

1983 Senate Bill 121

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## 1983 Wisconsin Act 216

AN ACT to renumber and amend 551.22 (1); to amend 179.23 (2) (e) 5, 551.02 (7) (intro.) and (11) (e), 551.22 (7), 551.22 (9) and (15), 551.25 (3) (a), 551.27 (5), 551.31 (1) and (4), 551.34 (1) (j) and (6), 551.53 (1), 551.59 (1) (a), (2) (a), (3), (5) and (6) (a), 551.60 (2), 551.62, 552.21 (3) and 553.51 (4); to repeal and recreate 551.23 (8); and to create 551.02 (11) (f) and 551.22 (1) (b) of the statutes, relating to miscellaneous changes to the limited partnership, securities, corporate take-over and franchise investment laws.

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

SECTION 1m. 179.23 (2) (e) 5 of the statutes, as affected by 1983 Wisconsin Act ... (Assembly Bill 338), is amended to read:

179.23 (2) (e) 5. The removal of a general partner or the admission of an additional general partner.

SECTION 2. 551.02 (7) (intro.) and (11) (e) of the statutes are amended to read:

551.02 (7) (intro.) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications ~~or~~ writings or electronic means, as to the value of securities or as to the advisability of investing in, purchasing or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. "Investment adviser" does not include:

(11) (e) The terms defined in this subsection do not include any bona fide pledge or loan of a security.

SECTION 3. 551.02 (11) (f) of the statutes is created to read:

551.02 (11) (f) A securities broker-dealer or agent who effects a brokered securities transaction is considered to have effected a sale or purchase of a security.

SECTION 4. 551.22 (1) of the statutes is renumbered 551.22 (1) (a) and amended to read:

551.22 (1) (a) 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; but any revenue obligation payable from payments to be made in respect of property or money used under a lease, sale or loan arrangement by or for a nongovernmental industrial or commercial enterprise is exempted ~~subject to rules adopted by the commissioner only as provided under par. (b)~~. A security, other than a revenue obligation or security issued or guaranteed by the United States or an agency or corporate instrumentality of the United States, is exempt under this subsection only if the issuer's financial statements are prepared according to generally accepted accounting principles or guidelines which the commissioner designates by rule.

SECTION 5. 551.22 (1) (b) of the statutes is created to read:

551.22 (1) (b) Unless subject to a letter of credit of a bank or a savings and loan association as provided in this paragraph, a revenue obligation of an issuer specified under par. (a) that is payable from payments to be made in respect of property or money used under a lease, sale or loan arrangement by or for a nongovernmental industrial or commercial enterprise is exempted subject to rules adopted by the commissioner. A revenue obligation is exempt from any filing under the rules of the commissioner if it is the subject of an irrevocable letter of credit from a bank or a savings and loan association in favor of holders of the revenue obligations providing for payment of all principal and interest on the revenue obligations, and the letter of credit is accompanied by an opinion of counsel stating:

1. a. That payment of debt service will not constitute a preference under federal bankruptcy law if a petition in bankruptcy with respect to the enterprise is filed; or

b. That the letter of credit will provide for reimbursement to holders of the revenue obligations if they are required by order of a federal bankruptcy court to disgorge as a preference any payment of a debt service; and

2. That the enforceability of the letter of credit would not be materially affected by the filing of a petition under federal bankruptcy law with respect to the enterprise or any person obligated to reimburse the bank or a savings and loan association for payments made under the letter of credit.

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

551.22 (7) Any security listed, or approved for listing upon notice of issuance, on the New York stock exchange, the American stock exchange, or a national securities exchange registered under the securities exchange act of 1934 and designated by rule of the commissioner; ~~any other security of the same issuer which is of senior or substantially equal rank~~; any security called for by subscription rights or warrants so listed or approved; or any warrant or right to purchase or subscribe to any of the foregoing.

SECTION 6. 551.22 (9) and (15) of the statutes are amended to read:

551.22 (9) Any commercial paper meeting the requirements established by rule of the commissioner and which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which evidences an obligation to pay cash within 9 months of the date of issuance, exclusive of days of grace, or any renewal of such paper which is likewise limited, or any guarantee of such paper or of any such renewal.

(15) Any contract for the sale or purchase of a commodity for future delivery, if it is traded or executed on a contract market designated under 7 USC 7.

SECTION 7. 551.23 (8) of the statutes is repealed and recreated to read:

551.23 (8) Any offer or sale of a security to any of the following:

(a) The issuer of the security.

(b) A bank, savings institution, credit union, trust company, insurer, broker-dealer, investment adviser or savings and loan association, if the purchaser or prospective purchaser is acting for itself or as trustee with investment control.

(c) An investment company as defined under 15 USC 80a-3 or a pension or profit-sharing trust.

(d) This state or any of its agencies or political subdivisions.

(e) The federal government or any of its agencies or instrumentalities.

(f) Any financial institution or institutional investor designated by rule or order of the commissioner.

SECTION 8. 551.25 (3) (a) of the statutes is amended to read:

551.25 (3) (a) A Unless waived in writing by the applicant before federal effectiveness, a registration statement under this section automatically becomes effective at the moment the federal registration statement becomes effective if ~~no~~ all of the following conditions are met:

1. No stop order is in effect and no proceeding is pending under s. 551.28; and the

2. The registration statement has been on file with the commissioner for at least 10 days; and a

3. A statement of the maximum and minimum proposed offering prices and the maximum underwriting discounts and commissions has been on file for 2 full business days or such shorter period as the commissioner permits, and the offering is made within these limitations.

SECTION 9. 551.27 (5) of the statutes is 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 one of the commissioner's employes to make an examination of the business and records of an issuer of securities for which a registration statement has been filed by qualification or coordination, at the expense of the applicant or registrant.

SECTION 10. 551.31 (1) and (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 so licensed under this chapter, except that a person who effects transactions in this state exclusively for the account of or exclusively in offers to sell or sales to persons specified in s. 551.23 (8) is not required to be so licensed.

(4) Every license expires one year from its effective date unless renewed, or unless the ~~period of the license is limited or extended for not more than 6 months~~ by rule or order for the purpose of administering the licensing statutes in this chapter. 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 11. 551.34 (1) (j) and (6) of the statutes are amended to read:

551.34 (1) (j) Has failed reasonably to supervise agents ~~if a broker-dealer~~ or, in the case of an investment adviser, employes, to assure their compliance with this chapter, but no person may be deemed to have failed in such supervision if there have been established written procedures, and a system for applying such procedures, which would rea-

sonably be expected to prevent and detect, insofar as practicable, any violations of statutes, rules or orders and if the person has reasonably discharged the duties incumbent upon the person by reason of such procedures and system;

(6) Withdrawal from the status of a licensed broker-dealer, agent or investment adviser becomes effective 30 days after receipt by the commissioner or by an organization designated by rule of the commissioner under s. 551.32 (1) (a) of an application to withdraw or within such shorter period as the commissioner determines, unless a revocation or suspension proceeding is pending when the application is filed or a proceeding to revoke or suspend or to impose conditions upon the withdrawal is instituted within 30 days after the application is filed. If a proceeding is pending or instituted, withdrawal becomes effective at such time and upon such conditions as the commissioner by order determines. If no proceeding is pending or instituted and withdrawal automatically becomes effective, the commissioner may institute a revocation or suspension proceeding for the grounds specified under sub. (1) (b) within one year after withdrawal became effective and enter a revocation or suspension order as of the last date on which the license was in effect.

SECTION 12. 551.53 (1) of the statutes is amended to read:

551.53 (1) 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:~~

(a) That contains an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements ~~therein made~~, in the light of the circumstances under which they were made, not misleading. ~~All advertising shall be; or~~

(b) That has not been filed with the commissioner not later than the date of publication or circulation, except as the commissioner may otherwise provide by rule or order.

SECTION 13. 551.59 (1) (a), (2) (a), (3), (5) and (6) (a) of the statutes are amended to read:

551.59 (1) (a) Any person who offers or sells a security in violation of s. 551.21, 551.31, 551.41 or 551.55 or any rule relating thereto, or any condition imposed under s. 551.26 or 551.27 or any order under this chapter of which the person has notice is liable to the person purchasing the security from him or her. The person purchasing the security may sue either at law or in equity to recover the consideration paid for the security, together with interest at the legal rate under s. 138.04 from the date of payment, and reasonable attorney fees, less the amount of any income received on the security, upon the tender of the security, or for damages if the person no longer owns the security. Damages are the amount that would be recoverable upon a tender less the value of the security when the purchaser disposed of it and interest at the legal rate under s. 138.04 from the date of disposition. Tender shall require only notice of willingness to exchange the security for the amount specified. Any notice may be given by service as in civil actions or by certified mail addressed to the last-known address of the person liable.

(2) (a) Any person who purchases a security in violation of s. 551.41 (2) is liable to the person selling the security to him or her, who may sue either at law or in equity to recover the security and reasonable attorney fees, plus any income received by the purchaser thereon, upon tender of the consideration received, or for damages and reasonable attorney fees if the purchaser no longer owns the security. Damages are the excess of the value of the security when the purchaser disposed of it, plus interest at the legal rate under s. 138.04 from the date of disposition, over the consideration paid for the security. Tender requires only notice of willingness to pay the amount specified in exchange for the security. Any notice may be given by service as in civil actions or by certified mail to the last-known address of the person liable.

(3) Any person who wilfully participates in any act or transaction in violation of s. 551.42 shall be liable to any other person who purchases or sells any security at a price which was affected by the act or transaction for the damages sustained as a result of such act or transaction. Damages shall be the difference between the price at which the other person purchased or sold securities and the market value which the securities would have had at the time of his or her purchase or sale in the absence of the act or transaction, plus interest at the legal rate under s. 138.04 and reasonable attorney fees.

(5) No action shall be maintained under this section unless commenced before the expiration of 3 years after the act or transaction constituting the violation ~~or the expiration of one year after the discovery of the facts constituting the violation, whichever first expires~~, but the time specified for commencing such action shall be extended by reason of any fact and for the time specified in ss. 893.13 and 893.16 to 893.23.

(6) (a) No purchaser may commence an action under this section if, before suit is commenced, the purchaser has received a written offer stating the respect in which liability under this section may have arisen and fairly advising the purchaser of his or her rights; offering to repurchase the security for cash payable on delivery of the security equal to the consideration paid, together with interest at the legal rate under s. 138.04 from the date of payment, less the amount of any income received thereon or, if the purchaser no longer owns the security, offering to pay the purchaser upon acceptance of the offer an amount in cash equal to the damages computed in accordance with sub. (1); and stating that the offer may be accepted by the purchaser at any time within a specified period of not less than 30 days after the date of receipt thereof or such shorter period as the commissioner may by rule prescribe; and the purchaser has failed to accept such offer in writing within the specified period.

SECTION 14. 551.60 (2) of the statutes is amended to read:

551.60 (2) (a) If the commissioner has reason to believe that any offer or sale of an unregistered security is, has been or would be unfair, inequitable or fraudulent to offer-ees or purchasers, the commissioner may by order summarily prohibit further offers or sales of such security in this state until it is registered under this chapter.

(b) If the commissioner has reason to believe that any security is being or has been offered or sold in this state by any unlicensed person in violation of this chapter or any rule or order hereunder, the commissioner may by order summarily prohibit such person from further offers or sales of securities in this state until licensed under this chapter.

(c) If the commissioner has reason to believe that any unlicensed person is transacting or has transacted business in this state as an investment ~~advisor~~ adviser in violation of this chapter or any rule or order promulgated under this chapter, the commissioner may by order summarily prohibit such person from further engaging in such activity in this state until licensed under this chapter.

SECTION 15. 551.62 of the statutes is amended to read:

**551.62 Stay of proceedings.** (1) No permanent or temporary injunction, stay, restraining order or other order shall issue in any proceeding under s. 551.56 or 551.61 suspending or staying any order of the commissioner, except upon application to the 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 permanent or temporary injunction, stay, restraining order or other order 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.

(2) No permanent or temporary injunction, stay, restraining order or other order shall issue in any proceeding under s. 551.56 or 551.61 or in any other proceeding or action, in any court, suspending or staying any order of the commissioner or having the effect of

delaying or preventing any such order from becoming effective, unless an undertaking is entered into on the part of the petitioner or plaintiff, with a surety and in the sum the court or the presiding judge thereof directs or approves to the effect that the petitioner or plaintiff will pay all damages which any party sustains by the suspension or stay of the order or the delay or prevention of the order from becoming effective, and to such other effect as the court or judge directs, and no order or judgment in any proceeding or action shall be stayed on appeal therefrom unless a like undertaking is entered into by the petitioner or plaintiff in addition to the undertaking under s. 808.07.

SECTION 16. 552.21 (3) of the statutes is amended to read:

552.21 (3) No action may be maintained under this section unless commenced before the expiration of 3 years after the act or transaction constituting the violation ~~or the expiration of one year after the discovery of the facts constituting the violation, whichever first expires~~, but the time specified for commencing such action shall be extended by reason of any fact and for the time specified in ss. 893.13 and 893.16 to 893.23.

SECTION 17. 553.51 (4) of the statutes is amended to read:

553.51 (4) No action may be maintained to enforce any liability under this section unless brought before the expiration of 3 years after the act or transaction constituting the violation upon which the liability is based, ~~the expiration of one year after the discovery by the plaintiff of the fact constituting the violation~~, or 90 days after delivery to the franchisee of a written notice disclosing any violation of s. 553.21 or 553.41, which notice shall be approved as to form by the commissioner, whichever first expires.

SECTION 18. **Cross-reference changes.** In the sections of the statutes listed in Column A, the cross-references shown in Column B are changed to the cross-references shown in Column C:

A	B	C
Statute Sections	Old Cross-References	New Cross-References
551.34 (6)	sub. (1)(b)	sub. (1)(b), (g), (m) or (n)

SECTION 19. **Effective date.** This act takes effect on January 1, 1984, or the day after its publication, whichever is later.

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