

1999 ASSEMBLY BILL 938

March 28, 2000 – Introduced by LAW REVISION COMMITTEE. Referred to Committee on Financial Institutions.

1 **AN ACT to amend** 551.31 (6), 551.33 (1), 551.33 (6), 551.34 (1) (e), 551.34 (1) (f),
2 551.63 (2), 553.26 (4m) and 553.31 (2) of the statutes; **relating to:** the licensing
3 of securities broker-dealers, agents, investment advisers and investment
4 adviser representatives; the regulation of investment adviser representatives;
5 and requirements for changing a franchise registration (suggested as remedial
6 legislation by the department of financial institutions).

Analysis by the Legislative Reference Bureau

Under current law, the division of securities in the department of financial institutions (DFI) oversees the licensing of securities broker-dealers, agents, investment advisers and investment adviser representatives. Current law generally requires every order of the division of securities to be appropriate for the protection of both investors and the public interest. Current law also specifically requires the division of securities to restrict or suspend a license if the licensee fails to pay court-ordered child support and to revoke a license if the licensee is liable for delinquent taxes. This bill clarifies that the general standard regarding protection of investors and the public interest does not apply to an order restricting, suspending or revoking a license due to unpaid child support or delinquent taxes.

Under current law, an investment adviser representative is generally subject to licensing requirements similar to those applicable to a securities broker-dealer, agent or investment adviser. Furthermore, current law contains numerous

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requirements regulating licensed securities broker–dealers, agents and investment advisers. This bill expands the coverage of current law to include investment adviser representatives as regulated individuals under certain requirements currently applicable to securities broker–dealers, agents and investment advisers.

Also, under Wisconsin’s current franchise investment law, a person attempting to sell a franchise must generally register the franchise offered for sale with the division of securities in DFI. It is unclear, though, whether the person is similarly required to register any material changes to the registration statement. This bill clarifies that, once a person has properly registered a franchise, the person is not required to file any additional information except amendments that reflect material changes to the registration statement. This bill also changes the effective date of any amendment filed after the effective date of the registration from the date the division of securities approves of the amendment to the date the division of securities receives the amendment.

For further information, see the NOTES provided by the law revision committee of the joint legislative council.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

LAW REVISION COMMITTEE PREFATORY NOTE: This bill is a remedial legislation proposal, requested by the department of financial institutions and introduced by the law revision committee under s. 13.83 (1) (c) 4., stats. After careful consideration of the various provisions of the bill, the law revision committee has determined that this bill makes minor substantive changes in the statutes, and that these changes are desirable as a matter of public policy.

1 **SECTION 1.** 551.31 (6) of the statutes is amended to read:

2 551.31 (6) It is unlawful for any licensed broker–dealer, agent or, investment
3 adviser, or investment adviser representative, or any person directly or indirectly
4 controlling a licensed broker–dealer or investment adviser, to transact business in
5 this state if the licensee is in violation of this chapter, or any rule under this chapter,
6 or any order under this chapter of which the licensee or person has notice, or if the
7 information contained in the licensee’s or person’s application for license, as of the
8 date of such transactions, is incomplete in any material respect or is false or
9 misleading with respect to any material fact.

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1 **SECTION 2.** 551.33 (1) of the statutes is amended to read:

2 551.33 **(1)** Every licensed broker–dealer, agent ~~and~~, investment adviser and
3 investment adviser representative shall make and keep all accounts,
4 correspondence, memoranda, papers, books and other records which the division
5 prescribes by rule or order, subject to the limitations of section 15 of the Securities
6 Exchange Act of 1934 for broker–dealers and section 222 of the Investment Advisers
7 Act of 1940 for investment advisers. All records required shall be preserved for the
8 period prescribed by the division by rule or order. All required records shall, at the
9 request of the division, be made available at any time for examination by the division
10 either in the principal office of the licensee or by production of exact copies thereof
11 in this state.

12 **SECTION 3.** 551.33 (6) of the statutes is amended to read:

13 551.33 **(6)** The division may by rule establish standards for the conduct of
14 business by broker–dealers, agents, investment advisers, investment adviser
15 representatives and clearing corporations as defined in s. 408.102 (1) (e).

16 **SECTION 4.** 551.34 (1) (e) of the statutes is amended to read:

17 551.34 **(1)** (e) Is the subject of an order of the division denying an application
18 or suspending or revoking a license as a broker–dealer, agent ~~or~~, investment adviser
19 or investment adviser representative;

20 **SECTION 5.** 551.34 (1) (f) of the statutes is amended to read:

21 551.34 **(1)** (f) Is the subject of an order entered within the past 5 years by the
22 securities administrator of any other state or by the securities and exchange
23 commission denying, suspending or revoking the person’s registration or license as
24 a broker–dealer, agent, investment adviser, investment adviser representative or
25 federal covered adviser, or is the subject of an order of the securities and exchange

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1 commission or of a securities exchange or association registered under the Securities
2 Exchange Act of 1934 suspending or expelling such person from a securities
3 exchange or association or forbidding the association or affiliation of the person with
4 a broker–dealer or investment adviser, or is the subject of a U.S. postal service fraud
5 order. The division may not institute a revocation or suspension proceeding under
6 this paragraph more than one year from the date of the order relied on, and the
7 division may not enter an order under this paragraph on the basis of an order under
8 another state law or federal law unless the order was based on facts which would
9 currently constitute a ground for an order under this section;

NOTE: SECTIONS 1 to 5 are changes made to the Wisconsin uniform securities law necessitated by 1997 Wisconsin Act 316, which created “investment adviser representative” as a category of licensee. Prior to that time, investment adviser representatives had been subject to a “qualification” procedure while broker–dealers, agents and investment advisers had been subject to licensure under the securities law.

References to “investment adviser representative” are added to 5 securities licensing provisions to reflect the change made by 1997 Wisconsin Act 316. These changes provide that the securities licensing requirements that currently apply to licensed broker–dealers, agents and investment advisers are made applicable to investment adviser representatives.

10 **SECTION 6.** 551.63 (2) of the statutes is amended to read:

11 551.63 (2) ~~No~~ Except as provided under s. 551.34 (1m) (b) and (c), no rule, form
12 or order may be made, amended or rescinded unless the division finds that the action
13 is necessary or appropriate in the public interest and for the protection of investors.
14 In prescribing rules and forms the division may cooperate with the securities
15 administrators of other states and the securities and exchange commission with a
16 view to achieving maximum uniformity in the form and content of registration
17 statements, notice filings, applications and reports wherever practicable.

NOTE: The current standard in s. 551.63 (2), stats., for actions of the division of securities prohibits rules, forms or orders from being made, amended or rescinded unless the division finds that the action is necessary or appropriate in the public interest and for the protection of investors. However, current s. 551.34 (1m) (b) and (c), stats., require

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action when a licensee fails to pay court-ordered child support or is liable for delinquent taxes.

This SECTION amends s. 551.63 (2), stats., to exclude the actions required for child support enforcement and delinquent taxes from the general standard used for division actions.

1 **SECTION 7.** 553.26 (4m) of the statutes is amended to read:

2 553.26 **(4m)** A person who has complied with sub. (1) need not file with the
3 division, during the period when the registration is effective, any more information,
4 ~~including any amendments to the offering circular other than an application or~~
5 ~~amendment required to be filed under s. 553.31.~~ The division may not require
6 changes in the offering circular filed by the franchisor, subject to the division's
7 authority to suspend or revoke a registration for any of the causes under s. 553.28.

NOTE: This SECTION results from 1995 Wisconsin Act 364. The legislation, introduced as 1995 Assembly Bill 782, would have repealed s. 553.31, stats., which requires a franchise registrant to file material amendments to its uniform franchise offering circular. Assembly Amendment 4 to Assembly Bill 782 deleted the proposed repeal of s. 553.31. However, the amendment did not include the necessary changes to s. 553.26 (4m), stats., to remove inconsistent language and to clarify that the amendments required under s. 553.31, stats., must still be filed with the division of securities in the department of financial institutions. This SECTION makes those changes.

8 **SECTION 8.** 553.31 (2) of the statutes is amended to read:

9 553.31 **(2)** An amendment ~~to an application~~ filed after the effective date of the
10 registration of the sale of franchises, ~~if the amendment is approved by the division,~~
11 ~~is effective on the date the division determines, having due regard for the public~~
12 ~~interest or the protection of franchisees~~ is effective upon receipt of the amendment
13 by the division.

NOTE: This SECTION amends s. 553.31 (2), stats., to clarify that any amendment that is filed with the division of securities after the effective date of a registration of the sale of a franchise is effective upon receipt of the amendment by the division. The current statute is ambiguous as to whether it applies to any amendment filed after an effective registration or only to an amendment to an *application* that was filed after an effective registration.

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(END)