
16 commenced within five years after the offense is
17 committed; and

18 (2) If the period prescribed in paragraph (1) has expired,
19 prosecution for a felony under this chapter may be
20 commenced within two years after the discovery of the
21 offense by an aggrieved party who is not a party to



1 the offense, but in no event more than seven years
2 after the offense is committed.

3 (f) The attorney general or the proper county attorney or
4 prosecutor, may institute criminal proceedings with or without a
5 referral from the commissioner under this chapter.

6 (g) This chapter shall not limit the power of the State to
7 punish a person for conduct that constitutes a crime under other
8 laws of the State.

9 **§ -509 Civil liability.** (a) Enforcement of civil
10 liability under this section shall be subject to the Securities
11 Litigation Uniform Standards Act of 1998.

12 (b) A person is liable to the purchaser if the person
13 sells a security in violation of section -301 or, by means of
14 an untrue statement of a material fact or an omission of a
15 material fact necessary to make the statement made, in light of
16 the circumstances under which it is made, not misleading, the
17 purchaser not knowing the untruth or omission and the seller not
18 sustaining the burden of proof that the seller did not know and,
19 in the exercise of reasonable care, could not have known of the
20 untruth or omission. An action under this subsection shall be
21 governed by the following:



1 (1) The purchaser may maintain an action to recover the
2 consideration paid for the security, less the amount
3 of any income received on the security, and interest
4 at the legal rate of interest, from the date of the
5 purchase, costs, and reasonable attorney's fees
6 determined by the court, upon the tender of the
7 security, or for actual damages as provided in
8 paragraph (3);

9 (2) The tender referred to in paragraph (1) may be made
10 any time before entry of judgment. Tender requires
11 only notice in a record of ownership of the security
12 and willingness to exchange the security for the
13 amount specified. A purchaser that no longer owns the
14 security may recover actual damages as provided in
15 paragraph (3); and

16 (3) Actual damages in an action arising under this
17 subsection are the amount that would be recoverable
18 upon a tender less the value of the security when the
19 purchaser disposed of it, and interest at the legal
20 rate of interest, from the date of the purchase,
21 costs, and reasonable attorney's fees determined by
22 the court.



1 (c) A person shall be liable to the seller if the person
2 buys a security by means of an untrue statement of a material
3 fact or omission of a material fact necessary to make the
4 statement made, in light of the circumstances under which it is
5 made, not misleading, the seller not knowing of the untruth or
6 omission, and the purchaser not sustaining the burden of proof
7 that the purchaser did not know, and in the exercise of
8 reasonable care, could not have known of the untruth or
9 omission. An action under this subsection shall be governed by
10 the following:

- 11 (1) The seller may maintain an action to recover the
12 security, and any income received on the security,
13 costs, and reasonable attorney's fees determined by
14 the court, upon the tender of the purchase price, or
15 for actual damages as provided in paragraph (3);
- 16 (2) The tender referred to in paragraph (1) may be made
17 any time before entry of judgment. Tender requires
18 only notice in a record of the present ability to pay
19 the amount tendered and willingness to take delivery
20 of the security for the amount specified. If the
21 purchaser no longer owns the security, the seller may



1 recover actual damages as provided in paragraph (3);

2 and

3 (3) Actual damages in an action arising under this
4 subsection are the difference between the price at
5 which the security was sold and the value the security
6 would have had at the time of the sale in the absence
7 of the purchaser's conduct causing liability, and
8 interest at the legal rate of interest, from the date
9 of the sale of the security, costs, and reasonable
10 attorney's fees determined by the court.

11 (d) A person acting as a broker-dealer or agent that sells
12 or buys a security in violation of section -401(a),
13 -402(a), or -506 shall be liable to the customer. The
14 customer, if a purchaser, may maintain an action for recovery of
15 actual damages as specified in subsection (b), or, if a seller,
16 for a remedy as specified in subsection (c).

17 (e) A person acting as an investment adviser or investment
18 adviser representative that provides investment advice for
19 compensation in violation of section -403(a), -404(a), or
20 -506 shall be liable to the client. The client may maintain
21 an action to recover the consideration paid for the advice,
22 interest at the legal rate of interest, from the date of



1 payment, costs, and reasonable attorney's fees determined by the
2 court.

3 (f) A person that receives directly or indirectly any
4 consideration for providing investment advice to another person
5 and that employs a device, scheme, or artifice to defraud the
6 other person or engages in an act, practice, or course of
7 business that operates or would operate as a fraud or deceit on
8 the other person, shall be liable to the other person. An
9 action under this subsection shall be governed by the following:

10 (1) The person defrauded may maintain an action to recover
11 the consideration paid for the advice and the amount
12 of any actual damages caused by the fraudulent
13 conduct, interest at the legal rate of interest from
14 the date of the fraudulent conduct, costs, and
15 reasonable attorney's fees determined by the court,
16 less the amount of any income received as a result of
17 the fraudulent conduct; and

18 (2) This subsection shall not apply to a broker-dealer or
19 its agents if the investment advice provided is solely
20 incidental to transacting business as a broker-dealer
21 and no special compensation is received for the
22 investment advice.



1 (g) The following persons are liable jointly and severally
2 with and to the same extent as persons liable under subsections
3 (b) to (f):

4 (1) A person that directly or indirectly controls a person
5 liable under subsections (b) to (f), unless the
6 controlling person sustains the burden of proof that
7 the person did not know, and in the exercise of
8 reasonable care could not have known, of the existence
9 of conduct by reason of which the liability is alleged
10 to exist;

11 (2) An individual who is a managing partner, executive
12 officer, or director of a person liable under
13 subsections (b) to (f), including an individual having
14 a similar status or performing similar functions,
15 unless the individual sustains the burden of proof
16 that the individual did not know and, in the exercise
17 of reasonable care could not have known, of the
18 existence of conduct by reason of which the liability
19 is alleged to exist;

20 (3) An individual who is an employee of or associated with
21 a person liable under subsections (b) to (f) and who
22 materially aids the conduct giving rise to the



1 liability, unless the individual sustains the burden
2 of proof that the individual did not know and, in the
3 exercise of reasonable care could not have known, of
4 the existence of conduct by reason of which the
5 liability is alleged to exist; and

6 (4) A person that is a broker-dealer, agent, investment
7 adviser, or investment adviser representative that
8 materially aids the conduct giving rise to the
9 liability under subsections (b) to (f), unless the
10 person sustains the burden of proof that the person
11 did not know and, in the exercise of reasonable care
12 could not have known, of the existence of conduct by
13 reason of which liability is alleged to exist.

14 (h) Person liable under this section has a right of
15 contribution as in cases of contract against any other person
16 liable under this section for the same conduct.

17 (i) A cause of action under this section survives the
18 death of an individual who might have been a plaintiff or
19 defendant.

20 (j) A person may not obtain relief:

21 (1) Under subsection (b) for violation of section -301,
22 or under subsection (d) or (e), unless the action is



1 instituted within one year after the violation
2 occurred; or

3 (2) Under subsection (b), other than for violation of
4 section -301, or under subsection (c) or (f),
5 unless the action is instituted within the earlier of
6 two years after discovery of the facts constituting
7 the violation or five years after the violation.

8 (k) A person that has made, or has engaged in the
9 performance of, a contract in violation of this chapter or a
10 rule adopted or order issued under this chapter, or that has
11 acquired a purported right under the contract with knowledge of
12 conduct by reason of which its making or performance was in
13 violation of this chapter, may not base an action on the
14 contract.

15 (1) A condition, stipulation, or provision binding a
16 person purchasing or selling a security or receiving investment
17 advice to waive compliance with this chapter or a rule adopted
18 or order issued under this chapter is void.

19 (m) The rights and remedies provided by this chapter are
20 in addition to any other rights or remedies that may exist.



1 § -510 **Rescission offers.** A purchaser, seller, or
2 recipient of investment advice may not maintain an action under
3 section -509 if:

4 (1) The purchaser, seller, or recipient of investment
5 advice receives in a record, before the action is
6 instituted:

7 (A) An offer stating the respect in which liability
8 under section -509 may have arisen and fairly
9 advising the purchaser, seller, or recipient of
10 investment advice of that person's rights in
11 connection with the offer, and any financial or
12 other information necessary to correct all
13 material misrepresentations or omissions in the
14 information that was required by this chapter to
15 be furnished to that person at the time of the
16 purchase, sale, or investment advice;

17 (B) If the basis for relief under this section may
18 have been a violation of section -509(b), an
19 offer to repurchase the security for cash,
20 payable on delivery of the security, equal to the
21 consideration paid, and interest at the legal
22 rate of interest, from the date of the purchase,



1 less the amount of any income received on the
2 security; or, if the purchaser no longer owns the
3 security, an offer to pay the purchaser upon
4 acceptance of the offer damages in an amount that
5 would be recoverable upon a tender, less the
6 value of the security when the purchaser disposed
7 of it, and interest at the legal rate of
8 interest, from the date of the purchase in cash
9 equal to the damages computed in the manner
10 provided in this subsection;

11 (C) If the basis for relief under this section may
12 have been a violation of section -509(c), an
13 offer to tender the security, on payment by the
14 seller of an amount equal to the purchase price
15 paid, less income received on the security by the
16 purchaser and interest at the legal rate of
17 interest, from the date of the sale; or if the
18 purchaser no longer owns the security, an offer
19 to pay the seller upon acceptance of the offer,
20 in cash, damages in the amount of the difference
21 between the price at which the security was
22 purchased and the value the security would have



1 had at the time of the purchase in the absence of
2 the purchaser's conduct that may have caused
3 liability and interest at the legal rate of
4 interest, from the date of the sale;

5 (D) If the basis for relief under this section may
6 have been a violation of section -509(d); and
7 if the customer is a purchaser, an offer to pay
8 as specified in subparagraph (B); or, if the
9 customer is a seller, an offer to tender or to
10 pay as specified in subparagraph (C);

11 (E) If the basis for relief under this section may
12 have been a violation of section -509(e), an
13 offer to reimburse in cash the consideration paid
14 for the advice and interest at the legal rate of
15 interest, from the date of payment; or

16 (F) If the basis for relief under this section may
17 have been a violation of section -509(f), an
18 offer to reimburse in cash the consideration paid
19 for the advice, the amount of any actual damages
20 that may have been caused by the conduct, and
21 interest at the legal rate of interest, from the
22 date of the violation causing the loss;



1 (2) The offer under paragraph (1) states that it must be
2 accepted by the purchaser, seller, or recipient of
3 investment advice within thirty days after the date of
4 its receipt by the purchaser, seller, or recipient of
5 investment advice or any shorter period, of not less
6 than three days, that the commissioner, by order,
7 specifies;

8 (3) The offeror has the present ability to pay the amount
9 offered or to tender the security under paragraph (1);

10 (4) The offer under paragraph (1) is delivered to the
11 purchaser, seller, or recipient of investment advice,
12 or sent in a manner that ensures receipt by the
13 purchaser, seller, or recipient of investment advice;
14 and

15 (5) The purchaser, seller, or recipient of investment
16 advice that accepts the offer under paragraph (1) in a
17 record within the period specified under paragraph (2)
18 is paid in accordance with the terms of the offer.

19 **PART VI. ADMINISTRATION AND JUDICIAL REVIEW**

20 § -601 **Commissioner of securities.** (a) The
21 administration of this chapter shall be vested in the
22 commissioner. The director, with the approval of the governor,



1 shall appoint the commissioner who shall not be subject to
2 chapter 76. The commissioner shall hold the commissioner's
3 office at the pleasure of the director and shall be responsible
4 for the performance of the duties imposed under this chapter.

5 (b) The commissioner shall employ from time to time such
6 other officers, deputies, attorneys, clerks, and employees, as
7 are necessary for the administration of this chapter. They
8 shall perform such duties as the commissioner assigns to them,
9 and their compensation, and the compensation of the deputies
10 herein provided for, shall be fixed by the commissioner with the
11 approval of the governor, subject to chapter 76. The
12 commissioner, deputies, or any person appointed or employed by
13 the commissioner under this subsection shall be paid, in
14 addition to their salary or compensation when required to travel
15 on official duties, the transportation cost, board, lodging, and
16 other traveling expenses necessary and actually incurred by each
17 of them in the performance of the duties required by this
18 chapter or performed by the direction of the commissioner.

19 (c) Notwithstanding any other law to the contrary, the
20 commissioner, by contract, may retain the services of attorneys
21 for the enforcement of this chapter. The attorneys shall serve
22 at the pleasure of the commissioner. At the option of the



1 commissioner, attorneys retained by contract under this
2 subsection may be compensated on a fixed-price basis, an hourly
3 rate basis, with or without a fixed cap, or through a contingent
4 fee arrangement to be specified in the contract and payable out
5 of all sums the attorney recovers for the State by judgment,
6 order, or settlement.

7 (d) Upon the filing of the application for registration of
8 securities as provided in section -302 or -303, the
9 applicant, in writing, may request that the registration be
10 reviewed by a private consultant and, when requested, the
11 commissioner may contract with private consultants for such
12 review. The cost of the review shall be borne by the applicant;
13 provided that upon payment of the cost of review, the applicant
14 shall be reimbursed one-half of the respective filing fee.

15 (e) The governor shall cause the commissioner to be
16 furnished with such quarters, stationery, furniture, office
17 equipment, and other supplies as may be necessary for the
18 efficient execution of the functions vested in the commissioner
19 by this chapter.

20 (f) The commissioner shall report to the governor annually
21 upon a date as the governor shall establish. The report shall
22 contain an account of the work of the commissioner during the



1 period covered and data and information deemed necessary or
2 appropriate.

3 (g) The commissioner may develop and implement investor
4 education initiatives to inform the public about investing in
5 securities, with particular emphasis on the prevention and
6 detection of securities fraud. In developing and implementing
7 these initiatives, the commissioner may collaborate with public
8 and nonprofit organizations with an interest in investor
9 education. The commissioner may accept a grant or donation from
10 a person that is not affiliated with the securities industry or
11 from a nonprofit organization, regardless of whether the
12 organization is affiliated with the securities industry, to
13 develop and implement investor education initiatives.

14 (h) It shall be unlawful for the commissioner or an
15 officer, employee, or designee of the commissioner to use for
16 personal benefit or the benefit of others records or other
17 information obtained by or filed with the commissioner that are
18 not public under section -607(b). This chapter does not
19 authorize the commissioner or an officer, employee, or designee
20 of the commissioner to disclose the record or information,
21 except in accordance with section -602, -607(c), or
22 -608.



1 § -602 Investigations and subpoenas. (a) The

2 commissioner may:

3 (1) Conduct public or private investigations within or
4 outside of this State which the commissioner considers
5 necessary or appropriate to determine whether a person
6 has violated, is violating, or is about to violate
7 this chapter or a rule adopted or order issued under
8 this chapter, or to aid in the enforcement of this
9 chapter or in the adoption of rules and forms under
10 this chapter;

11 (2) Require or permit a person to testify, file a
12 statement, or produce a record, under oath or
13 otherwise as the commissioner determines, as to all
14 the facts and circumstances concerning a matter to be
15 investigated or about which an action or proceeding is
16 to be instituted; and

17 (3) Publish a record concerning an action, proceeding, or
18 an investigation under, or a violation of, this
19 chapter or a rule adopted or order issued under this
20 chapter if the commissioner determines it is necessary
21 or appropriate in the public interest and for the
22 protection of investors.



1 (b) For the purpose of an investigation under this
2 chapter, the commissioner or its designee may administer oaths
3 and affirmations, subpoena witnesses, seek compulsion of
4 attendance, take evidence, require the filing of statements, and
5 require the production of any records that the commissioner
6 considers relevant or material to the investigation.

7 (c) If a person does not appear or refuses to testify,
8 file a statement, produce records, or otherwise does not obey a
9 subpoena as required by the commissioner under this chapter, the
10 commissioner may apply to a court of competent jurisdiction to
11 enforce compliance. The court may:

- 12 (1) Hold the person in contempt;
- 13 (2) Order the person to appear before the commissioner;
- 14 (3) Order the person to testify about the matter under
15 investigation or in question;
- 16 (4) Order the production of records;
- 17 (5) Grant injunctive relief, including restricting or
18 prohibiting the offer or sale of securities or the
19 providing of investment advice;
- 20 (6) Impose a civil penalty not greater than \$100,000 for
21 each violation; and
- 22 (7) Grant any other necessary or appropriate relief.



1 (d) This section shall not preclude a person from applying
2 to a court of competent jurisdiction for relief from a request
3 to appear, testify, file a statement, produce records, or obey a
4 subpoena.

5 (e) An individual shall not be excused from attending,
6 testifying, filing a statement, producing a record or other
7 evidence, or obeying a subpoena of the commissioner under this
8 chapter or in an action or proceeding instituted by the
9 commissioner under this chapter on the ground that the required
10 testimony, statement, record, or other evidence, directly or
11 indirectly, may tend to incriminate the individual or subject
12 the individual to a criminal fine, penalty, or forfeiture. If
13 the individual refuses to testify, file a statement, or produce
14 a record or other evidence on the basis of the individual's
15 privilege against self-incrimination, the commissioner may apply
16 to a court of competent jurisdiction to compel the testimony,
17 the filing of the statement, the production of the record, or
18 the giving of other evidence. The testimony, record, or other
19 evidence compelled under such an order may not be used, directly
20 or indirectly, against the individual in a criminal case, except
21 in a prosecution for perjury or contempt or otherwise failing to
22 comply with the order.



1 (f) At the request of the securities regulator of another
2 state or a foreign jurisdiction, the commissioner may provide
3 assistance if the requesting regulator states that it is
4 conducting an investigation to determine whether a person has
5 violated, is violating, or is about to violate a law or rule of
6 the other state or foreign jurisdiction relating to securities
7 matters that the requesting regulator administers or enforces.
8 The commissioner may provide the assistance by using the
9 authority to investigate and the powers conferred by this
10 chapter as the commissioner determines is necessary or
11 appropriate. The assistance may be provided without regard to
12 whether the conduct described in the request would also
13 constitute a violation of this chapter or other law of this
14 State if occurring in this State. In deciding whether to
15 provide the assistance, the commissioner may consider whether
16 the requesting regulator is permitted and has agreed to provide
17 assistance reciprocally within its state or foreign jurisdiction
18 to the commissioner when requested; whether compliance with the
19 request would violate or prejudice the public policy of this
20 State; and the availability of resources and employees of the
21 commissioner to carry out the request for assistance.



1 (g) The commissioner shall, in its discretion, cooperate,
2 coordinate, consult, and, subject to section -607, share
3 records and information with the securities regulator of another
4 state, a foreign jurisdiction, the Securities and Exchange
5 Commission, the Department of Justice, the Commodity Futures
6 Trading Commission, the Federal Trade Commission, the Securities
7 Investor Protection Corporation, a self-regulatory organization,
8 a national or international organization of securities
9 regulators, a federal or state banking and insurance regulator,
10 and any other governmental law enforcement agency among the
11 federal government, self-regulatory organizations, states, and
12 foreign governments. Chapter 92F shall apply to records and
13 information.

14 **§ -603 Civil enforcement.** (a) If the commissioner
15 believes that a person has engaged, is engaging, or is about to
16 engage in an act, practice, or course of business constituting a
17 violation of this chapter or a rule adopted or order issued
18 under this chapter or that a person has, is, or is about to
19 engage in an act, practice, or course of business that
20 materially aids a violation of this chapter or a rule adopted or
21 order issued under this chapter, the commissioner may maintain
22 an action in a court of competent jurisdiction to enjoin the



1 act, practice, or course of business, and to enforce compliance
2 with this chapter or a rule adopted or order issued under this
3 chapter.

4 (b) In an action under this section and on a proper
5 showing, the court may:

6 (1) Issue a permanent or temporary injunction, restraining
7 order, or declaratory judgment;

8 (2) Order other appropriate or ancillary relief, which may
9 include:

10 (A) An asset freeze, accounting, writ of attachment,
11 writ of general or specific execution, and
12 appointment of a receiver or conservator, that
13 may be the commissioner, for the defendant or the
14 defendant's assets;

15 (B) Ordering the commissioner to take charge and
16 control of a defendant's property, including
17 investment accounts and accounts in a depository
18 institution, rents, and profits; to collect
19 debts; and to acquire and dispose of property;

20 (C) Imposing a civil penalty up to \$50,000 for a
21 single violation;



1 (D) Ordering rescission, restitution, or disgorgement
2 directed to a person that has engaged in an act,
3 practice, or course of business constituting a
4 violation of this chapter or the predecessor act
5 or a rule adopted or order issued under this
6 chapter or the predecessor act; and

7 (E) The payment of prejudgment and postjudgment
8 interest;

9 (3) Order the payment of costs and reasonable attorney's
10 fees; and

11 (4) Order such other relief as the court considers
12 appropriate.

13 (c) The commissioner shall not be required to post a bond
14 in an action or proceeding under this chapter.

15 (d) In an action under this section, the commissioner may
16 apply for and on due showing be entitled to have issued by the
17 court, a subpoena requiring forthwith the appearance of any
18 defendant and the defendant's employees, salespersons, or agents
19 and the production of documents, books, and records as may
20 appear necessary for the hearing of such petition to testify and
21 give evidence concerning the acts or conduct or things
22 complained of in the application for the injunction.



1 **§ -604 Administrative enforcement.** (a) If the
2 commissioner determines that a person has engaged, is engaging,
3 or is about to engage in an act, practice, or course of business
4 constituting a violation of this chapter or a rule adopted or
5 order issued under this chapter or that a person has materially
6 aided, is materially aiding, or is about to materially aid an
7 act, practice, or course of business constituting a violation of
8 this chapter or a rule adopted or order issued under this
9 chapter, the commissioner may:

- 10 (1) Issue an order directing the person to cease and
11 desist from engaging in the act, practice, or course
12 of business or to take other action necessary or
13 appropriate to comply with this chapter;
- 14 (2) Issue an order denying, suspending, revoking, or
15 conditioning the exemptions for a broker-dealer under
16 section -401(b)(1)(D) or (F), or for an investment
17 adviser under section -403(b)(1)(C); or
- 18 (3) Issue an order under section -204.

19 (b) An order under subsection (a) shall be effective on
20 the date of issuance. Upon issuance of the order, the
21 commissioner shall promptly serve each person subject to the
22 order with a copy of the order. The order shall include a



1 statement of any civil penalty or costs of investigation the
2 commissioner will seek, a statement of the reasons for the
3 order, and notice that, within fifteen days after receipt of a
4 request in a record from the person, the matter shall be
5 scheduled for a hearing in accordance with chapter 91. The
6 order may include rescission, restitution, or disgorgement
7 directed to a person that has engaged in an act, practice, or
8 course of business constituting a violation of this chapter or
9 the predecessor act or a rule adopted or order issued under this
10 chapter or the predecessor act. If a person subject to the
11 order does not request a hearing and none is ordered by the
12 commissioner within thirty days after the date of service of the
13 order, the order, including the imposition of a civil penalty or
14 requirement for payment of the costs of investigation sought in
15 a statement in the order, becomes final as to that person by
16 operation of law. If a hearing is requested or ordered, the
17 commissioner, after notice of and opportunity for hearing to
18 each person subject to the order, may modify or vacate the order
19 or extend it until a final determination is made. During the
20 pendency of any hearing requested under this subsection, the
21 cease and desist order shall remain in effect unless vacated or



1 modified by the commissioner; provided that any penalty shall
2 not take effect until the final order is issued.

3 (c) If a hearing is requested or ordered pursuant to
4 subsection (b), a hearing shall be held pursuant to chapter 91.
5 A final order may not be issued unless the commissioner makes
6 findings of fact and conclusions of law in a record in
7 accordance with chapter 91. The final order may make final,
8 vacate, or modify the order issued under subsection (a).

9 (d) In a final order under subsection (c), the
10 commissioner may impose a civil penalty of not more than \$50,000
11 for each violation. The order may include rescission,
12 restitution, or disgorgement directed to a person that has
13 engaged in an act, practice, or course of business constituting
14 a violation of this chapter or the predecessor act or a rule
15 adopted or order issued under this chapter or the predecessor
16 act.

17 (e) In a final order, the commissioner may charge the
18 actual cost of an investigation or proceeding for a violation of
19 this chapter or a rule adopted or order issued under this
20 chapter.

21 (f) If a petition for judicial review of a final order is
22 not filed in accordance with section -609, the commissioner



1 may file a certified copy of the final order with the clerk of a
2 court of competent jurisdiction. The order so filed has the
3 same effect as a judgment of the court and may be recorded,
4 enforced, or satisfied in the same manner as a judgment of the
5 court.

6 (g) If a person does not comply with an order under this
7 section, the commissioner may petition a court of competent
8 jurisdiction to enforce the order. If the court finds, after
9 service and opportunity for hearing, that the person was not in
10 compliance with the commissioner's order, the court may find the
11 person in civil contempt of the order. The court may impose a
12 further civil penalty against the person for contempt in an
13 amount not to exceed \$2,000 for each violation and may grant any
14 other relief the court determines is just and proper in the
15 circumstances.

16 § -605 **Venue.** Any action brought by the commissioner
17 under this chapter may be brought in any circuit in the State at
18 the commissioner's discretion. Any other action under this
19 chapter shall be brought in the circuit of the plaintiff's
20 residence or in the circuit in which the commissioner has the
21 commissioner's office.



1 § -606 Rules, forms, orders, interpretive opinions, and
2 hearings. (a) The commissioner may adopt, amend, and repeal,
3 pursuant to chapter 91, such rules as may be necessary to carry
4 out the purposes of this chapter. Notwithstanding this
5 subsection, the commissioner may adopt, amend, and repeal forms
6 and orders necessary to implement this chapter without regard to
7 chapter 91. No form or order shall be adopted, amended, or
8 repealed without regard to chapter 91, unless the commissioner
9 finds that the action is in the public interest, necessary or
10 appropriate for the protection of investors, and consistent with
11 the purposes of this chapter.

12 (b) Subject to Section 15(h) of the Securities Exchange
13 Act (15 U.S.C. 780) and Section 222 of the Investment Advisers
14 Act of 1940 (15 U.S.C. 806-18a), the commissioner may require
15 that a financial statement filed under this chapter be prepared
16 in accordance with generally accepted accounting principles in
17 the United States and comply with other requirements specified
18 by rule adopted or order issued under this chapter. A rule
19 adopted or order issued under this chapter may establish:

20 (1) Subject to Section 15(h) of the Securities Exchange
21 Act (15 U.S.C. 780) and Section 222 of the Investment
22 Advisors Act of 1940 (15 U.S.C. 806-18a), the form and



1 content of financial statements required under this
2 chapter;

3 (2) Whether unconsolidated financial statements must be
4 filed; and

5 (3) Whether required financial statements must be audited
6 by an independent certified public accountant.

7 (c) The commissioner may provide interpretative opinions
8 or issue determinations that the commissioner will not institute
9 a proceeding or an action under this chapter against a specified
10 person for engaging in a specified act, practice, or course of
11 business if the determination is consistent with this chapter.
12 A rule adopted or order issued under this chapter may establish
13 a reasonable charge for interpretative opinions or
14 determinations that the commissioner will not institute an
15 action or a proceeding under this chapter.

16 (d) A hearing in an administrative proceeding under this
17 chapter shall be conducted in public unless the commissioner for
18 good cause consistent with this chapter determines that the
19 hearing will not be so conducted.

20 **§ -607 Administrative files and opinions.** (a) The
21 commissioner shall maintain, or designate a person to maintain,
22 a register of applications for registration of securities;



1 registration statements; notice filings; applications for
2 registration of broker-dealers, agents, investment advisers, and
3 investment adviser representatives; notice filings by federal
4 covered investment advisers that are or have been effective
5 under this chapter or the predecessor act; notices of claims of
6 exemption from registration or notice filing requirements
7 contained in a record; orders issued under this chapter or the
8 predecessor act; and interpretative opinions or no action
9 determinations issued under this chapter.

10 (b) The commissioner shall make all rules, forms,
11 interpretative opinions, and orders available to the public in
12 accordance with chapter 92F.

13 (c) The commissioner shall furnish a copy of a record that
14 is a public record or a certification that the public record
15 does not exist to a person that so requests in accordance with
16 chapter 92F. A copy of the record certified or a certificate by
17 the commissioner of a record's nonexistence is prima facie
18 evidence of a record or its nonexistence.

19 **§ -608 Public records; confidentiality.** (a) Except as
20 otherwise provided in subsection (b) or chapter 92F, records
21 obtained by the commissioner or filed under this chapter,
22 including a record contained in or filed with a registration



1 statement, application, notice filing, or report, are public
2 records and are available for public examination.

3 (b) The following records are not public records and are
4 not available for public examination under subsection (a):

5 (1) A record obtained by the commissioner in connection
6 with an audit or inspection under section -411(d)
7 or an investigation under section -602;

8 (2) A part of a record filed in connection with a
9 registration statement under sections -301 and
10 -303 to -305, or a record under section
11 -411(c) that contains trade secrets or confidential
12 information if the person filing the registration
13 statement or report has asserted a claim of
14 confidentiality or privilege that is authorized by
15 law;

16 (3) A record that is not required to be provided to the
17 commissioner or filed under this chapter and is
18 provided to the commissioner only on the condition
19 that the record will not be subject to public
20 examination or disclosure;

21 (4) A nonpublic record received from a person specified in
22 section -602(g);



1 (5) Any social security number, residential address unless
2 used as a business address, and residential telephone
3 number unless used as a business telephone number,
4 contained in a record that is filed; and

5 (6) A record obtained by the commissioner through a
6 designee of the commissioner that a rule or order
7 under this chapter determines has been:

8 (A) Expunged from the commissioner's records by the
9 designee; or

10 (B) Determined to be nonpublic or nondisclosable by
11 that designee if the commissioner finds the
12 determination to be in the public interest and
13 for the protection of investors.

14 (c) If disclosure is for the purpose of a civil,
15 administrative, or criminal investigation, action, or proceeding
16 or to a person specified in section -602(g), the commissioner
17 may disclose a record obtained in connection with an audit or
18 inspection under section -411(d) or a record obtained in
19 connection with an investigation under section -602.

20 **§ -609 Appeals to court, first circuit; time; bonds;**
21 **costs; decree; further appeal.** (a) An appeal may be taken by
22 any aggrieved person from any final order of the commissioner to



1 the circuit court of the first circuit in the manner provided in
2 chapter 91. The appellant shall execute a bond in the penal sum
3 of \$1,000 to the State, with sufficient surety, to be approved
4 by the commissioner or the court, conditioned upon the faithful
5 prosecution of the appeal to final judgment, and the payment of
6 all such costs as shall be adjudged against the appellant.

7 (b) The appeal shall be conducted without a jury and
8 confined to the record, and it may be given precedence by the
9 court over other matters pending in the court.

10 (c) If the order of the commissioner is reversed the court
11 shall by its mandate specifically direct the commissioner as to
12 the commissioner's further action in the matter, including the
13 making and entering of any order or orders in connection
14 therewith, and the conditions, limitations, or restrictions to
15 be therein contained; provided that the commissioner shall not
16 thereby be barred from thereafter revoking or altering the order
17 for any proper cause which may thereafter accrue or be
18 discovered.

19 (d) If the order is affirmed, the appellant shall not be
20 barred after thirty days from filing a new application; provided
21 the application is not otherwise barred or limited.



1 (e) The appeal shall not in any way suspend the operation
2 of the order appealed from during the pendency of the appeal
3 unless upon proper order of the commissioner or the court.

4 (f) An appeal may be taken from the decree of the circuit
5 court to the supreme court.

6 **§ -610 Service of process.** (a) A consent to service of
7 process complying with this section shall be signed and filed in
8 the form required by a rule or order under this chapter. A
9 consent appointing the commissioner the person's agent for
10 service of process in a noncriminal action or proceeding against
11 the person, or the person's successor or personal representative
12 under this chapter or a rule adopted or order issued under this
13 chapter after the consent is filed, has the same force and
14 validity as if the service were made personally on the person
15 filing the consent. A person that has filed a consent complying
16 with this subsection in connection with a previous application
17 for registration or notice filing need not file an additional
18 consent.

19 (b) If a person, including a nonresident of this State,
20 engages in an act, practice, or course of business prohibited or
21 made actionable by this chapter or a rule adopted or order
22 issued under this chapter and the person has not filed a consent



1 to service of process under subsection (a), the act, practice,
2 or course of business constitutes the appointment of the
3 commissioner as the person's agent for service of process in a
4 noncriminal action or proceeding against the person or the
5 person's successor or personal representative.

6 (c) Service under subsection (a) or (b) may be made by
7 providing a copy of the process to the office of the
8 commissioner; provided that it shall not be effective unless:

9 (1) The plaintiff, which may be the commissioner, promptly
10 sends notice of the service and a copy of the process,
11 return receipt requested, to the defendant or
12 respondent at the address set forth in the consent to
13 service of process or, if a consent to service of
14 process has not been filed, at the last known address,
15 or takes other reasonable steps to give notice; and

16 (2) The plaintiff files an affidavit of compliance with
17 this subsection in the action or proceeding on or
18 before the return day of the process, if any, or
19 within the time that the court, or the commissioner in
20 a proceeding before the commissioner, allows.



1 (d) Service pursuant to subsection (c) may be used in a
2 proceeding before the commissioner or by the commissioner in a
3 civil action in which the commissioner is the moving party.

4 (e) If process is served under subsection (c), the court,
5 or the commissioner in a proceeding before the commissioner,
6 shall order continuances as are necessary or appropriate to
7 afford the defendant or respondent reasonable opportunity to
8 defend.

9 (f) If any process or pleadings mentioned in this chapter
10 are served upon the commissioner, it shall be by duplicate
11 copies, one of which shall be filed in the office of the
12 commissioner and another immediately forwarded by the
13 commissioner by registered mail to the principal office of the
14 issuer against which the process or pleadings are directed.

15 **PART VII. TRANSITION**

16 **§ -701 Application of act to existing proceeding and**
17 **existing rights and duties.** (a) The predecessor act
18 exclusively governs all actions or proceedings that are pending
19 on the effective date of this chapter or may be instituted on
20 the basis of conduct occurring before the effective date of this
21 chapter; provided that a civil action may not be maintained to
22 enforce any liability under the predecessor act unless



1 instituted within any period of limitation that applied when the
2 cause of action accrued or within five years after the effective
3 date of this chapter, whichever is earlier.

4 (b) All effective registrations under the predecessor act,
5 all administrative orders relating to the registrations, rules,
6 statements of policy, interpretative opinions, declaratory
7 rulings, no-action determinations, and conditions imposed on the
8 registrations under the predecessor act shall remain in effect
9 for the period that they would have remained in effect if this
10 chapter had not been enacted. The registration orders, rules,
11 statements, opinions, rulings, determinations, and conditions,
12 shall be deemed to have been filed, issued, or imposed under
13 this chapter, but shall be exclusively governed by the
14 predecessor act."

15 SECTION 2. Section 26-9, Hawaii Revised Statutes, is
16 amended by amending subsection (o) to read as follows:

17 "(o) Every person licensed under any chapter within the
18 jurisdiction of the department of commerce and consumer affairs
19 and every person licensed subject to chapter [485] _____ or
20 registered under chapter 467B shall pay upon issuance of a
21 license, permit, certificate, or registration a fee and a
22 subsequent annual fee to be determined by the director and



1 adjusted from time to time to ensure that the proceeds, together
2 with all other fines, income, and penalties collected under this
3 section, do not surpass the annual operating costs of conducting
4 compliance resolution activities required under this section.
5 The fees may be collected biennially or pursuant to rules
6 adopted under chapter 91, and shall be deposited into the
7 special fund established under this subsection. Every filing
8 pursuant to chapter 514E or section [~~485-6(15)~~] -202(26)
9 shall be assessed, upon initial filing and at each renewal
10 period in which a renewal is required, a fee that shall be
11 prescribed by rules adopted under chapter 91, and that shall be
12 deposited into the special fund established under this
13 subsection. Any unpaid fee shall be paid by the licensed
14 person, upon application for renewal, restoration, reactivation,
15 or reinstatement of a license, and by the person responsible for
16 the renewal, restoration, reactivation, or reinstatement of a
17 license, upon the application for renewal, restoration,
18 reactivation, or reinstatement of the license. If the fees are
19 not paid, the director may deny renewal, restoration,
20 reactivation, or reinstatement of the license. The director may
21 establish, increase, decrease, or repeal the fees when necessary



1 pursuant to rules adopted under chapter 91. The director may
2 also increase or decrease the fees pursuant to section 92-28.

3 There is created in the state treasury a special fund to be
4 known as the compliance resolution fund to be expended by the
5 director's designated representatives as provided by this
6 subsection. Notwithstanding any law to the contrary, all
7 revenues, fees, and fines collected by the department shall be
8 deposited into the compliance resolution fund. Unencumbered
9 balances existing on June 30, 1999, in the cable television fund
10 under chapter 440G, the division of consumer advocacy fund under
11 chapter 269, the financial institution examiners' revolving
12 fund, section 412:2-109, the special handling fund, section
13 414-13, and unencumbered balances existing on June 30, 2002, in
14 the insurance regulation fund, section 431:2-215, shall be
15 deposited into the compliance resolution fund. This provision
16 shall not apply to the drivers education fund underwriters fee,
17 section 431:10C-115, insurance premium taxes and revenues,
18 revenues of the workers' compensation special compensation fund,
19 section 386-151, the captive insurance administrative fund,
20 section 431:19-101.8, the insurance commissioner's education and
21 training fund, section 431:2-214, the medical malpractice
22 patients' compensation fund as administered under section 5 of



1 Act 232, Session Laws of Hawaii 1984, and fees collected for
2 deposit in the office of consumer protection restitution fund,
3 section 487-14, the real estate appraisers fund, section 466K-1,
4 the real estate recovery fund, section 467-16, the real estate
5 education fund, section 467-19, the contractors recovery fund,
6 section 444-26, the contractors education fund, section 444-29,
7 and the condominium management education fund, section 514A-131.
8 Any law to the contrary notwithstanding, the director may use
9 the moneys in the fund to employ, without regard to chapter 76,
10 hearings officers, investigators, attorneys, accountants, and
11 other necessary personnel to implement this subsection. Any law
12 to the contrary notwithstanding, the moneys in the fund shall be
13 used to fund the operations of the department. The moneys in
14 the fund may be used to train personnel as the director deems
15 necessary and for any other activity related to compliance
16 resolution.

17 As used in this subsection, unless otherwise required by
18 the context, "compliance resolution" means a determination of
19 whether:

20 (1) Any licensee or applicant under any chapter subject to
21 the jurisdiction of the department of commerce and
22 consumer affairs has complied with that chapter;



1 (2) Any person subject to chapter [485] _____ has complied
2 with that chapter;

3 (3) Any person submitting any filing required by chapter
4 514E or section [~~485-6(15)~~] _____ -202(26) has complied
5 with chapter 514E or section [~~485-6(15)~~] _____ -202(26);

6 (4) Any person has complied with the prohibitions against
7 unfair and deceptive acts or practices in trade or
8 commerce; or

9 (5) Any person subject to chapter 467B has complied with
10 that chapter;

11 and includes work involved in or supporting the above functions,
12 licensing, or registration of individuals or companies regulated
13 by the department, consumer protection, and other activities of
14 the department.

15 The director shall prepare and submit an annual report to
16 the governor and the legislature on the use of the compliance
17 resolution fund. The report shall describe expenditures made
18 from the fund including non-payroll operating expenses."

19 SECTION 3. Section 26-14.6, Hawaii Revised Statutes, is
20 amended by amending subsection (f) to read as follows:

21 "(f) Effective July 1, 1990, the functions, authority, and
22 obligations, together with the limitations imposed thereon and



1 the privileges and immunities conferred thereby, exercised by a
2 "sheriff", "sheriffs", a "sheriff's deputy", "sheriff's
3 deputies", a "deputy sheriff", "deputy sheriffs", or a "deputy",
4 under sections 21-8, 47-18, 88-51, 105-4, 134-11, 134-51,
5 183D-11, 187A-14, 201G-55, 201G-74, 231-25, 281-108, 281-111,
6 286-52, 286-52.5, 321-1, 322-6, 325-9, 325-80, 353-11, 383-71,
7 438-5, 445-37, 482E-4, [~~485-6,~~] -202, 501-42, 501-171,
8 501-218, 521-78, 578-4, 584-6, 587-33, 603-29, 604-6.2, 606-14,
9 607-2, 607-4, 607-8, 633-8, 634-11, 634-12, 634-21, 634-22,
10 651-33, 651-37, 651-51, 654-2, 655-2, 657-13, 660-16, 666-11,
11 666-21, 803-23, 803-34, 803-35, 804-14, 804-18, 804-41, 805-1,
12 806-71, and 832-23 shall be exercised to the same extent by the
13 department of public safety."

14 SECTION 4. Section 92-28, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "**§92-28 State service fees; increase or decrease of.** Any
17 law to the contrary notwithstanding, the fees or other nontax
18 revenues assessed or charged by any board, commission, or other
19 governmental agency may be increased or decreased by the body in
20 an amount not to exceed fifty per cent of the statutorily
21 assessed fee or nontax revenue, [~~in order~~] to maintain a
22 reasonable relation between the revenues derived from such fee



1 or nontax revenue and the cost or value of services rendered,
2 comparability among fees imposed by the State, or any other
3 purpose which it may deem necessary and reasonable; provided
4 that:

5 (1) The authority to increase or decrease fees or nontax
6 revenues shall be subject to the approval of the
7 governor and extend only to the following: chapters
8 36, 92, 94, 142, 144, 145, 147, 150, 171, 188, 189,
9 231, 269, 271, 321, 338, 373, 412, 414, 414D, 415A,
10 417E, 419, 421, 421C, 421H, 421I, 425, 425E, 428, 431,
11 438, 439, 440, 442, 447, 448, 452, 453, 455, 456, 457,
12 458, 459, 460, 461, 463, 464, 466, 467, 469, 471, 482,
13 482E, [~~485,~~] _____, 501, 502, 505, 572, 574, and 846
14 (part II);

15 (2) The authority to increase or decrease fees or nontax
16 revenues under the chapters listed in paragraph (1)
17 that are established by the department of commerce and
18 consumer affairs shall apply to fees or nontax
19 revenues established by statute or rule;

20 (3) The authority to increase or decrease fees or nontax
21 revenues established by the University of Hawaii under
22 chapters 304, 305, 306, and 308 shall be subject to



1 the approval of the board of regents; provided that
2 the board's approval of any increase or decrease in
3 tuition for regular credit courses shall be preceded
4 by an open public meeting held during or prior to the
5 semester preceding the semester to which the tuition
6 applies;

7 (4) This section shall not apply to judicial fees as may
8 be set by any chapter cited in this section;

9 (5) The authority to increase or decrease fees or nontax
10 revenues pursuant to this section shall be exempt from
11 the public notice and public hearing requirements of
12 chapter 91; and

13 (6) Fees for copies of proposed and final rules and public
14 notices of proposed rulemaking actions under chapter
15 91 shall not exceed 10 cents a page, as required by
16 section 91-2.5."

17 SECTION 5. Section 303-2, Hawaii Revised Statutes, is
18 amended by amending subsection (a) to read as follows:

19 "(a) The department of education and the University of
20 Hawaii, on behalf of any employee of the respective
21 institutions, may enter into a written agreement with any
22 employee to purchase for the employee:



- 1 (1) An annuity contract under section 403(b) of the
2 Internal Revenue Code of 1986, as amended, from an
3 insurer who holds a certificate of authority under
4 section 431:3-201 or certificate of registration of
5 dealer in securities under chapter [~~485~~,] _____, or
6 both, and who complies with the requirements
7 established by the respective institution and agrees
8 to abide by the terms, conditions, rules, or
9 regulations of the respective institution; or
- 10 (2) An annuity contract qualified under section 401(k) of
11 the Internal Revenue Code of 1986, as amended, which
12 provides a nationwide retirement trust for a group of
13 college or university football coaches who, due to the
14 nature of their jobs, change employers frequently."

15 SECTION 6. Section 412:3-210, Hawaii Revised Statutes, is
16 amended by amending subsections (b) and (c) to read as follows:

17 "(b) An application under this section may be filed before
18 or after the applicant's articles of incorporation and bylaws
19 have been approved by the commissioner; provided that the
20 applicant in organization and the proposed financial institution
21 shall not solicit subscriptions for capital stock until the
22 articles of incorporation and bylaws of the proposed financial



1 institution shall have been approved by the commissioner. An
2 applicant in organization seeking approval of a capital stock
3 solicitation shall pay a fee established by the commissioner
4 pursuant to section 412:2-105, and shall file an application
5 which contains the following:

- 6 (1) Information regarding the solicitation plan by which
7 the applicant in organization and the proposed
8 financial institution proposes to conduct the
9 solicitation of subscribers;
- 10 (2) Information regarding the classes of shares,
11 respective quantities of shares for each class, and
12 the subscription price of each class of stock;
- 13 (3) A specimen subscription contract or purchase
14 agreement, suitability certificates and other related
15 documents to be executed by subscribers;
- 16 (4) Any underwriting agreement or other agreement for the
17 purchase or distribution of the capital stock;
- 18 (5) Any escrow agreements or other agreement for the
19 holding of the purchase proceeds of the capital stock;
- 20 (6) Proposed advertising materials;
- 21 (7) If the offer and sale of the capital stock is subject
22 to the Securities Act of 1933 and regulations



1 thereunder, a copy of the registration statement most
2 recently filed with the federal Securities and
3 Exchange Commission or any other notices or other
4 filings in lieu of registration required or permitted
5 by that Act or regulation and any subsequent
6 amendments thereto;

7 (8) If the offer and sale of the capital stock is subject
8 to chapter [~~485-7~~] _____, a copy of the registration or
9 qualification statement most recently filed with the
10 commissioner of securities and any subsequent
11 amendments thereto;

12 (9) If the offer and sale of the capital stock is not
13 subject to the Securities Act of 1933 or chapter
14 [~~485-7~~] _____, whether exempted by law or regulation
15 or otherwise, a copy of the most recent version of any
16 prospectus, offering memorandum, offering circular, or
17 other offering document proposed to be delivered to
18 prospective subscribers to the capital stock, and any
19 subsequent amendments thereto; and

20 (10) Any other information that the commissioner may
21 require.



1 (c) Upon being satisfied that the application for approval
2 of the capital stock solicitation is complete and that the
3 solicitation will not affect the safety or soundness of the
4 proposed financial institution or harm the public interest, the
5 commissioner shall approve the application. The approval shall
6 not constitute a determination that the applicant has complied
7 with chapter [485] _____ or any other state or federal law."

8 SECTION 7. Section 412:5-205.7, Hawaii Revised Statutes,
9 is amended as follows:

10 1. By amending subsections (a) and (b) to read:

11 "(a) With the prior written approval of the commissioner,
12 and subject to the limitations set forth in this section and to
13 any conditions the commissioner may impose, any bank organized
14 under the laws of the State, at the discretion of its board of
15 directors, either directly in any department or division of the
16 bank or through a subsidiary or affiliate of the bank, may
17 engage in the following securities activities and in any related
18 or incidental activity, within the State:

19 (1) Sale or purchase of any security on the order of and
20 for the account of customers, either alone or in
21 conjunction with the rendering of investment advice to



- 1 customers, through the operations, respectively, of a
2 discount or full service brokerage;
- 3 (2) Organization, sponsorship, operation, control, and
4 distribution of one or more investment companies, as
5 defined in section 3 of the Investment Company Act of
6 1940 (15 U.S.C. 80a-3) or in the laws of the
7 jurisdiction in which [+]the[+] investment company
8 operates;
- 9 (3) Provision of portfolio advice to customers;
- 10 (4) Provision of investment and financial advice to
11 government agencies; and
- 12 (5) Service as dealer-manager or financial advisor to
13 corporations, partnerships, or other persons,
14 including but not limited to[-] the provision of
15 valuation advice and opinions with respect to sales or
16 purchases of assets, corporate restructurings,
17 issuances of securities, mergers, and other
18 acquisitions.

19 The exercise of authority conferred in this subsection
20 shall be governed by and comply with chapter [~~485~~] _____ and
21 any securities administrative rules adopted under chapter [~~485-~~]
22 _____. Administration of chapter 485 and any securities



1 administrative rules shall be vested with the commissioner of
2 securities.

3 (b) With the prior written approval of the commissioner,
4 and subject to the limitations set forth in this section and to
5 any conditions the commissioner may impose, any bank organized
6 under the laws of the State, at the discretion of its board of
7 directors, either directly in any department or division of the
8 bank or through a subsidiary or affiliate thereof, may engage in
9 the following securities activities and in any related or
10 incidental activities, in any place outside this State,
11 including any other state of the United States, dependencies or
12 insular possession of the United States, or any foreign
13 countries:

14 (1) Sale or purchase of any security, as defined under
15 applicable law, on the order of and for the account of
16 customers, either alone or in conjunction with the
17 rendering of investment advice to customers, through
18 the operations, respectively, of a discount or full
19 service brokerage;

20 (2) Organization, sponsorship, operation, control, and
21 distribution of one or more investment companies, as
22 defined in section 3 of the Investment Company Act of



- 1 1940 (15 U.S.C. 80a-3) or as otherwise defined under
2 applicable law;
- 3 (3) Provision of portfolio advice to customers;
- 4 (4) Provision of investment and financial advice to
5 government agencies; and
- 6 (5) Service as dealer-manager or financial advisor to
7 corporations, partnerships, or other persons,
8 including but not limited to, the provision of
9 valuation advice and opinions with respect to sales or
10 purchases of assets, corporate restructurings,
11 issuances of securities, mergers, and other
12 acquisitions.

13 The exercise of authority conferred in this subsection
14 shall be governed by and comply with chapter [485] _____ and any
15 securities rules adopted under chapter [485] _____ or the laws
16 and administrative rules of the state, dependency, insular
17 possession, or foreign country applicable to the conduct of such
18 securities activities within that jurisdiction."

19 2. By amending subsection (d) as to read:

20 (d) Upon receipt of the commissioner's approval under this
21 section, the bank or its subsidiary or affiliate shall obtain
22 any necessary approvals required under chapter [485] _____ and



1 any securities administrative rules adopted under chapter [485]
2 _____, or the applicable securities and banking laws of the
3 jurisdiction in which it will be conducting its securities
4 activities."

5 SECTION 8. Section 412:10-502, Hawaii Revised Statutes, is
6 amended by amending subsection (e) to read as follows:

7 "(e) To the extent specified herein, a credit union may
8 invest its own assets in securities that are rated within the
9 four highest grades by a nationally-recognized rating service
10 and which represent ownership of one or more promissory notes,
11 certificates of interest, or participation in such notes, or
12 which are secured by one or more promissory notes, certificates
13 of interest, or participation in such notes, which notes:

14 (1) Are directly secured by a first lien on residential
15 real estate or a residential manufactured home as
16 defined under Title 42 of the United States Code,
17 whether or not such manufactured home is considered
18 real or personal property under state law; and

19 (2) Were originated by a credit union, insurance company,
20 or similar institution which is supervised and
21 examined by a federal or state authority, or by a
22 mortgagee approved by the Secretary of Housing and



1 Urban Development. Notes secured by a lien on a
2 manufactured home may also originate from a credit
3 union approved for insurance by the Secretary of
4 Housing and Urban Development. The total amount
5 invested in such securities by a credit union shall
6 not exceed twenty per cent of its capital and surplus.
7 The term "securities" in this [†]subsection[†] shall have the
8 same meaning as given in chapter [~~485-~~] _____."

9 SECTION 9. Section 417E-1, Hawaii Revised Statutes, is
10 amended by amending the definition of "commissioner" to read as
11 follows:

12 "Commissioner" means the commissioner of securities as
13 provided for in chapter [~~485-~~] _____."

14 SECTION 10. Section 417E-5, Hawaii Revised Statutes, is
15 amended by amending subsection (e) to read as follows:

16 "(e) No offeror shall make a take-over offer or acquire
17 any equity securities in this State pursuant to the take-over
18 offer, at any time when any proceeding by the commissioner is
19 pending against the offeror alleging a violation of any
20 provision of this chapter or chapter [~~485-~~] _____."

21 SECTION 11. Section 417E-6, Hawaii Revised Statutes, is
22 amended by amending subsection (a) to read as follows:



1 "(a) In administering this chapter, the commissioner may
2 exercise all powers granted to the commissioner under chapter
3 [~~485-7~~] _____, which are not inconsistent with this chapter."

4 SECTION 12. Section 417E-11, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "**§417E-11 Application of securities law.** All of the
7 provisions of chapter [~~485-which~~] _____ that are not in
8 conflict with this chapter shall apply to any take-over offer
9 involving a target company in this State."

10 SECTION 13. Section 421C-36, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "~~[§]~~**§421C-36**~~[§]~~ **Exemption of voting stock from**
13 **registration.** Membership stock or membership certificates under
14 section 421C-3(a), or share or membership capital of any
15 association organized under or existing prior to passage of this
16 chapter shall be included as exempt securities under section
17 [~~485-4-~~] _____-201."

18 SECTION 14. Section 431:4-113, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "**§431:4-113 Organization solicitor's license.**
21 Solicitation for sale of securities to members of the public



1 under a solicitation permit shall be made only by individuals
2 registered therefor pursuant to chapter [~~485-~~] _____."

3 SECTION 15. Section 514E-19, Hawaii Revised Statutes, is
4 amended by amending subsection (c) to read as follows:

5 "(c) A time share interest in any time share plan which
6 satisfies the escrow and blanket lien protection requirements of
7 this chapter shall not be deemed a risk capital security under
8 chapter [~~485-~~] _____, and the offer or sale of a time share
9 interest therein shall not be deemed the offer or sale of a
10 security."

11 SECTION 16. Section 806-83, Hawaii Revised Statutes, is
12 amended by amending subsection (a) to read as follows:

13 "(a) Criminal charges may be instituted by written
14 information for a felony when the charge is a class C felony
15 under section 19-3.5 (voter fraud); section 128D-10 (knowing
16 releases); section 132D-14(1), (2)(a), and (3), (penalties for
17 failure to comply with requirements of sections 132D-7, 132D-10
18 and 132D-16); section 134-6 (carrying or use of firearm in the
19 commission of a separate felony); section 134-7(a) and (b)
20 (ownership or possession prohibited); section 134-8 (prohibited
21 ownership); section 134-9 (licenses to carry); section 134-17(a)
22 (relating to false information or evidence concerning



1 psychiatric or criminal history); section 134-51 (deadly
2 weapons); section 134-52 (switchblade knives); section 134-53
3 (butterfly knives); section 188-23 (possession or use of
4 explosives, electrofishing devices, and poisonous substances in
5 state waters prohibited); section 231-34 (attempt to evade or
6 defeat tax); section 231-36 (false and fraudulent statements);
7 section 245-37 (sale or purchase of packages of cigarettes
8 without stamps); section 245-38 (vending unstamped cigarettes);
9 section 245-51 (sale of export cigarettes prohibited); section
10 245-52 (alteration of packaging prohibited); section 291C-12.5
11 (accidents involving substantial bodily injury); section
12 291E-61.5 (habitually operating a vehicle under the influence of
13 an intoxicant); section 329-41 (prohibited acts B); section
14 329-42 (prohibited acts C); section 329-43.5 (prohibited acts
15 related to drug paraphernalia); section 329C-2 (manufacture,
16 distribution, or possession with intent to distribute an
17 imitation controlled substance to a person under eighteen years
18 of age); section 346-34(d)(2) and (e) (fraud involving food
19 stamps or coupons with a value exceeding \$300); section 346-43.5
20 (medical assistance fraud); section 383-141 (falsely obtaining
21 benefits); section 431:10C-307.7 (insurance fraud); section
22 482D-7 (violation of fineness standards and stamping



1 requirements); section [~~485-8 (registration of securities);~~]
2 -301 (registration of securities); section [~~485-14~~
3 ~~(registration of dealers, investment advisers, salespersons, and~~
4 ~~investment adviser representatives);~~] -401 (registration of
5 broker-dealers); section -402 (registration of agents);
6 section -403 (registration of investment advisors); section
7 -404 (registration of investment advisor representatives);
8 section -405 (registration of federal covered investment
9 advisors); section [~~485-25 (fraudulent and other prohibited~~
10 ~~practices);~~] -501 (general fraud); section -502
11 (prohibited conduct in providing investment advice); section
12 707-703 (negligent homicide in the second degree); section
13 707-705 (negligent injury in the first degree); section 707-711
14 (assault in the second degree); section 707-713 (reckless
15 endangering in the first degree); section 707-721 (unlawful
16 imprisonment in the first degree); section 707-726 (custodial
17 interference in the first degree); section 707-757 (electronic
18 enticement of a child in the second degree); section 707-766
19 (extortion in the second degree); section 708-811 (burglary in
20 the second degree); section 708-821 (criminal property damage in
21 the second degree); section 708-831 (theft in the second
22 degree); section 708-833.5 (shoplifting); section 708-835.5



1 (theft of livestock); section 708-836 (unauthorized control of
2 propelled vehicle); section 708-836.5 (unauthorized entry into
3 motor vehicle); section 708-839.5 (theft of utility services);
4 section 708-839.8 (identity theft in the third degree); section
5 708-852 (forgery in the second degree); section 708-854
6 (criminal possession of a forgery device); section 708-858
7 (suppressing a testamentary or recordable instrument); section
8 708-875 (trademark counterfeiting); section 708-891.5 (computer
9 fraud in the second degree); section 708-892.5 (computer damage
10 in the second degree); section 708-895.6 (unauthorized computer
11 access in the second degree); section 708-8100 (fraudulent use
12 of a credit card); section 708-8102 (theft/forgery of credit
13 cards); section 708-8103 (credit card fraud by a provider of
14 goods or services); section 708-8104 (possession of unauthorized
15 credit card machinery or incomplete cards); section 708-8200
16 (cable television service fraud in the first degree); section
17 708-8202 (telecommunication service fraud in the first degree);
18 section 709-903.5 (endangering the welfare of a minor in the
19 first degree); [†]section[†] 709-906 (abuse of family or
20 household members); section 710-1016.3 (obtaining a
21 government-issued identification document under false pretenses
22 in the first degree); section 710-1016.6 (impersonating a law



1 enforcement officer in the first degree); section 710-1017.5
2 (sale or manufacture of deceptive identification document);
3 section 710-1018 (securing the proceeds of an offense); section
4 710-1021 (escape in the second degree); section 710-1023
5 (promoting prison contraband in the second degree); section
6 710-1024 (bail jumping in the first degree); section 710-1029
7 (hindering prosecution in the first degree); section 710-1060
8 (perjury); section 710-1072.5 (obstruction of justice); section
9 711-1103 (riot); section 711-1109.3 (cruelty to animals/fighting
10 dogs); section 711-1110.9 (violation of privacy in the first
11 degree); section 711-1112 (interference with the operator of a
12 public transit vehicle); section 712-1221 (promoting gambling in
13 the first degree); section 712-1222.5 (promoting gambling aboard
14 ships); section 712-1224 (possession of gambling records in the
15 first degree); section 712-1243 (promoting a dangerous drug in
16 the third degree); section 712-1246 (promoting a harmful drug in
17 the third degree); section 712-1247 (promoting a detrimental
18 drug in the first degree); section 712-1249.6 (promoting a
19 controlled substance in, on, or near schools or school
20 vehicles); section 803-42 (interception, access, and disclosure
21 of wire, oral, or electronic communications, use of pen
22 register, trap and trace device, and mobile tracking device



1 prohibited); or section 846E-9(a)(2) (penalty for failure to
2 comply with requirements of chapter 846E)."

3 SECTION 17. Chapter 485, Hawaii Revised Statutes, is
4 repealed.

5 SECTION 18. If any provision of this chapter or its
6 application to any person or circumstance is held invalid, the
7 invalidity shall not affect other provisions or applications of
8 this chapter that can be given effect without the invalid
9 provision or application, and to this end the provisions of this
10 chapter are severable.

11 SECTION 19. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 20. This Act shall take effect on July 1, 2099.

