

# State of South Dakota

SEVENTY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 1997

400A0386

HOUSE COMMERCE COMMITTEE

ENGROSSED NO. **SB80** - 1/31/97

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

1 FOR AN ACT ENTITLED, An Act to update and revise the Uniform Securities Act.

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

3 Section 1. That § 47-31A-402(b) be amended by adding thereto a NEW SUBSECTION to  
4 read as follows:

5 Any nonissuer transaction by a registered agent of a registered broker-dealer, and any resale  
6 transaction by a sponsor of a unit investment trust registered under the Investment Company Act  
7 of 1940, in a security of a class that has been outstanding in the hands of the public for at least  
8 ninety days provided, at the time of the transaction:

9 (A) The issuer of the security is actually engaged in business and not in the  
10 organization stage or in bankruptcy or receivership and is not a blank check,  
11 blind pool, or shell company whose primary plan of business is to engage in a  
12 merger or combination of the business with, or an acquisition of, an  
13 unidentified person or person;

14 (B) The security is sold at a price reasonably related to the current market price of

1 the security;

2 (C) The security does not constitute the whole or part of an unsold allotment to,  
3 or a subscription or participation by, the broker-dealer as an underwriter of the  
4 security;

5 (D) A nationally recognized securities manual designated by rule or order of the  
6 director or a document filed with the United States Securities and Exchange  
7 Commission which is publicly available through the United States Securities  
8 and Exchange Commission's Electronic Data Gathering and Retrieval System  
9 contains:

10 (i) A description of the business and operations of the issuer;

11 (ii) The names of the issuer's officers and the names of the issuer's directors,  
12 if any, or in the case of a non-United States issuer, the corporate  
13 equivalents of the persons in the issuer's country of domicile;

14 (iii) An audited balance sheet of the issuer as of a date within eighteen  
15 months or, in the case of a reorganization or merger where parties to the  
16 reorganization or merger had an audited balance sheet, a pro forma  
17 balance sheet; and

18 (iv) An audited income statement for each of the issuer's immediately  
19 preceding two fiscal years, or for the period of existence of the issuer,  
20 if in existence for less than two years or, in the case of a reorganization  
21 or merger where the parties to the reorganization or merger had an  
22 audited income statement, a pro forma income statement; and

23 (E) The issuer of the security has a class of equity securities listed on a national  
24 securities exchange registered under the Securities and Exchange Act of 1934,  
25 or designated for trading on the National Association of Securities Dealers

1 Automated Quotation System, unless:

- 2 (i) The issuer of the security is a unit investment trust registered under the  
3 Investment Company Act of 1940;
- 4 (ii) The issuer of the security has been engaged in continuous business,  
5 including any predecessors, for at least three years; or
- 6 (iii) The issuer of the security has total assets of at least two million dollars  
7 based on the audited balance sheet as of a date within eighteen months  
8 or, in the case of a reorganization or merger where the parties to the  
9 reorganization or merger had the audited balance sheet, a pro forma  
10 balance sheet.

11 Section 2. That § 47-31A-402(a) be amended by adding thereto a NEW SUBSECTION to  
12 read as follows:

13 Securities meeting all of the following conditions:

14 (A) The securities are:

- 15 (i) Equity securities except options, warrants, preferred stock, subscription  
16 rights, securities convertible into equity securities or any right to  
17 subscribe to or purchase the options, warrants, convertible securities, or  
18 preferred stock;
- 19 (ii) Units consisting of equity securities permitted by (i) and warrants to  
20 purchase the same equity security being offered in the unit;
- 21 (iii) Non-convertible debt securities that are rated in one of the four highest  
22 rating categories of Standard's and Poor's, Moody's, Dominion Bond  
23 Rating Services of Canadian Bond Rating Services or other rating  
24 organizations which the director by rule or order may designate. For  
25 purposes of this subparagraph, non-convertible debt securities means

- 1 securities that cannot be converted for at least one year from the date of  
2 issuance and then only into equity shares of the issuer or its parent; or
- 3 (iv) American Depository Receipts representing securities described in (i),  
4 (ii), or (iii).
- 5 (B) The issuer is not organized under the laws of the United States, or of any state,  
6 territory, or possession of the United States, or of the District of Columbia or  
7 Puerto Rico;
- 8 (C) The issuer, at the time an offer or sale is made under this subdivision, has been  
9 a going concern engaged in continuous business operations for the immediate  
10 past five years and during that period, has not been the subject of a preceding  
11 relating to insolvency, bankruptcy, involuntary administration, receivership, or  
12 similar proceedings. For the purposes of this subparagraph, the operating  
13 history of any predecessor that represented more than fifty percent of the value  
14 of the assets of the issuer that otherwise would have met the conditions of this  
15 section may be used toward the five year requirement;
- 16 (D) The issuer, at the time an offer or sale is made under this subsection, has public  
17 float of one billion United States dollars or more. For purposes of this  
18 subparagraph:
- 19 (i) Public float means the market value of all outstanding equity shares  
20 owned by non-affiliates;
- 21 (ii) Equity shares means common shares, non-voting equity shares, and  
22 subordinate or restricted voting equity shares, but does not include  
23 preferred shares;
- 24 (iii) An affiliate of a person is anyone who beneficially owns, directly or  
25 indirectly, or exercises control or direction over, more than ten percent

1 of the outstanding equity shares of the person;

2 (E) The market value of the issuer's equity shares, at the time an offer or sale is  
3 made under this subsection, is three billion United States dollars or more. For  
4 purposes of this subparagraph, equity shares means common shares, non-  
5 voting equity shares, and subordinate or restricted voting equity shares, but  
6 does not include preferred shares;

7 (F) The issuer, at the time an offer or sale is made under this section, has a class  
8 of equity securities listed for trading on or through the facilities of a foreign  
9 securities exchange or recognized foreign securities market included in Rule  
10 902(a)(1) promulgated under the Securities Act of 1933 or designated by the  
11 United States Securities and Exchange Commission under Rule 902(a)(2)  
12 promulgated under the Securities Act of 1933.

13 Section 3. That § 47-31A-201 be amended by adding thereto a NEW SUBSECTION to read  
14 as follows:

15 A broker-dealer that is resident in Canada and has no office or other physical presence in this  
16 state may, provided the broker-dealer is registered in accordance with this chapter, and any rules  
17 or orders as prescribed by the director, effect transactions in securities with or for, or induce or  
18 attempt to induce the purchase or sale of any security by:

19 (1) A person from Canada who is temporarily resident in this state, with whom the Canadian  
20 broker-dealer had a bona fide broker-dealer client relationship before the person  
21 entered the United States; or

22 (2) A person from Canada who is a resident in this state, whose transactions are in self-  
23 directed tax advantaged retirement plan in Canada of which the person is the holder  
24 or contributor.

25 Section 4. That § 47-31A-201 be amended by adding thereto a NEW SUBSECTION to read

1 as follows:

2 An agent who will be representing a Canadian broker-dealer registered under this section  
3 may, provided the agent is registered in accordance with this chapter, effect transactions in  
4 securities in this state as permitted for the broker-dealer in section 3 of this Act and any rules or  
5 orders as prescribed by the director.

6 Section 5. That subsection (a)(2)(M) of § 47-31A-204 be amended to read as follows:

7 (M) A civil penalty levied under subsection (a) shall not exceed ~~two hundred fifty~~  
8 ~~dollars per violation per person nor ten thousand dollars in a single proceeding~~  
9 ~~against any one~~ per violation per person. All administrative fines received shall  
10 be deposited in the state general fund.

11 Section 6. That § 47-31A-402(b) be amended by adding thereto a NEW SUBSECTION to  
12 read as follows:

13 Any nonissuer transaction in a security by a registered agent of a registered broker-dealer if:

14 (A) The issuer of the security is actually engaged in business and not in the organization  
15 stage or in bankruptcy or receivership and is not a blank check, blind pool, or shell  
16 company whose primary plan of business is to engage in a merger or combination of  
17 the business with, or an acquisition of, an unidentified person or persons; and

18 (B) The security is senior in rank to the common stock of the issuer both as to payment  
19 of dividends or interest upon dissolution or liquidation of the issuer and the security  
20 has been outstanding at least three years and the issuer or any predecessors have not  
21 defaulted within the current fiscal year or the three immediately preceding fiscal years  
22 in the payment of any dividend, interest, principal, or sinking fund installment on the  
23 security when due and payable.

1 **BILL HISTORY**

2 January 14 - First read in Senate and referred to Commerce. S.J. 27

3 January 16 - Scheduled for hearing.

4 January 16 - Passed, AYES 7, NAYS 0.

5 January 17 - Second reading Senate. S.J. 61

6 January 17 - Passed, AYES 33, NAYS 1. S.J. 61

7 January 18 - First read in House and referred to Commerce. H.J. 66

8 January 23 - Scheduled for hearing.

9 January 23 - Deferred to another day. H.J. 88

10 January 28 - Scheduled for hearing.

11 January 28 - Deferred to another day. H.J. 164

12 January 30 - Scheduled for hearing.

13 January 30 - Passed as amended, AYES 13, NAYS 0. H.J. 212

14 January 30 - Placed on Consent. H.J. 212