

1 IN THE SENATE BY RULES COMMITTEE  
BY REQUEST OF THE LEGISLATIVE COUNCIL

2 SENATE BILL NO. 24

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIRST LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to securities; prohibit-  
7 ing fraudulent practices in relation  
8 thereto; requiring registration of  
9 broker-dealers, agents, <sup>and</sup> investment advisers  
10 ~~and securities~~; making uniform the  
11 law with reference thereto; and declaring  
12 an effective date."

13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

14 PART I

15 FRAUDULENT AND OTHER PROHIBITED PRACTICES

16 Section 101. SALES AND PURCHASES. It is unlawful for any  
17 person, in connection with the offer, sale, or purchase of any  
18 security, directly or indirectly

19 (1) to employ any device, scheme, or artifice to de-  
20 fraud,

21 (2) to make any untrue statement of a material fact or  
22 to omit to state a material fact necessary in order to make the  
23 statements made, in the light of the circumstances under which  
24 they are made, not misleading, or

25 (3) to engage in any act, practice, or course of  
26 business which operates or would operate as a fraud or deceit  
27 upon any person.

28 Sec. 102. ADVISORY ACTIVITIES.

29 (a) It is unlawful for any person who receives any consid-

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is missing.

1 by a security holder of the assignor; but, if the investment  
2 adviser is a partnership, no assignment of an investment advisory  
3 contract is considered to result from the death or withdrawal of  
4 a minority of the members of the investment adviser having only  
5 a minority interest in the business of the investment adviser,  
6 or from the admission to the investment adviser of one or more  
7 members who, after admission, will be only a minority of the  
8 members and will have only a minority interest in the business.

9 (c) It is unlawful for any investment adviser to take or  
10 have custody of any securities or funds of any client if

11 (1) the Administrator by rule prohibits custody; or

12 (2) in the absence of rule, the investment adviser  
13 fails to notify the Administrator that he has or may have  
14 custody.

## 15 PART II

### 16 REGISTRATION OF BROKER-DEALERS,

### 17 AGENTS, AND INVESTMENT ADVISERS

#### 18 SECTION 201. REGISTRATION REQUIREMENT.

19 (a) It is unlawful for any person to transact business in  
20 this state as a broker-dealer or agent unless he is registered  
21 under this act.

22 (b) It is unlawful for any broker-dealer or issuer to  
23 employ an agent unless the agent is registered. The registra-  
24 tion of an agent is not effective during any period when he is  
25 not associated with a particular broker-dealer registered under  
26 this act or a particular issuer. When an agent begins or ter-  
27 minates a connection with a broker-dealer or issuer, or begins  
28 or terminates those activities which make him an agent, the  
29 agent as well as the broker-dealer or issuer shall promptly

1 notify the Administrator.

2 (c) It is unlawful for any person to transact business in  
3 this state as an investment adviser unless (1) he is so regis-  
4 tered under this act, (2) he is registered as a broker-dealer  
5 without the imposition of a condition under section 204 (b) (5),  
6 or (3) his only clients in this state are investment companies  
7 as defined in the Investment Company Act of 1940 or insurance  
8 companies.

9 (d) Every registration expires one year from its effec-  
10 tive date unless renewed. The Administrator may by rule or  
11 order prepare an initial schedule for registration renewals so  
12 that subsequent renewals of registrations effective on the  
13 effective date of this act may be staggered by calendar months.  
14 For this purpose the Administrator may by rule reduce the reg-  
15 istration fee proportionately.

16 Section 202. REGISTRATION PROCEDURE.

17 (a) A broker-dealer, agent, or investment adviser may ob-  
18 tain an initial or renewal registration by filing with the  
19 Administrator an application together with a consent to service  
20 of process pursuant to section 14(g). The application shall  
21 contain whatever information the Administrator by rule requires  
22 concerning such matters as (1) the applicant's form and place  
23 of organization; (2) the applicant's proposed method of doing  
24 business; (3) the qualifications and business history of the  
25 applicant; in the case of a broker-dealer or investment adviser,  
26 the qualifications and business history of any partner, officer,  
27 or director, any person occupying a similar status or performing  
28 similar functions, or any person directly or indirectly con-  
29 trolling the broker-dealer or investment adviser; and, in the

1 case of an investment adviser, the qualifications and business  
2 history of any employee; (4) any injunction or administrative  
3 order or conviction of a misdemeanor involving a security or any  
4 aspect of the securities business and any conviction of a felony;  
5 and (5) the applicant's financial condition and history. The  
6 Administrator may by rule or order require an applicant for  
7 initial registration to publish an announcement of the applica-  
8 tion in one or more specified newspapers published in this  
9 state. If no denial order is in effect and no proceeding is  
10 pending under section 204, registration becomes effective at  
11 noon of the thirtieth day after an application is filed. The  
12 Administrator may by rule or order specify an earlier effective  
13 date, and he may by order defer the effective date until noon  
14 of the thirtieth day after the filing of any amendment. Regis-  
15 tration of a broker-dealer automatically constitutes registra-  
16 tion of any agent who is a partner, officer, or director, or a  
17 person occupying a similar status or performing similar  
18 functions.

19 (b) Every applicant for initial or renewal registration  
20 shall pay a filing fee of \$100 in the case of a broker-dealer,  
21 \$50.00 in the case of an agent, and \$50.00 in the case of an  
22 investment adviser. When application is denied or withdrawn,  
23 the Administrator shall retain \$10.00 of the fee.

24 (c) A registered broker-dealer or investment adviser may  
25 file an application for registration of a successor, whether or  
26 not the successor is then in existence, for the unexpired por-  
27 tion of the year. There shall be no filing fee.

28 (d) The Administrator may by rule require a minimum cap-  
29 ital for registered broker-dealers and investment advisers.

1 (e) The Administrator may by rule require registered  
2 broker-dealers, agents, and investment advisers to post surety  
3 bonds in amounts up to \$10,000, and may determine their conditions.  
4 Any appropriate deposit of cash or securities shall be  
5 accepted in lieu of any bonds so required. No bond may be re-  
6 quired of any registrant whose net capital, which may be  
7 defined by rule, exceeds \$25,000. Every bond shall provide for  
8 suit thereon by any person who has a cause of action under  
9 section <sup>3</sup>410 and, if the Administrator by rule or order requires,  
10 by any person who has a cause of action not arising under this  
11 act. Every bond shall provide that no suit may be maintained  
12 to enforce any liability on the bond unless brought within two  
13 years after the sale or other act upon which it is based.

14 Section 203. SELF-REGISTRATION PENALTIES.

15 (a) Every registered broker-dealer and investment adviser  
16 shall make and keep such accounts, correspondence, memoranda,  
17 papers, books, and other records as the Administrator by rule  
18 prescribes. All records so required shall be preserved for  
19 three years unless the Administrator by rule prescribes other-  
20 wise for particular types of records.

21 (b) Every registered broker-dealer and investment adviser  
22 shall file such financial reports as the Administrator by rule  
23 prescribes.

24 (c) If the information contained in any document filed  
25 with the Administrator is or becomes inaccurate or incomplete in  
26 any material respect, the registrant shall promptly file a  
27 correcting amendment unless notification of the correction has  
28 been given under Section 201(b).

29 (d) All the records referred to in subsection (a) are

1 subject at any time or from time to time to such reasonable  
2 periodic, special, or other examinations by representatives of  
3 the Administrator, within or without this state, as the Adminis-  
4 trator deems necessary or appropriate in the public interest or  
5 for the protection of investors. For the purpose of avoiding  
6 unnecessary duplication of examinations, the Administrator, in-  
7 sofar as he deems it practicable in administering this subsec-  
8 tion, may cooperate with the securities administrators of other  
9 states, the Securities and Exchange Commission, and any national  
10 securities exchange or national securities association regis-  
11 tered under the Securities Exchange Act of 1934.

12 Section 204. DENIAL, REVOCATION, SUSPENSION, CANCELLATION,  
13 AND WITHDRAWAL OF REGISTRATION.

14 (a) The Administrator may by order deny, suspend, or re-  
15 voke any registration if he finds (1) that the order is in the  
16 public interest and (2) that the applicant or registrant or, in  
17 the case of a broker-dealer or investment adviser, any partner,  
18 officer, or director, any person occupying a similar status or  
19 performing similar functions, or any person directly or indir-  
20 ectly controlling the broker-dealer or investment adviser

21 (A) has filed an application for registration which as  
22 of its effective date, or as of any date after filing in the  
23 case of an order denying effectiveness, was incomplete in any  
24 material respect or contained any statement which was, in light  
25 of the circumstances under which it was made, false or mis-  
26 leading with respect to any material fact;

27 (B) has willfully violated or willfully failed to com-  
28 ply with any provision of this act or a predecessor act or any  
29 rule or order under this act or a predecessor act;

1 (C) has been convicted, within the past ten years, of  
2 any misdemeanor involving a security or any aspect of the secur-  
3 ities business, or any felony;

4 (D) is permanently or temporarily enjoined by any  
5 court of competent jurisdiction from engaging in or continuing  
6 any conduct or practice involving any aspect of the securities  
7 business;

8 (E) is the subject of an order the Administrator  
9 denying, suspending, or revoking registration as a broker-dealer,  
10 agent, or investment adviser;

11 (F) is the subject of an order entered within the past  
12 five years by the securities administrator of any other state or  
13 by the Securities and Exchange Commission denying or revoking  
14 registration as a broker-dealer, agent, or investment adviser, or  
15 the substantial equivalent of those terms as defined in this  
16 act, or is the subject of an order of the Securities and Exchange  
17 Commission suspending or expelling him from a national securi-  
18 ties exchange or national securities association registered  
19 under the Securities Exchange Act of 1934, or is the subject of  
20 a United States Post Office fraud order; but (i) the Adminis-  
21 trator may not institute a revocation or suspension proceeding  
22 under clause (F) more than one year from the date of the order  
23 relied on, and (ii) he may not enter an order under clause (F)  
24 on the basis of an order under another state act unless that  
25 order was based on facts which would currently constitute a  
26 ground for an order under this section;

27 (G) has engaged in dishonest or unethical practices  
28 in the securities business;

29 (H) is insolvent, either in the sense that his liabil-

1 ities exceed his assets or in the sense that he cannot meet his  
2 obligations as they mature; but the Administrator may not enter  
3 an order against a broker-dealer or investment adviser under  
4 this clause without a finding of insolvency as to the broker-  
5 dealer or investment adviser; or

6 (I) is not qualified on the basis of such factors as  
7 training, experience, and knowledge of the securities business,  
8 except as otherwise provided in subsection (b).

9 The Administrator may by order deny, suspend, or revoke  
10 any registration if he finds (1) that the order is in the public  
11 interest and (2) that the applicant or registrant

12 (J) has failed reasonably to supervise his agents if  
13 he is a broker-dealer or his employees if he is an investment  
14 adviser; or

15 (K) has failed to pay the proper filing fee; but the  
16 Administrator may enter only a denial order under this clause,  
17 and he shall vacate any such order when the deficiency has been  
18 corrected.

19 The Administrator may not institute a suspension or revoca-  
20 tion proceeding on the basis of a fact or transaction known to  
21 him when registration became effective unless the proceeding is  
22 instituted within the next thirty days.

23 (b) The following provisions govern the application of  
24 section 204(a) (2) (I):

25 (1) The Administrator may not enter an order against a  
26 broker-dealer on the basis of the lack of qualification of any  
27 person other than (A) the broker-dealer himself if he is an  
28 individual or (B) an agent of the broker-dealer.

29 (2) The Administrator may not enter an order against

1 an investment adviser on the basis of the lack of qualification  
2 of any person other than (A) the investment adviser himself if  
3 he is an individual or (B) any other person who represents the  
4 investment adviser in doing any of the acts which make him an  
5 investment adviser.

6 (3) The Administrator may not enter an order solely on  
7 the basis of lack of experience if the applicant or registrant  
8 is qualified by training or knowledge or both.

9 (4) The Administrator shall consider that an agent  
10 who will work under the supervision of a registered broker-  
11 dealer need not have the same qualifications as a broker-dealer.

12 (5) The Administrator shall consider that an invest-  
13 ment adviser is not necessarily qualified solely on the basis  
14 of experience as a broker-dealer or agent. When he finds that  
15 an applicant for initial or renewal registration as a broker-  
16 dealer is not qualified as an investment adviser, he may by  
17 order condition the applicant's registration as a broker-dealer  
18 upon his not transacting business in this state as an investment  
19 adviser.

20 (6) The Administrator may by rule provide for an ex-  
21 amination, which may be written or oral or both, to be taken by  
22 any class of or all applicants, as well as persons who represent  
23 or will represent an investment adviser in doing any of the acts  
24 which make him an investment adviser.

25 (c) The Administrator may by order summarily postpone or  
26 suspend registration pending final determination of any pro-  
27 ceeding under this section. Upon the entry of the order, the  
28 Administrator shall promptly notify the applicant or regis-  
29 trant, as well as the employer or prospective employer if the

1 applicant or registrant is an agent, that it has been entered  
2 and of the reasons therefor and that within fifteen days after  
3 the receipt of a written request the matter will be set down  
4 for hearing. If no hearing is requested and none is ordered by  
5 the Administrator, the order will remain in effect until it is  
6 modified or vacated by the Administrator. If a hearing is re-  
7 quested or ordered, the Administrator, after notice of and oppor-  
8 tunity for hearing, may modify or vacate the order or extend it  
9 until final determination.

10 (d) If the Administrator finds that any registrant or  
11 applicant for registration is no longer in existence or has  
12 ceased to do business as a broker-dealer, agent or investment  
13 adviser, or is subject to an adjudication of mental incompetence  
14 or to the control of a committee, conservator, or guardian, or  
15 cannot be located after reasonable search, the Administrator may  
16 by order cancel the registration or application.

17 (e) Withdrawal from registration as a broker-dealer, agent,  
18 or investment adviser becomes effective thirty days after re-  
19 ceipt of an application to withdraw or within such shorter period  
20 of time as the Administrator may determine, unless a revocation  
21 or suspension proceeding is pending when the application is filed  
22 or a proceeding to revoke or suspend or to impose conditions  
23 upon the withdrawal is instituted within thirty days after the  
24 application is filed. If a proceeding is pending or instituted,  
25 withdrawal becomes effective at such time and upon such condi-  
26 tions as the Administrator by order determines. If no proceeding  
27 is pending or instituted and withdrawal automatically becomes  
28 effective, the Administrator may nevertheless institute a revoca-  
29 tion or suspension proceeding under section 204(a) (2) (B) with-

1 in one year after withdrawal became effective and enter a  
2 revocation or suspension order as of the last date on which reg-  
3 istration was effective.

4 (f) No order may be entered under any part of this section  
5 except the first sentence of subsection (c) without (1) appro-  
6 priate prior notice to the applicant or registrant (as well as the  
7 employer or prospective employer if the applicant or registrant  
8 is an agent), (2) opportunity for hearing, and (3) written find-  
9 ings of fact and conclusions of law.

10 PART III

11 REGISTRATION OF SECURITIES

12 Section 301. REGISTRATION REQUIREMENT. It is unlawful for  
13 any person to offer or sell any security in this state unless  
14 (1) it is registered under this act or (2) the security or  
15 transaction is exempted under section 402.

16 Section 302. REGISTRATION BY NOTIFICATION.

17 (a) The following securities may be registered by notifi-  
18 cation, whether or not they are also eligible for registration by  
19 coordination under section 303:

20 (1) any security whose issuer and any predecessors  
21 have been in continuous operation for at least five years if  
22 (A) there has been no default during the current fiscal year or  
23 within the three preceding fiscal years in the payment of prin-  
24 cipal, interest, or dividends on any security of the issuer (or  
25 any predecessor) with a fixed maturity or a fixed interest or  
26 dividend provision, and (B) the issuer and any predecessor dur-  
27 ing the past three fiscal years have had average net earnings,  
28 determined in accordance with generally accepted accounting  
29 practices, (i) which are applicable to all securities without a

1 fixed maturity or a fixed interest or dividend provision outstand-  
2 ing at the date the registration statement is filed and equal at  
3 least five percent of the amount of such outstanding securities  
4 (as measured by the maximum offering price or the market price on  
5 a day, selected by the registrant, within thirty days before the  
6 date of filing the registration statement, whichever is higher,  
7 or book value on a day, selected by the registrant, within ninety  
8 days of the date of filing the registration statement to the ex-  
9 tent that there is neither a readily determinable market price  
10 nor a cash offering price), or (ii) which, if the issuer and any  
11 predecessors have not had any security of the type specified in  
12 clause (i) outstanding for three full fiscal years, equal at  
13 least five percent of the amount (as measured in clause (i)) of  
14 all securities which will be outstanding if all the securities  
15 being offered or proposed to be offered (whether or not they are  
16 proposed to be registered or offered in this state) are issued;

17 (2) any security (other than a certificate of interest  
18 or participation in an oil, gas or mining title or lease or in  
19 payments out of production under such a title or lease) regis-  
20 tered for non-issuer distribution if (A) any security of the  
21 same class has ever been registered under this act or prede-  
22 cessor act, or (B) the security being registered was originally  
23 issued pursuant to an exemption under this act or a predecessor  
24 act.

25 (b) A registration statement under this section shall  
26 contain the following information and be accompanied by the fol-  
27 lowing documents in addition to the information specified in  
28 section 305 (c) and the consent to service of process required  
29 by section 414 (g):

1 (1) a statement demonstrating eligibility for regis-  
2 tration by notification;

3 (2) with respect to the issuer and any significant  
4 subsidiary: its name, address, and form of organization; the  
5 state (or foreign jurisdiction) and the date of its organization;  
6 and the general character and location of its business;

7 (3) with respect to any person on whose behalf any  
8 part of the offering is to be made in a non-issuer distribution:  
9 his name and address; the amount of securities of the issuer  
10 held by him as of the date of the filing of the registration  
11 statement; and a statement of his reasons for making the offer-  
12 ing;

13 (4) a description of the security being registered;

14 (5) the information and documents specified in clauses  
15 (8), (10), and (12) of section 304(b); and

16 (6) in the case of any registration under section  
17 302(a) (2) which does not also satisfy the conditions of section  
18 302(a) (1), a balance sheet of the issuer as of a date within  
19 four months prior to the filing of the registration statement,  
20 and a summary of earnings for each of the two fiscal years pre-  
21 ceding the date of the balance sheet and for any period between  
22 the close of the last fiscal year and the date of the balance  
23 sheet, or for the period of the issuer's and any predecessor's  
24 existence if less than two years.

25 (c) If no stop order is in effect and no proceeding is  
26 pending under section 306, a registration statement under this  
27 section automatically becomes effective at three o'clock Pacific  
28 Standard Time in the afternoon of the second full business day  
29 after the filing of the registration statement or the last amend-

1 ment, or at such earlier time as the Administrator determines.

2 Section 303. REGISTRATION BY COORDINATION.

3 (a) Any security for which a registration statement has  
4 been filed under the Securities Act of 1933 in connection with  
5 the same offering may be registered by coordination.

6 (b) A registration statement under this section shall con-  
7 tain the following information and be accompanied by the follow-  
8 ing documents in addition to the information specified in sec-  
9 tion 305(c) and the consent to service of process required by  
10 section 414(g):

11 (1) three copies of the latest form of prospectus  
12 filed under the Securities Act of 1933;

13 (2) if the Administrator by rule or otherwise requires,  
14 a copy of the articles of incorporation and by-laws (or their  
15 substantial equivalents) currently in effect, a copy of any  
16 agreements with or among underwriters, a copy of any indenture  
17 or other instrument governing the issuance of the security to be  
18 registered, and a specimen or copy of the security;

19 (3) if the Administrator requests, any other informa-  
20 tion, or copies of any other documents, filed under the Securi-  
21 ties Act of 1933; and

22 (4) an undertaking to forward all future amendments to  
23 the federal prospectus, other than an amendment which merely  
24 delays the effective date of the registration statement, promptly  
25 and in any event not later than the first business day after the  
26 day they are forwarded to or filed with the Securities and Ex-  
27 change Commission, whichever first occurs.

28 (c) A registration statement under this section automati-  
29 cally becomes effective at the moment the federal registration

1 statement becomes effective if all the following conditions are  
2 satisfied: (1) no stop order is in effect and no proceeding is  
3 pending under section 306; (2) the registration statement has  
4 been on file with the Administrator for at least ten days; and  
5 (3) a statement of the maximum and minimum proposed offering  
6 prices and the maximum underwriting discounts and commissions  
7 has been on file for two full business days or such shorter per-  
8 iod as the Administrator permits by rule or otherwise and the  
9 offering is made within those limitations. The registrant shall  
10 promptly notify the Administrator by telephone or telegram of  
11 the date and time when the federal registration statement be-  
12 came effective and the content of the price amendment, if any,  
13 and shall promptly file a post-effective amendment containing  
14 the information and documents in the price amendment. "Price  
15 amendment" means the final federal amendment which includes a  
16 statement of the offering price, underwriting and selling dis-  
17 counts or commissions, amount of proceeds, conversion rates,  
18 call prices, and other matters dependent upon the offering price  
19 Upon failure to receive the required notification and post-  
20 effective amendment with respect to the price amendment, the  
21 Administrator may enter a stop order, without notice or hearing,  
22 retroactively denying effectiveness to the registration state-  
23 ment or suspending its effectiveness until compliance with this  
24 subsection, if he promptly notifies the registrant by telephone  
25 or telegram (and promptly confirms by letter or telegram when he  
26 notifies by telephone) of the issuance of the order. If the  
27 registrant proves compliance with the requirements of this  
28 subsection as to notice and post-effective amendment, the stop  
29 order is void as of the time of its entry. The Administrator

1 may by rule or otherwise waive either or both of the conditions  
2 specified in clauses (2) and (3). If the federal registration  
3 statement becomes effective before all the conditions in this  
4 subsection are satisfied and they are not waived, the regis-  
5 tration statement automatically becomes effective as soon as all  
6 the conditions are satisfied. If the registrant advises the  
7 Administrator of the date when the federal registration state-  
8 ment is expected to become effective, the Administrator shall  
9 promptly advise the registrant by telephone or telegram, at the  
10 registrant's expense, whether all the conditions are satisfied  
11 and whether he then contemplates the institution of a proceeding  
12 under section 306; but this advice by the Administrator does not  
13 preclude the institution of such a proceeding at any time.

14 Section 304. REGISTRATION BY QUALIFICATION.

15 (a) Any security may be registered by qualification.

16 (b) A registration statement under this section shall con-  
17 tain the following information and be accompanied by the follow-  
18 ing documents in addition to the information specified in section  
19 305 (c) and the consent to service of process required by section  
20 414 (g):

21 (1) with respect to the issuer and any significant  
22 subsidiary: its name, address, and form of organization; the  
23 state or foreign jurisdiction and date of its organization; the  
24 general character and location of its business; a description of  
25 its physical properties and equipment; and a statement of the  
26 general competitive conditions in the industry or business in  
27 which it is or will be engaged;

28 (2) with respect to every director and officer of the  
29 issuer, or person occupying a similar status or performing simi-

1 lar functions: his name, address, and principal occupation for  
2 the past five years; the amount of securities of the issuer held  
3 by him as of a specified date within thirty days of the filing of  
4 the registration statement; the amount of the securities covered  
5 by the registration statement to which he has indicated his in-  
6 tention to subscribe; and a description of any material interest  
7 in any material transaction with the issuer or any significant  
8 subsidiary effected within the past three years or proposed to  
9 be effected;

10 (3) with respect to persons covered by clause (2): the  
11 remuneration paid during the past twelve months and estimated to  
12 be paid during the next twelve months, directly or indirectly, by  
13 the issuer (together with all predecessors, parents, subsidiaries,  
14 and affiliates) to all those persons in the aggregate;

15 (4) with respect to any person owning of record, or  
16 beneficially if known, ten percent or more of the outstanding  
17 shares of any class of equity security of the issuer: the infor-  
18 mation specified in clause (2) other than his occupation;

19 (5) with respect to every promoter if the issuer was  
20 organized within the past three years: the information specified  
21 in clause (2), any amount paid to him within that period or in-  
22 tended to be paid to him, and the consideration for any such  
23 payment;

24 (6) with respect to any person on whose behalf any part  
25 of the offering is to be made in a non-issuer distribution: his  
26 name and address; the amount of securities of the issuer held  
27 by him as of the date of the filing of the registration state-  
28 ment; a description of any material interest in any material  
29 transaction with the issuer or any significant subsidiary effect-

1 ed within the past three years or proposed to be effected; and  
2 a statement of his reasons for making the offering;

3 (7) the capitalization and long-term debt (on both a  
4 current and a pro forma basis) of the issuer and any significant  
5 subsidiary, including a description of each security outstanding  
6 or being registered or otherwise offered, and a statement of the  
7 amount and kind of consideration (whether in the form of cash,  
8 physical assets, services, patents, goodwill, or anything else)  
9 for which the issuer or any subsidiary has issued any of its  
10 securities within the past two years or is obligated to issue  
11 any of its securities;

12 (8) the kind and amount of securities to be offered;  
13 the proposed offering price or the method by which it is to be  
14 computed; any variation therefrom at which any proportion of  
15 the offering is to be made to any person or class of persons  
16 other than the underwriters, with a specification of any such  
17 person or class; the basis upon which the offering is to be made  
18 if otherwise than for cash; the estimated aggregate underwriting  
19 and selling discounts or commissions and finders' fees (includ-  
20 ing separately cash, securities, contracts, or anything else of  
21 value to accrue to the underwriters or finders in connection  
22 with the offering) or, if the selling discounts or commissions  
23 are variable, the basis of determining them and their maximum  
24 and minimum amounts; the estimated amounts of other selling  
25 expenses, including legal, engineering, and accounting charges;  
26 the name and address of every underwriter and every recipient of  
27 a finder's fee; a copy of any underwriting or selling-group  
28 agreement pursuant to which the distribution is to be made, or  
29 the proposed form of any such agreement whose terms have not yet

1 been determined; and a description of the plan of distribution  
2 of any securities which are to be offered otherwise than through  
3 an underwriter;

4 (9) the estimated cash proceeds to be received by the  
5 issuer from the offering; the purposes for which the proceeds  
6 are to be used by the issuer; the amount to be used for each  
7 purpose; the order or priority in which the proceeds will be used  
8 for the purposes stated; the amounts of any funds to be raised  
9 from other sources to achieve the purposes stated; the sources of  
10 any such funds; and, if any part of the proceeds is to be used to  
11 acquire any property (including goodwill) otherwise than in the  
12 ordinary course of business, the names and addresses of the ven-  
13 dors, the purchase price, the names of any persons who have re-  
14 ceived commissions in connection with the acquisition, and the  
15 amounts of any such commissions and any other expense in connec-  
16 tion with the acquisition (including the cost of borrowing money  
17 to finance the acquisition);

18 (10) a description of any stock options or other secur-  
19 ity options outstanding, or to be created in connection with the  
20 offering, together with the amount of any such options held or  
21 to be held by every person required to be named in clause (2),  
22 (4), (5), (6), or (8) and by any person who holds or will hold  
23 ten percent or more in the aggregate of any such options;

24 (11) the dates of, parties to, and general effect con-  
25 cisely stated of, every management or other material contract  
26 made or to be made otherwise than in the ordinary course of busi-  
27 ness if it is to be performed in whole or in part at or after the  
28 filing of the registration statement or was made within the past  
29 two years, together with a copy of every such contract; and a

1 description of any pending litigation or proceeding to which  
2 the issuer is a party and which materially affects its business  
3 or assets (including any such litigation or proceeding known to  
4 be contemplated by governmental authorities);

5 (12) a copy of any prospectus, pamphlet, circular,  
6 form letter, advertisement, or other sales literature intended  
7 as of the effective date to be used in connection with the  
8 offering;

9 (13) a specimen or copy of the security being regis-  
10 tered; a copy of the issuer's articles of incorporation and by-  
11 laws, or their substantial equivalents, as currently in effect;  
12 and a copy of any indenture or other instrument covering the  
13 security to be registered;

14 (14) a signed or conformed copy of an opinion of coun-  
15 sel as to the legality of the security being registered (with an  
16 English translation if it is in a foreign language), which shall  
17 state whether the security when sold will be legally issued,  
18 fully paid, and non-assessable, and, if a debt security, a bind-  
19 ing obligation of the issuer;

20 (15) the written consent of any accountant, engineer,  
21 appraiser, or other person whose profession gives authority to a  
22 statement made by him, if any such person is named as having  
23 prepared or certified a report or valuation (other than a public  
24 and official document or statement) which is used in connection  
25 with the registration statement;

26 (16) a balance sheet of the issuer as of a date within  
27 four months prior to the filing of the registration statement;  
28 a profit and loss statement and analysis of surplus for each of  
29 the three fiscal years preceding the date of the balance sheet

1 and for any period between the close of the last fiscal year and  
2 the date of the balance sheet, or for the period of the issuer's  
3 and any predecessors' existence if less than three years; and,  
4 if any part of the proceeds of the offering is to be applied to  
5 the purchase of any business, the same financial statements  
6 which would be required if that business were the registrant;  
7 and

8 (17) such additional information as the Administrator  
9 requires by rule or order.

10 (c) A registration statement under this section becomes  
11 effective when the Administrator so orders.

12 (d) The Administrator may by rule or order require as a  
13 condition of registration under this section that a prospectus  
14 containing any designated part of the information specified in  
15 subsection (b) be sent or given to each person to whom an offer  
16 is made before or concurrently with (1) the first written offer  
17 made to him (otherwise than by means of a public advertisement)  
18 by or for the account of the issuer or any other person on whose  
19 behalf the offering is being made, or by any underwriter or  
20 broker-dealer who is offering part of an unsold allotment or  
21 subscription taken by him as a participant in the distribution,  
22 (2) the confirmation of any sale made by or for the account of  
23 any such person, (3) payment pursuant to any such sale, or (4)  
24 delivery of the security pursuant to any such sale, whichever  
25 first occurs.

26 Section 305. PROVISIONS APPLICABLE TO REGISTRATION GENER-  
27 ALLY.

28 (a) A registration statement may be filed by the issuer, any  
29 other person on whose behalf the offering is to be made, or a

1 registered broker-dealer.

2 (b) Every person filing a registration statement shall pay  
3 a filing fee of 1/10 percent of the maximum aggregate offering  
4 price at which the registered securities are to be offered in  
5 this state, but the fee shall in no case be less than \$500 or  
6 more than \$1,000. When a registration statement is withdrawn  
7 before the effective date or a pre-effective stop order is enter-  
8 ed under section 306, the Administrator shall retain \$100 of the  
9 fee.

10 (c) Every registration statement shall specify (1) the  
11 amount of securities to be offered in this state; (2) the states  
12 in which a registration statement or similar document in connec-  
13 tion with the offering has been or is to be filed; and (3) any  
14 adverse order, judgment, or decree entered in connection with  
15 the offering by the regulatory authorities in each state or by  
16 any court or the Securities and Exchange Commission.

17 (d) Any document filed under this act or a predecessor act  
18 within five years preceding the filing of a registration state-  
19 ment may be incorporated by reference in the registration state-  
20 ment to the extent that the document is currently accurate.

21 (e) The Administrator may by rule or otherwise permit the  
22 omission of any item of information or document from any regis-  
23 tration statement.

24 (f) In the case of a non-issuer distribution, information  
25 may not be required under section 304 or 305 (j) unless it is  
26 known to the person filing the registration statement or to the  
27 persons on whose behalf the distribution is to be made, or can  
28 be furnished by them without unreasonable effort or expense.

29 (g) The Administrator may by rule or order require as a

1 condition of registration by qualification or coordination (1)  
2 that any security issued within the past three years or to be  
3 issued to a promoter for a consideration substantially different  
4 from the public offering price, or to any person for a considera-  
5 tion other than cash, be deposited in escrow; and (2) that the  
6 proceeds from the sale of the registered security in this state  
7 be impounded until the issuer receives a specified amount from  
8 the sale of the security either in this state or elsewhere. The  
9 Administrator may by rule or order determine the conditions of  
10 any escrow or impounding required hereunder, but he may not re-  
11 ject a depository solely because of location in another state.

12 (h) The Administrator may by rule or order require as a  
13 condition of registration that any security registered by quali-  
14 fication or coordination be sold only on a specified form of  
15 subscription or sale contract, and that a signed or conformed  
16 copy of each contract be filed with the Administrator or preser-  
17 ved for any period up to three years specified in the rule or  
18 order.

19 (i) Every registration statement is effective for one year  
20 from its effective date, or any longer period during which the  
21 security is being offered or distributed in a non-exempted  
22 transaction by or for the account of the issuer or other person  
23 on whose behalf the offering is being made or by any underwriter  
24 or broker-dealer who is still offering part of an unsold allot-  
25 ment or subscription taken by him as a participant in the dis-  
26 tribution, except during the time a stop order is in effect under  
27 section 306. All outstanding securities of the same class as a  
28 registered security are considered to be registered for the pur-  
29 pose of any non-issuer transaction (1) so long as the registra-

1 tion statement is effective and (2) between the thirtieth day  
2 after the entry of any stop order suspending or revoking the  
3 effectiveness of the registration statement under section 306  
4 (if the registration statement did not relate in whole or in  
5 part to a non-issuer distribution) and one year from the effec-  
6 tive date of the registration statement. A registration state-  
7 ment may not be withdrawn for one year from its effective date  
8 if any securities of the same class are outstanding. A regis-  
9 tration statement may be withdrawn otherwise only in the dis-  
10 cretion of the Administrator.

11 (j) So long as a registration statement is effective, the  
12 Administrator may by rule or order require the person who filed  
13 the registration statement to file reports, not more often than  
14 quarterly, to keep reasonably current the information contained  
15 in the registration statement and to disclose the progress of the  
16 offering.

17 (k) A registration statement relating to a security issued  
18 by a face-amount certificate company or a redeemable security  
19 issued by an open-end management company or unit investment  
20 trust, as those terms are defined in the Investment Company Act  
21 of 1940, may be amended after its effective date so as to in-  
22 crease the securities specified as proposed to be offered. Such  
23 an amendment becomes effective when the Administrator so orders  
24 Every person filing such an amendment shall pay a filing fee,  
25 calculated in the manner specified in subsection (b), with res-  
26 spect to the additional securities proposed to be offered.

27 Section 306. DENIAL, SUSPENSION, AND REVOCATION OF REGIS-  
28 TRATION.

29 (a) The Administrator may issue a stop order denying ef-

1     fectiveness to, or suspending or revoking the effectiveness of  
2     any registration statement if he finds (1) that the offering is  
3     the public interest and (2) that

4             (A) the registration statement as of its effective date  
5     or as of any earlier date in the case of an order denying effec-  
6     tiveness, or any amendment under section 305 (k) as of its effec-  
7     tive date, or any report under section 305 (j) is incomplete in  
8     any material respect or contains any statement which was, in the  
9     light of the circumstances under which it was made, false or mis-  
10    leading with respect to any material fact;

11            (B) any provision of this act or any rule, order, or  
12    condition lawfully imposed under this act has been willfully  
13    violated, in connection with the offering, by (i) the person  
14    filing the registration statement, (ii) the issuer, any partner,  
15    officer, or director of the issuer, any person occupying a simi-  
16    lar status or performing similar functions, or any person dir-  
17    ectly or indirectly controlling or controlled by the issuer, but  
18    only if the person filing the registration statement is directly  
19    or indirectly controlled by or acting for the issuer, or (iii)  
20    any underwriter;

21            (C) the security registered or sought to be registered  
22    is the subject of an administrative stop order or similar order  
23    or a permanent or temporary injunction of any court of competent  
24    jurisdiction entered under any other federal or state act appli-  
25    cable to the offering; but (i) the Administrator may not insti-  
26    tute a proceeding against an effective registration statement  
27    under clause (C) more than one year from the date of the order  
28    or injunction relied on, and (ii) he may not enter an order under  
29    clause (C) on the basis of an order or injunction entered under

1 any other state act unless that order or injunction was based  
2 on facts which would currently constitute a ground for a stop  
3 order under this section;

4 (D) the issuer's enterprise or method of business  
5 includes or would include activities which are illegal where  
6 performed;

7 (E) the offering has worked or tended to work a fraud  
8 upon purchasers or would so operate;

9 (F) the offering has been or would be made with un-  
10 reasonable amounts of underwriters' and sellers' discounts,  
11 commissions, or other compensation, or promoters' profits or  
12 participation, or unreasonable amounts or kinds of options;

13 (G) when a security is sought to be registered by  
14 notification, it is not eligible for such registration;

15 (H) when a security is sought to be registered by  
16 coordination, there has been a failure to comply with the under-  
17 taking required by section 303 (b) (4); or

18 (I) the applicant or registrant has failed to pay the  
19 proper filing fee; but the Administrator may enter only a den-  
20 ial order under this clause and he shall vacate any such order  
21 when the deficiency has been corrected.

22 The Administrator may not institute a stop-order proceeding  
23 against an effective registration statement on the basis of a  
24 fact or transaction known to him when the registration statement  
25 became effective unless the proceeding is instituted within the  
26 next thirty days.

27 (b) The Administrator may by order summarily postpone or  
28 suspend the effectiveness of the registration statement pending  
29 final determination of any proceeding under this section. Upon

1 the entry of the order, the Administrator shall promptly notify  
2 each person specified in subsection (c) that it has been entered  
3 and of the reasons therefor and that within fifteen days after  
4 the receipt of a written request the matter will be set down for  
5 hearing. If no hearing is requested and none is ordered by the  
6 Administrator, the order will remain in effect until it is modi-  
7 fied or vacated by the Administrator. If a hearing is requested  
8 or ordered, the Administrator, after notice of and opportunity  
9 for hearing to each person specified in subsection (c), may modi-  
10 fy or vacate the order or extend it until final determination.

11 (c) No stop order may be entered under any part of this  
12 section except the first sentence of subsection (b) without (1)  
13 appropriate prior notice to the applicant or registrant, the  
14 issuer, and the person on whose behalf the securities are to be  
15 or have been offered, (2) opportunity for hearing, and (3) writ-  
16 ten findings of fact and conclusions of law.

17 (d) The Administrator may vacate or modify a stop order if  
18 he finds that the conditions which prompted entry have changed or  
19 that it is otherwise in the public interest to do so.

#### 20 PART IV

#### 21 GENERAL PROVISIONS

22 Section <sup>2</sup>401. DEFINITIONS. When used in this act, unless  
23 the context otherwise requires:

24 (a) "Administrator" means the Commissioner of Insurance.

25 (b) "Agent" means any individual other than a broker-dealer  
26 who represents a broker-dealer or issuer in effecting or attempt-  
27 ing to effect purchases or sales of securities. "Agent" does not  
28 include an individual who represents an issuer in (1) effecting  
29 transactions in a security exempted by clause (1), (2), (3), (10),

1 or (11) of section 402(a), (2) effecting transactions exempted  
2 by section 402(b), or (3) effecting transactions with existing  
3 employees, partners, or directors of the issuer if no commission  
4 or other remuneration is paid or given directly or indirectly  
5 for soliciting any person in this state. A partner, officer,  
6 or director of a broker-dealer or issuer, or a person occupying  
7 a similar status or performing similar functions, is an agent  
8 only if he otherwise comes within this definition.

9 (c) "Broker-dealer" means any person engaged in the busi-  
10 ness of effecting transactions in securities for the account of  
11 others or for his own account. "Broker-dealer" does not include  
12 (1) an agent, (2) an issuer, (3) a bank, savings institution,  
13 or trust company, or (4) a person who has no place of business  
14 in this state if (A) he effects transactions in this state  
15 exclusively with or through (i) the issuers of the securities  
16 involved in the transactions, (ii) other broker-dealers, or  
17 (iii) banks, savings institutions, trust companies, insurance  
18 companies, investment companies as defined in the Investment  
19 Company Act of 1940, pension or profit-sharing trusts, or other  
20 financial institutions or institutional buyers, whether acting  
21 for themselves or as trustees, or (B) during any period of  
22 twelve consecutive months he does not direct more than fifteen  
23 offers to sell or buy into this state in any manner to persons  
24 other than those specified in clause (A, whether or not the  
25 offeror or any of the offerees is then present in this state.

26 (d) "Fraud", "deceit", and "defraud" are not limited to  
27 common-law deceit.

28 (e) "Guaranteed" means guaranteed as to payment of prin-  
29 cipal, interest, or dividends.

1 (f) "Investment adviser" means any person who, for com-  
2 pensation, engages in the business of advising others, either  
3 directly or through publications or writings, as to the value  
4 of securities or as to the advisability of investing in, pur-  
5 chasing, or selling securities, or who, for compensation and  
6 as a part of a regular business, issues or promulgates analyses  
7 or reports concerning securities. "Investment adviser" does  
8 not include (1) a bank, savings institution, or trust company;  
9 (2) a lawyer, accountant, engineer, or teacher whose perform-  
10 ance of these services is solely incidental to the practice  
11 of his profession; (3) a broker-dealer whose performance of  
12 these services is solely incidental to the conduct of his busi-  
13 ness as a broker-dealer and who receives no special compensation  
14 for them; (4) a publisher of any bona fide newspaper, news  
15 magazine, or business or financial publication of general,  
16 regular, and paid circulation; (5) a person whose advice,  
17 analyses, or reports relate only to securities exempted by  
18 section 402(a) (1); (6) a person who has no place of business  
19 in this state if (A) his only clients in this state are other  
20 investment advisers, broker-dealers, banks, savings institutions,  
21 trust companies, insurance companies, investment companies as  
22 defined in the Investment Company Act of 1940, pension or  
23 profit-sharing trusts, or other financial institutions or in-  
24 stitutional buyers, whether acting for themselves or as trustees  
25 or (B) during any period of twelve consecutive months he does  
26 not direct business communications into this state in any manner  
27 to more than five clients other than those specified in clause  
28 (A), whether or not he or any of the persons to whom the com-  
29 munications are directed is then present in this state; or (7)

1 such other persons not within the intent of this paragraph as  
2 the Administrator may by rule or order designate.

3 (g) "Issuer" means any person who issues or proposes to  
4 issue any security, except that (1) with respect to certificates  
5 of deposit, voting-trust certificates, or collateral-trust certi-  
6 ficates, or with respect to certificates of interest or shares in  
7 an unincorporated investment trust not having a board of direc-  
8 tors, or persons performing similar functions or of the fixed,  
9 restricted management, or unit type, the term "issuer" means the  
10 person or persons performing the acts and assuming the duties of  
11 depositor or manager pursuant to the provisions of the trust or  
12 other agreement or instrument under which the security is issued;  
13 and (2) with respect to certificates of interest or participa-  
14 tion in oil, gas, or mining titles or leases or in payments out  
15 of production under such titles or leases, there is not consid-  
16 ered to be any "issuer".

17 (h) "Non-issuer" means not directly or indirectly for the  
18 benefit of the issuer.

19 (i) "Person" means an individual, a corporation, a partner-  
20 ship, an association, a joint-stock company, a trust where the  
21 interests of the beneficiaries are evidenced by a security, an  
22 unincorporated organization, a government, or a political sub-  
23 division of a government.

24 (j) (1) "Sale" or "sell" includes every contract of sale  
25 of, contract to sell, or disposition of, a security or interest  
26 in a security for value.

27 (2) "Offer" or "offer to sell" includes every attempt  
28 or offer to dispose of, or solicitation of an offer to buy, a  
29 security or interest in a security for value.

1           (3) Any security given or delivered with, or as a  
2 bonus on account of, any purchase of securities or any other  
3 thing is considered to constitute part of the subject of the  
4 purchase and to have been offered and sold for value.

5           (4) A purported gift of assessable stock is consid-  
6 ered to involve an offer and sale.

7           (5) Every sale or offer of a warrant or right to pur-  
8 chase or subscribe to another security of the same or another  
9 issuer, as well as every sale or offer of a security which gives  
10 the holder a present or future right or privilege to convert into  
11 another security of the same or another issuer, is considered to  
12 include an offer of the other security.

13           (6) The terms defined in this subsection do not in-  
14 clude (A) any bona fide pledge or loan; (B) any stock dividend,  
15 whether the corporation distributing the dividend is the issuer  
16 of the stock or not, if nothing of value is given by stockholders  
17 for the dividend other than the surrender of a right to a cash  
18 or property dividend when each stockholder may elect to take the  
19 dividend in cash or property or in stock; (C) any act incident  
20 to a class vote by stockholders, pursuant to the certificate of  
21 incorporation or the applicable corporation statute, on a mer-  
22 ger, consolidation, reclassification of securities, or sale of  
23 corporate assets in consideration of the issuance of securities  
24 of another corporation; or (D) any act incident to a judicially  
25 approved reorganization in which a security is issued in ex-  
26 change for one or more outstanding securities, claims, or pro-  
27 perty interests, or partly in such exchange and partly for cash.

28           (k) "Securities Act of 1933", "Securities Exchange Act of  
29 1934", "Public Utility Holding Company Act of 1935", and "Invest-

ment Company Act of 1940" mean the federal statutes of those names as amended before or after the effective date of this act.

(1) "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting-trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; or, in general, any interest or instrument commonly known as a "security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. "Security" does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay a fixed sum of money either in a lump sum or periodically for life or for some other specified period.

(m) "State" means any state, territory, or possession of the United States, the District of Columbia, and Puerto Rico.

Section 402. EXEMPTIONS.

(a) The following securities are exempted from sections 301 and 403:

(1) any security (including a revenue obligation) issued or guaranteed by the United States, any state, any political subdivision of a state, or any agency or corporate or other instrumentality of one or more of the foregoing; or any certificate of deposit for any of the foregoing;

(2) any security issued or guaranteed by Canada, any

1 Canadian province, any political subdivision of any such province  
2 any agency or corporate or other instrumentality of one or more of  
3 the foregoing, or any other foreign government with which the  
4 United States currently maintains diplomatic relations, if the  
5 security is recognized as a valid obligation by the issuer or  
6 guarantor;

7 (3) any security issued by and representing an interest  
8 in or a debt of, or guaranteed by, any bank organized under the  
9 laws of the United States, or any bank, savings institution, or  
10 trust company organized and supervised under the laws of any state;

11 (4) any security issued by and representing an interest  
12 in or a debt of, or guaranteed by, any federal savings and loan  
13 association, or any building and loan or similar association or-  
14 ganized under the laws of any state and authorized to do business  
15 in this state;

16 (5) any security issued by and representing an interest  
17 in or a debt of, or guaranteed by, any insurance company organ-  
18 ized under the laws of any state and authorized to do business in  
19 this state; but this exemption does not apply to an annuity con-  
20 tract, investment contract, or similar security under which the  
21 promised payments are not fixed in dollars but are substantially  
22 dependent upon the investment results of a segregated fund or  
23 account invested in securities;

24 (6) any security issued or guaranteed by any federal  
25 credit union or any credit union, industrial loan association, or  
26 similar association organized and supervised under the laws of  
27 this state;

28 (7) any security issued or guaranteed by any railroad,  
29 other common carrier, public utility, or holding company which

1 is (A) subject to the jurisdiction of the Interstate Commerce  
2 Commission; (B) a registered holding company under the Public  
3 Utility Holding Company Act of 1935 or a subsidiary of such a  
4 company within the meaning of that act; (C) regulated in respect  
5 of its rates and charges by a governmental authority of the  
6 United States or any state; or (D) regulated in respect of the is-  
7 suance or guarantee of the security by a governmental authority  
8 of the United States, any state, Canada, or any Canadian province;

9 (8) any security listed or approved for listing upon  
10 notice of issuance on the New York Stock Exchange, the American  
11 Stock Exchange, or the Midwest Stock Exchange, or any other  
12 security of the same issuer which is of senior or substantially  
13 equal rank; any security called for by subscription rights or  
14 warrants so listed or approved; or any warrant or right to pur-  
15 chase or subscribe to any of the foregoing;

16 (9) any security issued by any person organized and  
17 operated not for private profit but exclusively for religious,  
18 educational, benevolent, charitable, fraternal, social, athletic,  
19 or reformatory purposes, or as a chamber of commerce or trade  
20 or professional association;

21 (10) any commercial paper which arises out of a cur-  
22 rent transaction or the proceeds of which have been or are to be  
23 used for current transactions, and which evidences an obligation  
24 to pay cash within nine months of the date of issuance, exclusive  
25 of days of grace, or any renewal of such paper which is likewise  
26 limited, or any guarantee of such paper or of any such renewal;

27 (11) any investment contract issued in connection with  
28 an employees' stock purchase, savings, pension, profit-sharing,  
29 or similar benefit plan if the Administrator is notified in

1 writing thirty days before the inception of the plan or, with  
2 respect to plans which are in effect on the effective date of  
3 this act, within sixty days thereafter (or within thirty days  
4 before they are reopened if they are closed on the effective  
5 date of this act);

6 (b) The following transactions are exempted from sections  
7 301 and 403:

8 (1) any isolated non-issuer transaction, whether ef-  
9 fected through a broker-dealer or not;

10 (2) any non-issuer distribution of an outstanding  
11 security if (A) a recognized securities manual contains the  
12 names of the issuer's officers and directors, a balance sheet  
13 of the issuer as of a date within eighteen months, and a profit  
14 and loss statement for either the fiscal year preceding that  
15 date or the most recent year of operations, or (B) the security  
16 has a fixed maturity or a fixed interest or dividend provision  
17 and there has been no default during the current fiscal year or  
18 within the three preceding fiscal years, or during the exist-  
19 ence of the issuer and any predecessors if less than three years,  
20 in the payment of principal, interest, or dividends on the  
21 security;

22 (3) any non-issuer transaction effected by or  
23 through a registered broker-dealer pursuant to an unsolicited  
24 order or offer to buy; but the Administrator may by rule re-  
25 quire that the customer acknowledge upon a specified form that  
26 the sale was unsolicited, and that a signed copy of each such  
27 form be preserved by the broker-dealer for a specified period;

28 (4) any transaction between the issuer or other per-  
29 son on whose behalf the offering is made and an underwriter, or

1 among underwriters;

2 (5) any transaction in a bond or other evidence of  
3 indebtedness secured by a real or chattel mortgage or deed of  
4 trust, or by an agreement for the sale of real estate or chat-  
5 tels, if the entire mortgage, deed of trust, or agreement, to-  
6 gether with all the bonds or other evidences of indebtedness,  
7 secured thereby, is offered and sold as a unit;

8 (6) any transaction by an executor, administrator,  
9 sheriff, marshal, receiver, trustee in bankruptcy, guardian, or  
10 conservator;

11 (7) any transaction executed by a bona fide pledgee  
12 without any purpose of evading this act;

13 (8) any offer or sale to a bank, savings institution,  
14 trust company, insurance company, investment company as defined  
15 in the Investment Company Act of 1940, pension or profit-sharing  
16 trust, or other financial institution or institutional buyer,  
17 or to a broker-dealer, whether the purchaser is acting for it-  
18 self or in some fiduciary capacity;

19 (9) any transaction pursuant to an offer directed by  
20 the offeror to not more than ten persons (other than those  
21 designated in paragraph (3)) in this state during any period of  
22 twelve consecutive months, whether or not the offeror or any of  
23 the offerees is then present in this state, if (A) the seller  
24 reasonably believes that all the buyers in this state (other  
25 than those designated in paragraph (8)) are purchasing for  
26 investment, and (B) no commission or other remuneration is paid  
27 or given directly or indirectly for soliciting any prospective  
28 buyer in this state (other than those designated in paragraph  
29 (8)); but the Administrator may by rule or order, as to any

1 security or transaction or any type of security or transaction,  
2 withdraw or further condition this exemption, or increase or  
3 decrease the number of offerees permitted, or waive the condi-  
4 tions in Clauses (A) and (B) with or without the substitution of  
5 a limitation or remuneration;

6 (10) any offer or sale of a preorganization certifi-  
7 cate or subscription if (A) no commission or other remuneration  
8 is paid or given directly or indirectly for soliciting any pros-  
9 pective subscriber, (B) the number of subscribers does not ex-  
10 ceed ten, and (C) no payment is made by any subscriber;

11 (11) any transaction pursuant to an offer to existing  
12 security holders of the issuer, including persons who at the  
13 time of the transaction are holders of convertible securities,  
14 non-transferable warrants, or transferable warrants exercisable  
15 within not more than ninety days of their issuance, if (A) no  
16 commission or other remuneration (other than a standby commis-  
17 sion) is paid or given directly or indirectly for soliciting any  
18 security holder in this state, or (B) the issuer first files a  
19 notice specifying the terms of the offer and the Administrator  
20 does not by order disallow the exemption within the next five  
21 full business days:

22 (12) any offer (but not a sale) of a security for  
23 which registration statements have been filed under both this  
24 act and the Securities Act of 1933 if no stop order or refusal  
25 order is in effect and no public proceeding or examination look-  
26 ing toward such an order is pending under either act.

27 (c) The Administrator may by order deny or revoke any  
28 exemption specified in clause (9) or (11) or subsection (a) or  
29 in subsection (b) with respect to a specific security or trans-

1 action. No such order may be entered without appropriate prior  
2 notice to all interested parties, opportunity for hearing, and  
3 written findings of fact and conclusions of law, except that  
4 the Administrator may by order summarily deny or revoke any  
5 of the specified exemptions pending final determination of any  
6 proceeding under this subsection. Upon the entry of a summary  
7 order, the Administrator shall promptly notify all interested  
8 parties that it has been entered and of the reasons therefor  
9 and that within fifteen days of the receipt of a written request  
10 the matter will be set down for hearing. If no hearing is re-  
11 quested and none is ordered by the Administrator, the order  
12 will remain in effect until it is modified or vacated by the  
13 Administrator. If a hearing is requested or ordered, the  
14 Administrator, after notice of and opportunity for hearing to  
15 all interested persons, may modify or vacate the order or extend  
16 it until final determination.

17 No order under this subsection may operate retroactively.  
18 No person may be considered to have violated section 301 or 403  
19 by reason of any offer or sale effected after the entry of an  
20 order under this subsection if he sustains the burden of proof.  
21 that he did not know, and in the exercise of reasonable care  
22 could not have known, of the order.

23 (d) In any proceeding under this act, the burden of prov-  
24 ing an exemption or an exception from a definition is upon the  
25 person claiming it.

26 Section <sup>3</sup>403. FILING OF SALES AND ADVERTISING LITERATURE.  
27 The Administrator may by rule or order require the filing of any  
28 prospectus, pamphlet, circular, form letter, advertisement, or  
29 other sales literature or advertising communication addressed or

1 intended for distribution to prospective investors, including  
2 clients or prospective clients of an investment adviser, unless  
3 the security or transaction is exempted by section 402.

4 Section 404. MISLEADING FILINGS. It is unlawful for any  
5 person to make or cause to be made, in any document filed with  
6 the Administrator or in any proceeding under this act, any state-  
7 ment which is, at the time and in the light of the circumstances  
8 under which it is made, false or misleading in any material  
9 respect.

10 Section 405. UNLAWFUL REPRESENTATIONS CONCERNING REGISTRA-  
11 TION OR EXEMPTION.

12 (a) Neither (1) the fact that an application for registra-  
13 tion under Part II or a registration statement under Part III  
14 has been filed nor (2) the fact that a person or security is  
15 effectively registered constitutes a finding by the Administra-  
16 tor that any document filed under this act is true, complete,  
17 and not misleading. Neither any such fact nor the fact that an  
18 exemption or exception is available for a security or a trans-  
19 action means that the Administrator has passed in any way upon  
20 the merits or qualifications of, or recommended or given appro-  
21 val to, any person, security, or transaction.

22 (b) It is unlawful to make, or cause to be made, to any  
23 prospective purchaser, customer, or client any representation  
24 inconsistent with subsection (a).

25 Section 406. ADMINISTRATION OF ACT.

26 (a) This act shall be administered by the Office of the  
27 Insurance Commission.

28 (b) It is unlawful for the Administrator or any of his  
29 officers or employees to use for personal benefit any informa-

1 tion which is filed with or obtained by the Administrator and  
2 which is not made public. No provision of this act authorizes  
3 the Administrator or any of his officers or employees to dis-  
4 close any such information except among themselves or when nec-  
5 essary or appropriate in a proceeding or investigation under  
6 this act. No provision of this act either creates or derogates  
7 from any privilege which exists at common law or otherwise when  
8 documentary or other evidence is sought under a subpoena directed  
9 to the Administrator or any of his officers or employees.

10 Section 407. INVESTIGATIONS AND SUBPOENAS.

11 (a) The Administrator in his discretion (1) may make such  
12 public or private investigations within or outside of this state  
13 as he deems necessary to determine whether any person has vio-  
14 lated or is about to violate any provision of this act or any  
15 rule or order hereunder, or to aid in the enforcement of this act  
16 or in the prescribing of rules and forms hereunder, (2) may re-  
17 quire or permit any person to file a statement in writing, under  
18 oath or otherwise as the Administrator determines, as to all the  
19 facts and circumstances concerning the matter to be investigated,  
20 and (3) may publish information concerning any violation of this  
21 act or any rule or order hereunder.

22 (b) For the purpose of any investigation or proceeding under  
23 this act, the Administrator or any officer designated by him may  
24 administer oaths and affirmations, subpoena witnesses, compel  
25 their attendance, take evidence, and require the production of  
26 any books, papers, correspondence, memoranda, agreements, or  
27 other documents or records which the Administrator deems relevant  
28 or material to the inquiry.

29 (c) In case of contumacy by, or refusal to obey a subpoena

1 issued to any person, the Superior Court, upon application by  
2 the Administrator, may issue to the person an order requiring  
3 him to appear before the Administrator, or the officer designated  
4 by him, there to produce documentary evidence if so ordered or  
5 to give evidence touching the matter under investigation or in  
6 question. Failure to obey the order of the court may be pun-  
7 ished by the court as a contempt of court.

8 (d) No person is excused from attending and testifying or  
9 from producing any document or record before the Administrator,  
10 or in obedience to the subpoena of the Administrator or any of-  
11 ficer designated by him, or in any proceeding instituted by the  
12 Administrator, on the ground that the testimony or evidence  
13 (documentary or otherwise) required of him may tend to incrimin-  
14 ate him or subject him to a penalty or forfeiture; but no indi-  
15 vidual may be prosecuted or subjected to any penalty or for-  
16 feiture for or on account of any transaction, matter, or thing  
17 concerning which he is compelled, after claiming his privilege  
18 against self-incrimination, to testify or produce evidence (doc-  
19 umentary or otherwise), except that the individual testifying is  
20 not exempt from prosecution and punishment for perjury or con-  
21 tempt committed in testifying.

22 Section 408. INJUNCTIONS. Whenever it appears to the Admin-  
23 istrator that any person has engaged or is about to engage in any  
24 act or practice constituting a violation of any provision of this  
25 act or any rule or order hereunder, he may in his discretion  
26 bring an action in the Superior Court to enjoin the acts or prac-  
27 tices and to enforce compliance with this act or any rule or  
28 order hereunder. Upon a proper showing a permanent or temporary  
29 injunction, restraining order, or writ of mandamus shall be

1 granted and a receiver or conservator may be appointed for the  
2 defendant or the defendant's assets. The court may not require  
3 the Administrator to post a bond.

4 Section <sup>3</sup>409. CRIMINAL PENALTIES.

5 (a) Any person who willfully violates any provision of this  
6 act except section 404, or who willfully violates any rule or  
7 order under this act, or who willfully violates section 404 know-  
8 ing the statement made to be false or misleading in any material  
9 respect, shall upon conviction be fined not more than \$5,000 or  
10 imprisoned not more than three years, or both; but no person may  
11 be imprisoned for the violation of any rule or order if he proves  
12 that he had no knowledge of the rule or order. No indictment or  
13 information may be returned under this act more than five years  
14 after the alleged violation.

15 (b) The Administrator may refer such evidence as is available  
16 concerning violations of this act or of any rule or order here-  
17 under to the attorney general who may, with or without such a refer-  
18 ence, institute the appropriate criminal proceedings under this act.

19 (c) Nothing in this act limits the power of the state to  
20 punish any person for any conduct which constitutes a crime by  
21 statute or at common law.

22 Section <sup>4</sup>410. CIVIL LIABILITIES.

23 (a) Any person who

24 (1) offers or sells a security in violation of section  
25 201(a), 301, or 405(b), or of any rule or order under section 403  
26 which requires the affirmative approval of sales literature before  
27 it is used, or of any condition imposed under section 304(d),  
28 305(g), or 305(h), or

29 (2) offers or sells a security by means of any untrue

1 statement of a material fact or any omission to state a material  
2 fact necessary in order to make the statements made, in the light  
3 of the circumstances under which they are made, not misleading  
4 (the buyer not knowing of the untruth or omission), and who does  
5 not sustain the burden of proof that he did not know, and in the  
6 exercise of reasonable care could not have known, of the untruth  
7 or omission, is liable to the person buying the security from him,  
8 who may sue either at law or in equity to recover the considera-  
9 tion paid for the security, together with interest at six per-  
10 cent per year from the date of payment, costs, and reasonable  
11 attorneys' fees, less the amount of any income received on the  
12 security, upon the tender of the security, or for damages if he  
13 no longer owns the security. Damages are the amount that would  
14 be recoverable upon a tender less the value of the security when  
15 the buyer disposed of it and interest at six percent per year  
16 from the date of disposition.

17 (b) Every person who directly or indirectly controls a sel-  
18 ler liable under subsection (a), every partner officer, or dir-  
19 ector of such a seller, every person occupying a similar status  
20 or performing similar functions, every employee of such a seller  
21 who materially aids in the sale, and every broker-dealer or agent  
22 who materially aids in the sale are also liable jointly and sev-  
23 erally with and to the same extent as the seller, unless the  
24 non-seller who is so liable sustains the burden of proof that he  
25 did not know, and in exercise of reasonable care could not have  
26 known, of the existence of the facts by reason of which the  
27 liability is alleged to exist. There is contribution as in cases  
28 of contract among the several persons so liable.

29 (c) Any tender specified in this section may be made at any

1 time before entry of judgment.

2 (d) Every cause of action under this statute survives the  
3 death of any person who might have been a plaintiff or defendant.

4 (e) No person may sue under this section more than two years  
5 after the contract of sale. No person may sue under this section  
6 (1) if the buyer received a written offer, before suit and at a  
7 time when he owned the security, to refund the consideration paid  
8 together with interest at six percent per year from the date of  
9 payment, less the amount of any income received on the security,  
10 and he failed to accept the offer within thirty days of its re-  
11 ceipt, or (2) if the buyer received such an offer before suit and  
12 at a time when he did not own the security, unless he rejected  
13 the offer in writing within thirty days of its receipt.

14 (f) No person who has made or engaged in the performance of  
15 any contract in violation of any provision of this act or any  
16 rule or order hereunder, or who has acquired any purported right  
17 under any such contract with knowledge of the facts by reason  
18 of which its making or performance was in violation, may base  
19 any suit on the contract.

20 (g) Any condition, stipulation, or provision binding any  
21 person acquiring any security to waive compliance with any pro-  
22 vision of this act or any rule or order hereunder is void.

23 (h) The rights and remedies provided by this act are in  
24 addition to any other rights or remedies that may exist at law or  
25 in equity, but this act does not create any cause of action not  
26 specified in this section or section 202(e)

27 Section <sup>3</sup>411. JUDICIAL REVIEW OF ORDERS.

28 (a) Any person aggrieved by a final order of the Administra-  
29 tor may obtain a review of the order in the Superior Court by

1 filed in court, within ten days after the entry of the order  
2 and the court shall have jurisdiction to set aside the order  
3 in whole or in part. A copy of the petition shall be forthwith  
4 served upon the Administrator, and thereupon the Administrator  
5 shall certify and file in court a copy of the findings and evidence  
6 upon which the order was entered. When these have been filed,  
7 the court has exclusive jurisdiction to affirm, modify, enforce  
8 or set aside the order, in whole or in part. The findings of  
9 the Administrator as to the facts, if supported by competent,  
10 material and substantial evidence, are conclusive. If either  
11 party applies to the court for leave to adduce additional material  
12 evidence, and shows to the satisfaction of the court that there  
13 were reasonable grounds for failure to adduce the evidence in the  
14 hearing before the Administrator, the court may order the addi-  
15 tional evidence to be taken before the Administrator and to be  
16 adduced upon the hearing in such manner and upon such conditions  
17 as the court considers proper. The Administrator may modify his  
18 findings and order on the basis of the additional evidence and shall  
19 file in court the additional evidence together with any modified  
20 or new findings or order. The judgment of the court is final,  
21 subject to review by the Supreme Court.

22 (b) The commencement of proceedings under subsection (a)  
23 does not, unless specifically ordered by the court, operate as  
24 a stay of the Administrator's order.

25 Section <sup>3</sup>12. RULES, FORMS, ORDERS, AND HEARINGS.

26 (a) The Administrator may from time to time make, amend,  
27 and rescind such rules, forms, and orders as are necessary to  
28 carry out the provisions of this act, including rules and forms  
29 governing hearings, affidavits, applications, and reports, and

1 defining any terms, whether or not used in this act, insofar as  
2 the definitions are not inconsistent with the provisions of this  
3 act. For the purpose of rules and forms, the Administrator may  
4 classify securities, persons, and matters within his jurisdiction,  
5 and prescribe different requirements for different classes.

6 (b) No rule, form, or order may be made, amended, or re-  
7 scinded unless the Administrator finds that the action is nec-  
8 essary or appropriate in the public interest or for the protec-  
9 tion of investors and consistent with the purposes fairly in-  
10 tended by the policy and provisions of this act. In prescribing  
11 rules and forms the Administrator may cooperate with the securi-  
12 ties administrators of the other states and the Securities and  
13 Exchange Commission with a view to effectuating the policy of  
14 this statute to achieve maximum uniformity in the form and con-  
15 tent of registration statements, applications, and reports where-  
16 ever practicable.

17 (c) The Administrator may by rule or order prescribe (1)  
18 the form and content of financial statements required under this  
19 act, (2) the circumstances under which consolidated financial  
20 statements shall be filed, and (3) whether any required financial  
21 statements shall be certified by independent or certified public  
22 accountants. All financial statements shall be prepared in accor-  
23 dance with generally accepted accounting practices.

24 (d) All rules and forms of the Administrator shall be pub-  
25 lished.

26 (e) No provision of this act imposing any liability applies  
27 to any act done or omitted in good faith in conformity with any  
28 rule, form, or order of the Administrator, notwithstanding that  
29 the rule, form, or order may be later amended or rescinded or be

1 determined by judicial or other authority to be invalid for any  
2 reason.

3 (f) Every hearing in an administrative proceeding shall be  
4 public unless the Administrator in his discretion grants a request  
5 joined in by all the respondents that the hearing be conducted  
6 privately.

7 Section 413. ADMINISTRATIVE FILES AND OPINIONS.

8 (a) A document is filed when it is received by the Admin-  
9 istrator.

10 (b) The Administrator shall keep a register of all applica-  
11 tions for registration and registration statements which are or  
12 have ever been effective under this act and all denial, suspen-  
13 sion, or revocation orders which have been entered under this act.  
14 The register shall be open for public inspection.

15 (c) The information contained in or filed with any registra-  
16 tion statement, application, or report may be made available to  
17 the public under such rules as the Administrator prescribes.

18 (d) Upon request and at such reasonable charges as he pre-  
19 scribes, the Administrator shall furnish to any person photo-  
20 static or other copies (certified under his seal of office if  
21 requested) of any entry in the register or any document which is  
22 a matter of public record. In any proceeding or prosecution  
23 under this act, any copy so certified is prima facie evidence of  
24 the contents of the entry or documents certified.

25 (e) The Administrator in his discretion may honor requests  
26 from interested persons for interpretative opinions.

27 Section 414. SCOPE OF THE ACT AND SERVICE OF PROCESS.

28 (a) Sections 101, 201(a), 301, 405, and 410 apply to persons  
29 who sell or offer to sell when (1) an offer to sell is made in

1 this state, or (2) an offer to buy is made and accepted in this  
2 state.

3 (b) Sections 101, 201(a), and 405 apply to persons who buy  
4 or offer to buy when (1) an offer to buy is made in this state,  
5 or (2) an offer to sell is made and made accepted in this state.

6 (c) For the purpose of this section, an offer to sell or  
7 to buy is made in this state, whether or not either party is then  
8 present in this state, when the offer (1) originates from this  
9 state or (2) is directed by the offeror to this state and re-  
10 ceived at the place to which it is directed (or at any post  
11 office in this state in the case of a mailed offer).

12 (d) For the purpose of this section, an offer to buy or  
13 to sell is accepted in this state when acceptance (1) is commu-  
14 nicated to the offeror in this state and (2) has not previously  
15 been communicated to the offeror, orally or in writing, outside  
16 this state; and acceptance is communicated to the offeror in this  
17 state, whether or not either party is then present in this state.  
18 when the offeree directs it to the offeror in this state reason-  
19 ably believing the offeror to be in this state and it is re-  
20 ceived at the place to which it is directed (or at any post  
21 office in this state in the case of a mailed acceptance).

22 (e) An offer to sell or to buy is not made in this state  
23 when (1) the publisher circulates or there is circulated on his  
24 behalf in this state any bona fide newspaper or other publication  
25 of general, regular, and paid circulation which is not published  
26 in this state, or which is published in this state but has had  
27 more than two-thirds of its circulation outside this state during  
28 the past twelve months, or (2) a radio or television program  
29 originating outside this state is received in this state.

1 (f) Sections 102 and 201(c), as well as section 405 so far  
2 as investment advisers are concerned, apply when any act instru-  
3 mental in effecting prohibited conduct is done in this state,  
4 whether or not either party is then present in this state.

5 (g) Every applicant for registration under this act and  
6 every issuer which proposes to offer a security in this state  
7 through any person acting on an agency basis in the common-law  
8 sense shall file with the Administrator, in such form as he by  
9 rule prescribes, an irrevocable consent appointing the Adminis-  
10 trator or his successor in office to be his attorney to receive  
11 service of any lawful process in any non-criminal suit, action,  
12 or proceeding against him or his successor executor or administra-  
13 tor which arises under this act or any rule or order hereunder  
14 after the consent has been filed, with the same force and vali-  
15 dity as if served personally on the person filing the consent. A  
16 person who has filed such a consent in connection with a previous  
17 registration need not file another. Service may be made by leav-  
18 ing a copy of the process in the office of the Administrator, but  
19 it is not effective unless (1) the plaintiff, who may be the  
20 Administrator in a suit, action, or proceeding instituted by him,  
21 forthwith sends notice of the service and a copy of the process  
22 by registered mail to the defendant or respondent at his last  
23 address on file with the Administrator, and (2) the plaintiff's  
24 affidavit of compliance with this subsection is filed in the case  
25 on or before the return day of the process, if any, or within  
26 such further time as the court allows.

27 (h) When any person, including any nonresident of this  
28 state, engages in conduct prohibited or made actionable by this  
29 act or any rule or order hereunder, and he has not filed a con-

1 sent to service of process under subsection (g) and personal  
2 jurisdiction over him cannot otherwise be obtained in this state,  
3 that conduct shall be considered equivalent to his appointment  
4 of the Administrator or his successor in office to be his attor-  
5 ney to receive service of any lawful process in any non-criminal  
6 suit, action, or proceeding against him or his successor executor  
7 or administrator which grows out of that conduct and which is  
8 brought under this act or any rule or order hereunder, with the  
9 same force and validity as if served on him personally. Service  
10 may be made by leaving a copy of the process in the office of the  
11 Administrator, and it is not effective unless (1) the plaintiff,  
12 who may be the Administrator in a suit, action, or proceeding  
13 instituted by him, forthwith sends notice of the service and a  
14 copy of the process by registered mail to the defendant or re-  
15 spondent at his last known address or takes other steps which  
16 are reasonably calculated to give actual notice, and (2) the  
17 plaintiff's affidavit of compliance with this subsection is filed  
18 in the case on or before the return day of the process, if any,  
19 or within such further time as the court allows.

20 (i) When process is served under this section, the court,  
21 or the Administrator in a proceeding before him, shall order  
22 such continuance as may be necessary to afford the defendant or  
23 respondent reasonable opportunity to defend.

24 Section 415. STATUTORY POLICY. This act shall be so con-  
25 strued as to effectuate its general purpose to make uniform the  
26 law of those states which enact it and to coordinate the inter-  
27 pretation and administration of this act with the related fed-  
28 eral regulation.

29 Section 416. SHORT TITLE. This act may be cited as the

1 Uniform Securities Act.

2 Section 417. EFFECTIVE DATE. This Act shall be in full  
3 force and effect from and after the date of its passage and  
4 approval or upon its becoming law without such approval.

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