

State of South Dakota

SEVENTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 1997

400A0309

HOUSE COMMERCE COMMITTEE

ENGROSSED NO. **SB82** - 2/26/97

Introduced by: The Committee on Commerce at the request of the Department of Commerce
and Regulation

1 FOR AN ACT ENTITLED, An Act to revise the South Dakota Uniform Securities Act to
2 conform with the provisions of the National Securities Markets Improvement Act of 1996.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 47-31A-201 be amended to read as follows:

5 47-31A-201. (a) It is unlawful for any person to transact business in this state as a
6 broker-dealer or agent unless ~~he~~ the person is registered under this chapter.

7 (b) It is unlawful for any broker-dealer or issuer to employ an agent unless the agent is
8 registered. The registration of an agent is not effective during any period when ~~he~~ the agent is
9 not associated with a particular broker-dealer registered under this chapter or particular issuer.
10 When an agent begins or terminates a connection with a broker-dealer or issuer, or begins or
11 terminates those activities which make him an agent, the agent as well as the broker-dealer or
12 issuer shall promptly notify the director.

13 (c) It is unlawful for any person to transact business in this state as an investment adviser
14 or as an investment adviser representative unless:

- 1 (1) ~~He~~ The person is so registered under this chapter; or
- 2 (2) ~~He~~ The person has no place of business in this state, and
- 3 (A) ~~His~~ The person's only clients in this state are investment companies as defined
- 4 by the Investment Company Act of 1940, other investment advisers, federal
- 5 covered advisers, broker-dealers, banks, trust companies, savings and loan
- 6 associations, insurance companies, employee benefit plans with assets of not
- 7 less than one million dollars, and governmental agencies or instrumentalities,
- 8 whether acting for themselves or as trustees with investment control, or other
- 9 institutional investors as designated by rule or order of the director; or
- 10 (B) ~~During any period of twelve consecutive months he does not direct business~~
- 11 ~~communications in this state in any matter to more than five clients, other than~~
- 12 ~~those specified in subparagraph (2), (A) whether or not he or any of the~~
- 13 ~~persons to whom the communications are directed is then present in the~~
- 14 ~~preceding twelve-month period has had not more than five clients, other than~~
- 15 ~~those specified in subparagraph (A), who are residents of this state.~~
- 16 (d) It is unlawful for any:
- 17 (1) Person required to be registered as an investment adviser ~~required to be registered~~
- 18 under this chapter to employ an investment adviser representative unless the
- 19 investment adviser representative is registered under this chapter. ~~The~~ However, the
- 20 registration of an investment adviser representative is not effective during any period
- 21 when ~~he~~ the representative is not employed by an investment adviser registered under
- 22 this chapter; or
- 23 (2) Federal covered adviser to employ, supervise, or associate with an investment adviser
- 24 representative having a place of business located in this state unless the investment
- 25 adviser representative is registered under this chapter or is exempt from registration.

1 When an investment adviser representative begins or terminates employment with an
2 investment adviser, the investment adviser, in the case of subparagraph (1), or the investment
3 adviser representative, in the case of subparagraph (2), shall promptly notify the director.

4 (e) Every registration or notice filing expires on December thirty-first unless renewed.

5 (f) Except with respect to advisers whose only clients are those described in subparagraph
6 201(c)(2) of this chapter, it is unlawful for any federal covered adviser to conduct advisory
7 business in this state unless the person complies with the provisions of subsection 202(b) of this
8 chapter.

9 Section 2. That § 47-31A-202 be amended to read as follows:

10 47-31A-202. (a) A broker-dealer, agent, investment adviser, or investment adviser
11 representative may obtain an initial or renewal registration by filing with the director an
12 application together with a consent to service of process pursuant to § 47-31A-414(g). The
13 application shall contain whatever information reasonably related to the applicant's qualifications
14 to transact business in this state, the director, by rule, requires concerning such matters as:

- 15 (1) The applicant's form and place of organization;
- 16 (2) The applicant's proposed method of doing business;
- 17 (3) The qualifications and business history of the applicant; in the case of the
18 broker-dealer or investment adviser, the qualifications and business history of any
19 partner, officer, or director, any person occupying a similar status or performing
20 similar functions, or any person directly or indirectly controlling the broker-dealer or
21 investment adviser;
- 22 (4) Any injunction or administrative order or conviction of a misdemeanor involving a
23 security or any aspect of the securities or any other financial business and any
24 conviction of a felony;
- 25 (5) The applicant's financial condition and history; and

1 (6) Any information to be furnished or disseminated to any client or prospective client,
2 if the applicant is an investment adviser. The director may, by rule or order, require
3 an applicant for initial registration to publish an announcement of the application in
4 one or more specified newspapers published in this state. If no denial order is in effect
5 and no proceeding is pending under § 47-31A-204, registration becomes effective by
6 order of the director. Registration of a broker-dealer automatically constitutes
7 registration of any agent who is a partner, officer, or director, or a person occupying
8 a similar status or performing similar functions. Registration of an investment adviser
9 automatically constitutes registration of any investment adviser representative who
10 is a partner, officer, or director, or a person occupying a similar status or performing
11 similar functions.

12 (b) Except with respect to federal covered advisers whose only clients are those described
13 in subparagraph 201(c)(2)(A) of this chapter, a federal covered adviser shall file with the
14 director, prior to acting as a federal covered adviser in this state, any documents filed with the
15 Securities and Exchange Commission as the director, by rule or order, may require. Until
16 October 10, 1999, the director may require the registration of a federal covered adviser if the
17 filer fails to pay the fees required by this chapter. For the purpose of this subsection, a delay in
18 payment or an underpayment of a fee that is remedied within fifteen days after receipt of notice
19 from the director does not constitute a failure or refusal to pay the fee.

20 (c) Every applicant for initial or renewal registration shall pay a filing fee of one hundred
21 fifty dollars in the case of a broker-dealer, one hundred twenty-five dollars in the case of an
22 agent, one hundred dollars in the case of an investment adviser who is subject to registration
23 under this chapter, and fifty dollars in the case of an investment adviser representative who is
24 subject to registration under this chapter. Every applicant acting as a federal covered adviser in
25 this state shall pay an initial fee and renewal fee of two hundred dollars.

1 ~~(c)~~(d) A registered broker-dealer or investment adviser may file an application for
2 registration of a successor, whether or not the successor is then in existence, for the unexpired
3 portion of the year. There shall be no filing fee.

4 ~~(d)~~(e) The director may, by rule, require a minimum capital for registered broker-dealers,
5 subject to the limitations of section 15 of the Securities Exchange Act of 1934, and establish
6 minimum financial requirements for investment advisers, subject to the limitations of section 222
7 of the Investment Advisers Act of 1940, which may include different requirements for those
8 investment advisers who maintain custody of clients' funds or securities or who have
9 discretionary authority over same and those investment advisers who do not. ~~Notwithstanding~~
10 ~~such rules, compliance with minimum capital levels and financial requirements established by the~~
11 ~~Securities and Exchange Commission shall be deemed compliance with the rules established~~
12 ~~under this section.~~

13 ~~(e)~~(f) The director may, by rule or order, require registered broker-dealers, agents, and
14 investment advisers who have custody of or discretionary authority over client funds or securities
15 to post ~~surety bonds in amounts up to twenty-five thousand dollars~~, subject to the limitations
16 provided in section 15 of the Securities and Exchange Act of 1934 and section 222 of the
17 Investment Advisers Act of 1940, and may determine their conditions. Any appropriate deposit
18 of cash or securities may be accepted in lieu of any bonds so required. No bond may be required
19 of any registrant whose net capital or, in the case of an investment adviser whose minimum
20 financial requirements, which may be defined by rule, exceeds ~~one hundred thousand dollars~~ the
21 amounts required by rule or order by the director. Every bond shall provide for suit thereon by
22 any person who has a cause of action under § 47-31A-410 and, if the director, by rule or order,
23 requires, by any person who has a cause of action not arising under this chapter. Every bond shall
24 provide that no suit may be maintained to enforce any liability on the bond unless brought within
25 the time limitations of § 47-31A-410(f).

1 Section 3. That § 47-31A-203 be amended to read as follows:

2 47-31A-203. (a) Every registered broker-dealer and investment adviser shall make and keep
3 such accounts, correspondence, memoranda, papers, books, and other records as the director,
4 by rule or order, prescribes, except as provided by section 15 of the Securities Exchange Act of
5 1934 and section 222 of the Investment Advisers Act of 1940. All records so required ~~shall be~~
6 ~~preserved for three years unless the director, by rule, prescribes otherwise for particular types~~
7 ~~of records. Compliance with the recordkeeping requirements for broker-dealers established by~~
8 ~~the Securities and Exchange Commission shall be deemed compliance with the rules established~~
9 ~~under this section, with respect to an investment adviser, shall be preserved for the period~~
10 prescribed by the director by rule or order.

11 (b) With respect to investment advisers, the director may require that certain information
12 be furnished or disseminated as necessary or appropriate in the public interest or for protection
13 of investors and advisory clients. To the extent it is determined by the director in ~~his~~ the
14 director's discretion, information furnished to clients or prospective clients of an investment
15 adviser ~~pursuant to that would be in compliance with~~ the Investment Advisers Act of 1940 and
16 the rules thereunder may be used in whole or in partial satisfaction of this requirement.

17 (c) Every registered broker-dealer and investment adviser shall file such financial reports as
18 the director, by rule or order, prescribes, except as provided by section 15 of the Securities and
19 Exchange Commission Act of 1934 and section 222 of the Investment Advisers Act of 1940.

20 (d) If the information contained in any document filed with the director is or becomes
21 inaccurate or incomplete in any material respect, the registrant or federal covered adviser shall
22 promptly file a correcting amendment if the document is filed with respect to a registrant or when
23 the amendment is required to be filed with the Securities and Exchange Commission if the
24 document is filed with respect to a federal covered adviser, unless a notification of the
25 corrections has been made under § 47-31A-201(b).

1 (e) All the records referred to in subsection (a) are subject at any time or from time to time
2 to such reasonable periodic, special, or other examinations by representatives of the director,
3 within or without this state, as the director deems necessary or appropriate in the public interest
4 or for the protection of investors. For the purpose of avoiding unnecessary duplication of
5 examinations, the director, insofar as ~~he~~ the director deems it practicable in administering the
6 subsection, may cooperate with the securities administrators of other states, the Securities and
7 Exchange Commission, and any national securities exchange or national securities association
8 registered under the Securities Exchange Act of 1934.

9 Section 4. That § 47-31A-301 be amended to read as follows:

10 47-31A-301. It is unlawful for any person to offer or sell any security in this state unless:

- 11 (1) It is registered under this chapter; or
- 12 (2) The security or transaction is exempted under § 47-31A-402; or
- 13 (3) It is a federal covered security.

14 Section 5. That chapter 47-31A be amended by adding thereto a NEW SECTION to read
15 as follows:

16 (a) The director, by rule or order, may require the filing of any of the following documents
17 with respect to a covered security under section 18(b)(2) of the Securities Act of 1933:

- 18 (1) Prior to the initial offer of the federal covered security in this state, all documents that
19 are part of a federal registration statement filed with the Securities and Exchange
20 Commission under the Securities Act of 1933, together with a consent to service of
21 process signed by the issuer and a filing fee of five hundred dollars for open-end
22 management companies with total net assets of fifty million dollars or less, or a filing
23 fee of one thousand dollars for open-end management companies with total net assets
24 of more than fifty million dollars but less than two hundred fifty million dollars, or a
25 filing fee of two thousand dollars for open-end management companies with total net

1 assets equal to or greater than two hundred fifty million dollars; or a filing fee of one
2 hundred fifty dollars for unit investment trusts. A renewal filing is required annually,
3 including those documents that the director by rule or order may require and a fee as
4 provided in this subparagraph (a)(1). An initial or renewal filing includes a separate
5 fee for each portfolio, series class, or other designation. Any other federal covered
6 security must submit a filing fee of two hundred fifty dollars.

7 (2) After the initial offer of the federal covered security in this state, all documents that
8 are part of an amendment to a federal registration statement filed with the Securities
9 and Exchange Commission under the Securities Act of 1933, which shall be filed
10 concurrently with the director. Any amendment filing that includes a name change to
11 any filing, including any portfolio, series, class, or other designation, must include a
12 fifty dollar filing fee for each name change of each portfolio, series, class, or other
13 designation.

14 (3) An annual report of the net assets of the fund, together with the requisite filing fee in
15 this section.

16 (b) With respect to any security that is a covered security under section 18(b)(4)(D) of the
17 Securities Act of 1933, the director may, by rule or order, require the issuer to file a notice on
18 SEC Form D and a consent to service of process signed by the issuer or the issuer's
19 representative, no later than fifteen days after the first sale of the federal covered security in this
20 state, together with a filing fee of two hundred dollars.

21 (c) The director, by rule or order, may require the filing of any document filed with the
22 Securities and Exchange Commission under the Securities Act of 1933 with respect to a covered
23 security under section 18(b)(3) or (4) of the Securities Act of 1933, together with a two hundred
24 fifty dollar filing fee.

25 (d) The director may issue a cease and desist order suspending the offer and sale of a

1 covered security, except a covered security under section 18(b)(1) of the Securities Act of 1933,
 2 if the director finds that the order is in the public interest and there is a failure to comply with any
 3 condition established under this section.

4 (e) The director, by rule or order, may waive any or all of the provisions of this section.

5 (f) Until October 10, 1999, the director may require the registration of a federal covered
 6 security if the issuer fails to pay the fee required by this chapter. For the purpose of this
 7 subsection, a delay in payment or an underpayment of a fee that is remedied within fifteen days
 8 after receipt of notice from the director does not constitute a failure to pay the fee.

9 Section 6. That subsection (b) of § 47-31A-401 be amended to read as follows:

10 (b) "Agent," means any individual other than a broker-dealer who represents a broker-dealer
 11 or issuer in effecting or attempting to effect purchases or sales of securities. "Agent" does not
 12 include an individual who represents:

13 (1) ~~an~~ An issuer in:

14 ~~(1)(i)~~ (i) Effecting transactions in a security exempted by clause (1), (2), (3), (10), or
 15 (11) of § 47-31A-402 (a);

16 ~~(2)(ii)~~ (ii) Effecting the transactions exempted by § 47-31A-402 (b); ~~or~~

17 (iii) Effecting transactions in a covered security as described in section 18(b)(3) and
 18 18(b)(4)(D) of the Securities Act of 1933;

19 ~~(3)(iv)~~ (iv) Effecting transactions with existing employees, partners or directors of the
 20 issuer if no commission or other remuneration is paid or given directly or
 21 indirectly for soliciting any person in this state; or

22 (2) A broker-dealer in effecting transactions in this state limited to those transactions
 23 described in section 15(h)(2) of the Securities Exchange Act of 1934.

24 A partner, officer, or director of a broker-dealer or issuer, or a person occupying a similar
 25 status or performing similar functions is an agent only if ~~he~~ the person otherwise comes within

1 this definition.

2 Section 7. That subsection (f) of § 47-31A-401 be amended to read as follows:

3 (f) "Investment adviser," means any person, who for compensation, engages in the business
4 of advising others, whether directly or through publications or writings, as to the value of
5 securities or as to the advisability of investing in, purchasing, or selling securities, or who, for
6 compensation and as a part of a regular business, issues or promulgates analyses or reports
7 concerning securities. "Investment adviser" also includes financial planners and other persons
8 who, as an integral component of other financially related services, provide the foregoing
9 investment advisory services to others for compensation as a part of a business or who hold
10 themselves out as providing the foregoing investment advisory services to others for
11 compensation. "Investment adviser" does not include:

- 12 (1) An investment adviser representative;
- 13 (2) A bank, savings institution, or trust company;
- 14 (3) A lawyer, accountant, engineer, or teacher whose performance of these services is
15 solely incidental to the practice of his profession;
- 16 (4) A broker-dealer or its agent whose performance of these services is solely incidental
17 to the conduct of its business as a broker-dealer and who receives no special
18 compensation for them;
- 19 (5) A publisher of any newspaper, news column, newsletter, news magazine, or business
20 or financial publication or service, whether communicated in hard copy form, or by
21 electronic means, or otherwise, that does not consist of the rendering of advice on the
22 basis of the specific investment situation of each client; ~~or~~
- 23 (6) Any person that is a federal covered adviser; or
- 24 (7) Such other person not within the intent of this subsection as the director may, by rule
25 or order, designate.

1 Section 8. That § 47-31A-401 be amended by adding thereto a NEW SUBSECTION to read
2 as follows:

3 "Federal covered adviser," means a person who is:

4 (1) Registered under section 203 of the Investment Advisers Act of 1940; or

5 (2) Excluded from the definition of investment adviser under 202(a)(11).

6 Section 9. That subsection (g) of § 47-31A-401 be amended to read as follows:

7 (g) "Investment adviser representative," means any person, including ~~but not limited to,~~ a
8 partner, officer, or director, or a person occupying a similar status or performing similar
9 functions, or other individual, except clerical or ministerial personnel, who is employed by or
10 associated with an investment adviser ~~except clerical or ministerial personnel, that is registered~~
11 or required to be registered under this chapter, or who has a place of business located in this
12 state and is employed by or associated with a federal covered adviser, and who does any of the
13 following:

14 (1) Makes any recommendations or otherwise renders advice regarding securities if the
15 person has direct advisory client contact;

16 (2) Manages accounts or portfolios of clients;

17 (3) Determines which recommendations or advice regarding securities should be given;
18 ~~provided, however, if there are more than five such persons employed by or~~
19 ~~associated with an investment adviser, who do not otherwise come within the meaning~~
20 ~~of items (1), (2), (4) or (5) of this subsection, then only the direct supervisor of such~~
21 ~~persons is deemed to be investment adviser representative pursuant to this subsection;~~

22 (4) Solicits, offers, or negotiates for the sale of or sells investment advisory services
23 unless the person is a broker-dealer or agent registered with South Dakota whose
24 solicitation activities are solely incidental to ~~his~~ the person's profession and who
25 receives special compensation only from an affiliated entity and the person would not

1 be an investment adviser representative except for the performance of the activities
2 described in this subsection; or

3 (5) Directly supervises employees who perform any of the foregoing activities or services.

4 Section 10. That § 47-31A-401 be amended by adding thereto a NEW SUBSECTION to
5 read as follows:

6 "Federal covered security," means any security described as a covered security under section
7 18(b) of the Securities Act of 1933, or rules or regulations promulgated thereunder.

8 Section 11. That subsection (a)(13) of § 47-31A-402 be repealed.

9 ~~(13) A security issued by an issuer registered as an open-end management investment~~
10 ~~company or unit investment trust under section 8 of the Investment Company Act of~~
11 ~~1940 if:~~

12 ~~(A) (i) The issuer is advised by an investment adviser that is a depository institution~~
13 ~~exempt from registration under the Investment Advisers Act of 1940 or that~~
14 ~~is currently registered as an investment adviser, and has been registered, or is~~
15 ~~affiliated with an adviser that has been registered, as an investment adviser~~
16 ~~under the Investment Advisers Act of 1940 for at least three years next~~
17 ~~preceding an offer or sale of a security claimed to be exempt under this~~
18 ~~paragraph, and the issuer has acted, or is affiliated with an investment adviser~~
19 ~~that has acted, as investment adviser to one or more registered investment~~
20 ~~companies or unit investment trusts for at least three years next preceding an~~
21 ~~offer or sale of a security claimed to be exempt under this paragraph; or~~

22 ~~(ii) The issuer has a sponsor that has at all times throughout the three years before~~
23 ~~an offer or sale of a security claimed to be exempt under this paragraph~~
24 ~~sponsored one or more registered investment companies or unit investment~~
25 ~~trusts the aggregate total assets of which have exceeded one hundred million~~

1 dollars.

2 ~~(B) The division has received prior to any sale exempted herein:~~

3 ~~(i) A notice of intention to sell which has been executed by the issuer which~~
4 ~~sets forth the name and address of the issuer and the title of the~~
5 ~~securities to be offered in this state; and~~

6 ~~(ii) A filing fee of five hundred dollars for open-end management companies~~
7 ~~with total net assets of fifty million dollars or less, or a filing fee of one~~
8 ~~thousand dollars for open-end management companies with assets of~~
9 ~~more than fifty million dollars but less than two hundred fifty million~~
10 ~~dollars, or a filing fee of two thousand dollars for open-end management~~
11 ~~companies with total net assets equal to or greater than two hundred~~
12 ~~fifty million dollars, or~~

13 ~~(iii) A filing fee of one hundred fifty dollars for unit investment trusts.~~

14 ~~(C) In the event any offer or sale is to be made more than twelve months after the~~
15 ~~date on which the notice to claim exemption was filed with the division under~~
16 ~~this rule, it shall be necessary to refile a notice to claim exemption and the filing~~
17 ~~fee set forth in subsection (a)(13)(B)(ii) above.~~

18 ~~(D) For the purpose of this paragraph, an investment adviser is affiliated with~~
19 ~~another investment adviser if it controls, is controlled by, or is under common~~
20 ~~control with the other investment adviser.~~

21 Section 12. That subsection (b)(13) of § 47-31A-402 be amended to read as follows:

22 (13) ~~Any sale by an issuer having its principal office in this state, to not more than~~
23 ~~thirty-five persons in this state as, when aggregated with the number of persons to~~
24 ~~whom sales have been made pursuant to paragraphs (9) and (10), other than those~~
25 ~~designated in paragraph (8), during one period of twelve consecutive months, whether~~

1 or not any of the purchasers is then present in this state; or any sale by an issuer not
2 having its principal office in this state, to not more than five persons in this state,
3 when aggregated with the number of persons to whom sales have been made pursuant
4 to paragraph (10), other than those designated in paragraph (8), during one period of
5 twelve consecutive months; whether or not any of the purchasers is then present in
6 this state if:

7 ~~————— (A) The issuer believes that all of the buyers in this state, other than those~~
8 ~~designated in paragraph (8), are purchasing for investment;~~

9 ~~————— (B) No commission or other remuneration is paid or given directly or indirectly for~~
10 ~~soliciting any prospective buyer in this state, other than those designated in~~
11 ~~paragraph (8), except reasonable and customary commissions paid by the issuer~~
12 ~~to a broker or agent licensed under this chapter;~~

13 ~~————— (C) The issuer has, ten calendar days prior to any sales pursuant to this paragraph,~~
14 ~~supplied the director with a statement of issuer on forms prescribed by the~~
15 ~~director and shall pay a fee upon filing of one hundred dollars;~~

16 ~~————— (D) There is no public advertising of an offer to sell securities under this paragraph;~~
17 ~~and~~

18 ~~————— (E) Any offers made under this paragraph are directed only to persons with whom~~
19 ~~the issuer has a preexisting relationship or persons acting on the issuer's behalf~~
20 ~~who have a preexisting business relationship.~~

21 ~~— The director may, by rule or order, as to any security or transaction of any type of security~~
22 ~~or transactions, withdraw or further condition the exemption, or increase the number of offers~~
23 ~~and sales permitted or waive the conditions, as set forth in this paragraph, in subdivision (A), (B)~~
24 ~~or (C) of paragraph (13) with or without the substitution of a limitation or remuneration, and~~
25 ~~may require a report of sales. The director may, by rule or order, create a limited offering~~

1 transactional exemption which shall further the objectives of compatibility with federal
2 exemptions and uniformity among the states. Any transactional exemption that complies with the
3 rules promulgated pursuant to this section shall submit a filing fee of two hundred dollars.

4 Section 13. That § 47-31A-403 be amended to read as follows:

5 47-31A-403. The director may, by rule or order, require the filing of any prospectus,
6 pamphlet, circular, form letter, advertisement, or other sales literature or advertising
7 communication addressed or intended for distribution to prospective investors, including clients
8 or prospective clients of an investment adviser unless a security or transaction is exempted by
9 § 47-31A-402 or the security is a federal covered security or the transaction is with respect to
10 a federal covered security.

11 Section 14. That subsection (a) of § 47-31A-414 be amended to read as follows:

12 (a) Sections 47-31A-101, 47-31A-201(a), 47-31A-301, 47-31A-302, 47-31A-405, and
13 47-31A-410 apply to persons who sell or offer to sell when:

- 14 (1) An offer to sell is made in this state; or
15 (2) An offer to buy is made and accepted in this state.

16 Section 15. That subsection (g) of § 47-31A-414 be amended to read as follows:

17 (g) Every applicant for registration under this chapter and every issuer which proposes to
18 offer a security in this state through any person acting on an agency basis in common-law sense,
19 shall file with the director, in such form as ~~he~~ the director, by rule, prescribes, an irrevocable
20 consent appointing the director or ~~his~~ the director's successor in office to be ~~his~~ the applicant's
21 attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding
22 against ~~him or his~~ the applicant or the applicant's successor, executor, or administrator which
23 arises under this chapter, or any rule or order hereunder, after the consent has been filed, with
24 the same force and validity as if served personally on the person filing consent. A person who
25 has filed such a consent in connection with a previous registration or notice filing need not file

1 another. Service may be made by leaving a copy of the process in the office of the director, but
2 it is not effective unless:

3 (1) The plaintiff, who may be the director in a suit, action, or proceeding instituted by ~~him~~
4 the director, forthwith sends notice of the service and copy of the process by certified
5 or registered mail to the defendant or the respondent at ~~his~~ the last address on file
6 with the director; and

7 (2) The plaintiff's affidavit of compliance with this subsection is filed in the case on or
8 before the return day of the process, if any, or within such further time as the court
9 allows.

10 Section 16. That the introductory clause to subsection (a) of § 47-31A-402 be amended to
11 read as follows:

12 (a) The following securities are exempted from §§ 47-31A-301, section 5 of this Act, and
13 47-31A-403:

14 Section 17. That the introductory clause to subsection (b) of § 47-31A-402 be amended to
15 read as follows:

16 (b) The following transactions are exempted from §§ 47-31A-301, section 5 of this Act, and
17 47-31A-403:

18 Section 18. That subsection (h) of § 47-31A-407 be amended to read as follows:

19 (h) The director may prepare and issue any certificate to the effect that the records of the
20 director show that a specified security was or was not registered ~~or~~, that a specified person was
21 or was not ~~licensed~~ registered, or that a filing under section 5 of this Act was or was not made,
22 on a specified date or between specified dates. The director may prepare and issue certified
23 copies of any order of registration, of any filing under section 5 of this Act, or of any license or
24 of any lawful order of the director. Any such certificate may recite that such registration, filing,
25 license, or lawful order has not been suspended, revoked, cancelled, or amended except as

1 therein stated. The director may prepare and issue certified copies of any application, filing,
2 document, exhibit, report, or other paper on file with the director. All certificates issued pursuant
3 to this subsection shall be signed by the director and identified by an impression of the seal of the
4 director. The director shall charge one dollar for each such certificate and fifty cents per folio for
5 all copies so certified. All such certificates shall be prima facie evidence of the facts therein
6 stated; and all copies so certified shall be receipted evidence in all courts with the same force and
7 effect as the originals thereof.

8 Section 19. That subsection (a) of § 47-31A-409 be amended to read as follows:

9 (a) It is a violation of this chapter and a Class 4 felony for any person to violate any
10 provision of this chapter except § 47-31A-404, who fails to file and pay the requisite fees under
11 section 5 of this Act, or who violates any rule or order under this chapter, or who willfully
12 violates § 47-31A-404 knowing the statement made to be false or misleading in any material
13 respect, or who willfully fails to comply with section 5 of this Act; but no person may be
14 imprisoned for violation of any rule or order or failure to comply with section 5 of this Act, if
15 ~~he~~ the person proves that he or she had no knowledge of the rule or order. A subsequent
16 violation is a Class 3 felony.

17 Section 20. That subsection (a) of § 47-31A-412 be amended to read as follows:

18 (a) The director may from time to time make, amend, and rescind such rules, forms, and
19 orders as are necessary to carry out the provisions of this chapter, including rules and forms
20 governing registration statements, filings under section 5 of this Act, applications, and reports,
21 and defining any terms whether or not used in this chapter, insofar as the definitions are not
22 inconsistent with the provisions of this chapter and pursuant to the provisions of chapter 1-26.
23 For the purpose of the rules and forms, the director may classify securities, persons, and matters
24 within ~~his~~ the director's jurisdiction, and prescribe different requirements for different classes.
25 The director may, by rule, adopt exemptions from the registration requirements of

1 §§ 47-31A-201 and 47-31A-301 where such exemptions are consistent with the public interest
2 and with the purposes fairly intended by the policy and provisions of this chapter.

3 Section 21. That subsection (b) of § 47-31A-413 be amended to read as follows:

4 (b) The director shall keep a register of all applications for registration of securities and
5 registration statements, all filings made for federal covered securities, and all applications for
6 broker-dealer, agent, investment adviser, or investment adviser representative which are or have
7 ever been effective under this chapter; all written notices of claim of exemption from registration
8 requirements; all orders entered under this chapter; and all interpretative opinions or no-action
9 determinations issued pursuant to subsection (e). All records may be maintained in computer or
10 microfilm format or any other form of data storage. No original records will be maintained any
11 longer than ten years. The register shall be available for public inspection.

12 Section 22. That subsection (c) of § 47-31A-413 be amended to read as follows:

13 (c) The information contained in or filed with any registration statement, federal covered
14 security filing, application, or report may be made available to the public under such rules as the
15 director prescribes.

1 **BILL HISTORY**

2 1/14/97 First read in Senate and referred to Commerce. S.J. 27

3 1/16/97 Scheduled for Committee hearing on this date.

4 1/16/97 Commerce Do Pass, Passed, AYES 6, NAYS 1.

5 1/17/97 Senate Do Pass, Passed, AYES 34, NAYS 0. S.J. 61

6 1/18/97 First read in House and referred to Commerce. H.J. 66

7 1/23/97 Scheduled for Committee hearing on this date.

8 1/23/97 Commerce Do Pass, Passed, AYES 12, NAYS 0. H.J. 88

9 1/23/97 Commerce Place on Consent Calendar. H.J. 88

10 1/27/97 Deferred to another day. H.J. 162

11 1/28/97 Referred to Commerce. H.J. 182

12 2/25/97 Scheduled for Committee hearing on this date.

13 2/25/97 Commerce Do Pass Amended, Passed, AYES 12, NAYS 0. H.J. 677

14 2/25/97 Commerce Place on Consent Calendar. H.J. 677