

1971 Senate Bill 226

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CHAPTER 84, Laws of 1971

AN ACT to renumber 551.21; to amend 551.02 (2) and (13), 551.22 (5), 551.23 (3) (b) and (d), (8), (9), (10) and (12), 551.24 (1), 551.27 (5) and (11), 551.28 (3), 551.31 (1) to (4), 551.33 (3) and (4), 551.34 (4), 551.51 (1), 551.53, 551.57, 551.60 (2) and (4), 551.61 (1), 551.62 (1) and 551.66 (title); to repeal and recreate 226.14 (7) and 551.22 (13); and to create 179.31, 180.98, 181.77, 551.21 (2) and 551.31 (6) of the statutes, relating to the regulation of and offer and sale of securities.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 179.31 of the statutes is created to read:

179.31 OFFER AND SALE OF SECURITIES. No limited partnership formed under this chapter and no other limited partnership shall offer or sell any of its securities in this state, unless the securities are registered under ch. 551 or unless the securities or the offer or sale thereof are exempted from registration under ch. 551.

SECTION 2. 180.98 of the statutes is created to read:

180.98 OFFER AND SALE OF SECURITIES. No domestic corporation organized under this chapter and no foreign corporation shall offer or sell any of its securities in this state, unless the securities are registered under ch. 551 or unless the securities or the offer or sale thereof are exempted from registration under ch. 551.

SECTION 3. 181.77 of the statutes is created to read:

181.77 OFFER AND SALE OF SECURITIES. No domestic nonstock corporation organized under this chapter and no foreign nonstock corporation shall offer or sell any of its securities in this state, unless the securities are registered under ch. 551 or unless the securities or the offer or sale thereof are exempted from registration under ch. 551.

SECTION 3m. 226.14 (7) of the statutes is repealed and recreated to read:

226.14 (7) Any such trust may designate the beneficial interests therein as beneficial certificates or shares of beneficial interest in a common law or business trust or voluntary association or a substantially equivalent designation.

SECTION 4. 551.02 (2) and (13) of the statutes are amended to read:

551.02 (2) "Agent" means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect ~~purchases or sales of~~ transactions in securities. "Agent" does not include an individual who represents an issuer in effecting transactions in a security exempted by s. 551.22, effecting transactions exempted by s. 551.23, or effecting other transactions if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state. A partner, officer or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions, is an agent ~~only~~ if he ~~otherwise~~ comes within this definition.

(13) (a) "Security" means any ~~note~~; stock; treasury stock; ~~note~~; bond; debenture; evidence of indebtedness; share of beneficial interest in a business trust; certificate of interest or participation in any profit sharing agreement; collateral trust certificate; preorganization subscription; transferable share; investment contract; commodity futures contract; voting trust certificate; certificate of deposit for a security; limited partnership interest; 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 or having the incidents of a security or offered in the manner in which securities are offered ~~or~~ or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of or option, warrant or right to subscribe to or purchase or sell, any of the foregoing.

(b) "Security" does not include any fixed or variable insurance or endowment policy or ~~fixed or variable~~ annuity contract under which an insurance company promises to pay a ~~sum~~ of money either in a lump sum or periodically for life or some other specified period; any beneficial interest in any voluntary inter vivos trust ~~which is~~ not created for the purpose of carrying on any business or solely for the purpose of voting; or any beneficial interest in any testamentary trust.

SECTION 5. 551.21 of the statutes is renumbered 551.21 (1).

SECTION 6. 551.21 (2) of the statutes is created to read:

551.21 (2) It is unlawful for any issuer or registrant of any securities registered under this chapter, or any person in control of or controlled by or under common control with the issuer or registrant, to offer or sell any of the registered securities in

this state if the issuer or registrant is in violation of this chapter, or any rule under this chapter, or any order under this chapter of which he has notice, or if the registration statement relating to the securities, as of the date of such offer or sale, is incomplete in any material respect or contains any statement which is false or misleading with respect to any material fact.

SECTION 7. 551.22 (5) of the statutes is amended to read:

551.22 (5) Any security issued or guaranteed by any federal credit union, or any credit union, ~~; industrial loan association~~ or similar association organized and supervised under the laws of this state.

SECTION 8. 551.22 (13) of the statutes is repealed and recreated to read:

551.22 (13) Any option to put or call any outstanding security transactions in which are exempted under s. 551.23 (3).

SECTION 9. 551.23 (3) (b) and (d), (8), (9), (10) and (12) of the statutes are amended to read:

551.23 (3) (b) Securities of the same class have been registered under this chapter under a registration statement becoming effective within 2 years preceding the sale and the registration has not been revoked or suspended; or

(d) The issuer or applicant files with the commissioner such information, and an undertaking to file such reports, as he ~~shall~~ by rule ~~require~~ requires and the commissioner does not by order disallow the exemption within 10 days.

(8) Any offer or sale of a security to the issuer thereof or to a bank, savings institution, trust company, insurance company, broker-dealer, savings and loan association, investment company as defined in the investment company act of 1940, or pension or profit sharing trust, or the state or any agency or political subdivision thereof, or to any other financial institution or institutional investor ~~whom the commissioner by rule exempts~~, whether such person is acting for itself or as trustee.

(9) Any offer or sale of a preorganization subscription, if no commission or other remuneration is paid or given directly or indirectly for soliciting any subscriber in this state and no advertising is published or circulated unless it has been permitted by the commissioner, and if the subscription is not binding and no payment is made by any subscriber until the securities subscribed for may legally be sold.

(10) Any offer or sale of its securities by a corporation, partnership or association having its principal office in this state, if the aggregate number of ~~holders of persons~~ holding directly or indirectly all the issuer's securities, after the securities to be issued are sold, does not exceed 15, exclusive of persons exempt under sub. (8), and if no commission or other remuneration ~~has been is paid or given directly or indirectly for soliciting any person in this state~~ and no advertising ~~has been is published or circulated in connection with any such sale unless it has been permitted by the commissioner~~, but the commissioner may by rule or order waive the condition with respect to commissions and may require reports of sales under this exemption.

(12) Any transaction pursuant to an offer to existing security holders of the issuer or of a corporation which, prior to the ~~initial~~ offer, owned substantially all of the voting stock of the issuer or ~~was organized whose controlling persons organized the~~

issuer for the purpose of the offer by ~~persons in control of the issuer~~, if no commission or other remuneration other than a standby commission is paid or given directly or indirectly for soliciting any security holder in this state, and if the issuer ~~first~~ files a notice specifying the terms of the offer and all other information which the commissioner by rule requires and the commissioner does not by order disallow the exemption within 10 days. "Security holders" include persons who at the time of the transaction are holders of convertible securities, nontransferable warrants or transferable warrants exercisable within not more than 90 days of their issuance.

SECTION 10. 551.24 (1) of the statutes is amended to read:

551.24 (1) The commissioner may by order deny or revoke any exemption ~~specified in~~ under s. 551.22 or 551.23 with respect to a ~~specific~~ specified security or transaction. No such order may be entered without appropriate prior notice to all interested parties, opportunity for hearing, and written findings of fact and conclusions of law, except that the commissioner may by order summarily deny or revoke any of the specified exemptions pending final determination of any proceeding under this section. Upon the entry of a summary order, the commissioner shall promptly notify all interested parties that it has been entered and the reasons therefor and that within 15 days of the ~~receipt~~ filing of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the commissioner, the order ~~will remain~~ remains in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing to all interested ~~persons~~ parties, may modify or vacate the order or extend it until final determination. No order under this section may operate retroactively. No person may be considered to ~~have violated~~ violate s. 551.21 by reason of any offer or sale effected after the entry of an order under this section if he was not given notice and if he sustains the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the order.

SECTION 11. 551.27 (5) and (11) of the statutes are amended to read:

551.27 (5) The commissioner may by rule or order require as a condition of registration, and at the expense of the applicant or registrant, that a report by an accountant, engineer, appraiser or other professional person be filed. The commissioner may also designate an ~~employee one of his employees~~ to make an investigation examination of the books, business and records and affairs of the applicant for registration of an issuer of securities for which a registration statement has been filed by qualification at the expense of the applicant or registrant.

(11) A registration statement is effective for one year from its effective date, or any longer period during which the security is being offered or distributed in a nonexempted transaction by or for the account of the issuer or other person on whose behalf the offering is being made or by any underwriter or broker-dealer who is still offering part of an unsold allotment or subscription taken by him as a participant in the distribution, provided that the commissioner has been notified of such continued offering and the period thereof. Any extension of the offering period shall be subject to rules established by the commissioner. All outstanding securities of the same class as a registered security are considered to be registered for the purpose of any transaction by or on behalf of a person not the issuer and not in control of the issuer or controlled by the issuer; or under common control with the issuer, so long as the registration statement is effective unless otherwise prescribed by order. A registration statement may not be withdrawn after its effective date if any of the securities registered have been sold in

this state, unless permitted by rule or order of the commissioner. No registration statement is effective during the time a stop order is in effect under s. 551.28.

SECTION 12. 551.28 (3) of the statutes is amended to read:

551.28 (3) In a proceeding for registration by qualification, the applicant or registrant has the burden of satisfying the requirements of sub. (1). In a proceeding for registration by coordination, the commissioner has the burden of establishing the existence of one of the grounds causes enumerated in sub. (1).

SECTION 13. 551.31 (1) to (4) of the statutes are amended to read:

551.31 (1) It is unlawful for any person to transact business in this state as a broker-dealer or agent unless he is licensed under this chapter. ~~If a broker-dealer is a foreign corporation, it shall comply with ch. 180.~~

(2) It is unlawful for any broker-dealer or issuer to employ an agent to represent him in this state unless the agent is licensed. The licensing of an agent is not effective during any period when he is not associated with a specified broker-dealer licensed under this chapter or a specified issuer. No agent shall at any time represent more than one broker-dealer or issuer, except that where affiliated organizations ~~operating at the same location~~ affiliated by direct or indirect common control are licensed broker-dealers or issuers of securities registered under this chapter, an agent may represent any such organization. When an agent begins or terminates ~~a connection his~~ employment with a broker-dealer or issuer, or begins or terminates those activities which make him an agent, the agent as well as the broker-dealer or issuer shall promptly notify the commissioner.

(3) It is unlawful for any person to transact business in this state as an investment adviser unless he is so licensed or licensed as a broker-dealer under this chapter or unless his only clients in this state are ~~financial institutions or institutional investors persons~~ exempted under s. 551.23 (8).

(4) Every license expires one year from its effective date unless renewed, or unless the period of the license is limited by rule or order. The commissioner by rule or order may prepare an initial schedule for license renewals so that subsequent renewals of licenses effective January 1, 1970, may be staggered by calendar months. For this purpose the commissioner may adjust the license fee proportionately. No license is effective after its expiration, and expiration of a license for which a renewal application has not been filed is deemed an application for withdrawal under s. 551.34 (6).

SECTION 14. 551.31 (6) of the statutes is created to read:

551.31 (6) It is unlawful for any licensed broker-dealer, agent or investment adviser, or any person directly or indirectly controlling a licensed broker-dealer or investment adviser, to transact business in this state if the licensee is in violation of this chapter, or any rule under this chapter, or any order under this chapter of which he has notice, or if the information contained in his application for license, as of the date of such transactions, is incomplete in any material respect or is false or misleading with respect to any material fact.

SECTION 15. 551.33 (3) and (4) of the statutes are amended to read:

551.33 (3) If the information contained in any application for license or other document filed with the commissioner is or becomes inaccurate or incomplete in any material respect, the licensee shall promptly file a correcting amendment.

(4) The commissioner shall make periodic examinations, within or without this state, of the business and records of each licensed broker-dealer and investment adviser, at such times and in such scope as he determines. ~~These~~ The examinations may be made without prior notice to the broker-dealer or investment adviser. The expense reasonably attributable to any such examination shall be paid by the broker-dealer or investment adviser whose business is examined, but the expense so payable shall not exceed an amount which the commissioner by rule prescribes. For the purpose of avoiding unnecessary duplication of examinations, the commissioner, insofar as he deems it practicable in administering this subsection, may cooperate with securities administrators of other states, the securities and exchange commission, and any national securities exchange or national securities association registered under the securities exchange act of 1934. The commissioner shall not make public the information obtained in the course of examinations, except when his duty under this chapter requires him to take action regarding any broker-dealer or investment adviser or to make the information available to one of the agencies specified herein, or except when called as a witness in any criminal or civil proceeding.

SECTION 16. 551.34 (4) of the statutes is amended to read:

551.34 (4) The commissioner may by order summarily deny, postpone or suspend a license or an application for ~~a~~ license pending final determination of any proceeding under this section. Upon the entry of the order, the commissioner shall promptly notify the applicant or licensee, as well as the employer or prospective employer if the applicant or licensee is an agent, that it has been entered and of the reasons therefor and that within 15 days after the receipt filing of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the commissioner, the order ~~will remain~~ remains in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing, may modify or vacate the order or extend it until final determination.

SECTION 17. 551.51 (1) of the statutes is amended to read:

551.51 (1) This chapter shall be administered by the commissioner of securities. The commissioner shall appoint a deputy commissioner ~~under the classified service and to serve at his pleasure. The commissioner may select the deputy from the classified service employes within the office or he may appoint the deputy commissioner outside the classified service.~~ The commissioner may designate the deputy commissioner or any officer or employe to perform any duty or exercise any power or function assigned to him when he is absent from the office.

SECTION 18. 551.53 of the statutes is amended to read:

551.53 It is unlawful for any person, in connection with the offer, sale or purchase of any security in this state, to publish, circulate or use any advertising which contains an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. All advertising shall be filed with the commissioner not later than the date of ~~use~~ publication or circulation, except advertising which the commissioner exempts by rule or order. The commissioner may by rule or

order prohibit the publication, circulation or use of any advertising deemed false or misleading.

SECTION 19. 551.57 of the statutes is amended to read:

551.57 Whenever it appears to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of this chapter or any rule or order hereunder, he may bring an action in the name of the state in the circuit court of the appropriate county to enjoin the acts or practices and to enforce compliance with this chapter or any rule or order hereunder, or he may refer the matter to the attorney general or the district attorney of the appropriate county. Upon a proper showing, the court may grant a permanent or temporary injunction, restraining order or writ of mandamus shall be granted and or restraining order, or may appoint a receiver or conservator may be appointed for the defendant or the defendant's assets, or may order rescission of any sales or purchases of securities determined to be unlawful under this chapter or any rule or order hereunder. The court may not require the commissioner to post a bond.

SECTION 20. 551.60 (2) and (4) of the statutes are amended to read:

551.60 (2) If the commissioner has reason to believe that any offer or sale of an unregistered security is or would be unfair, inequitable or fraudulent to purchasers, he may by order summarily prohibit further offers or sales of such security in this state until it is registered under this chapter. If the commissioner has reason to believe that any security is being offered or sold in this state by any unlicensed person in violation of this chapter or any rule or order hereunder, he may by order summarily prohibit such person from further offers or sales of securities in this state until he is licensed under this chapter.

(4) Every domestic corporation and every foreign corporation licensed in this state corporation, partnership or association having its principal office in this state or whose securities have been registered under this chapter or predecessor laws shall, within 20 days after receipt of written request from the commissioner made in connection with any investigation under s. 551.56 (1), furnish him with a list of all or part of its stockholders security holders as he may request requests, showing the amount of stock securities held by each security holder and the date of issuance of such securities and information reasonably related thereto, duly verified signed by the president or secretary of the corporation or partner of the issuer or a person occupying a similar status or performing similar functions.

SECTION 21. 551.61 (1) of the statutes is amended to read:

551.61 (1) Within 30 days after any order has become effective without a hearing, any interested party may apply to file a written request with the commissioner for a hearing in respect to any matters determined by the order, and a hearing shall be held within 15 days after the application is filed filing of the request, the matter shall be set down for hearing and notice given to all interested parties. After the hearing, the commissioner may affirm, vacate or modify the order as he deems appropriate.

SECTION 22. 551.62 (title) and (1) of the statutes are amended to read:

551.62 STAY OF PROCEEDINGS. (1) No injunction shall issue in any proceeding under s. 551.61 suspending or staying any order of the commissioner, except upon application to the court or the presiding judge thereof circuit court of the appropriate county,

notice of which shall be given to the commissioner and other parties to the proceeding, and except after opportunity for hearing thereon. No injunction shall issue in any other proceeding or action, in any court, which shall have the effect of delaying or preventing any such order from becoming effective, unless the parties to the proceeding before the commissioner are also parties to the court proceeding or action, and except after notice and opportunity for hearing thereon.

SECTION 23. 551.66 (title) of the statutes is amended to read:

551.66 (title) SCOPE OF CHAPTER.
