




# State of Wisconsin


LEGISLATIVE REFERENCE BUREAU

## **RESEARCH APPENDIX -** **PLEASE DO NOT REMOVE FROM DRAFTING FILE**

Date Transfer Requested: 02/14/2008 (Per: ARG)





 Appendix A ... Part 17 of 23

 The 2007 drafting file for LRB-1109/2

has been transferred to the drafting file for

**2007 LRB-3866** (SB 483)

 This cover sheet, the final request sheet, and the final version of the 2007 draft were copied on yellow paper, and returned to the original 2007 drafting file.

 The attached 2007 draft was incorporated into the new 2007 draft listed above. For research purposes, this cover sheet and the complete drafting file were transferred, as a separate appendix, to the 2007 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

SUBCHAPTER V

FRAUD AND LIABILITIES

**551.501 General fraud.** It is unlawful for a person, in connection with the offer, sale, or purchase of a security, directly or indirectly, to do any of the following:

(1) To employ a device, scheme, or artifice to defraud.

(2) To make an untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

(3) To engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

**551.502 Prohibited conduct in providing investment advice.** (1) FRAUD IN PROVIDING INVESTMENT ADVICE. It is unlawful for a person that advises others for compensation, either directly or indirectly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing, or selling securities or that, for compensation and as part of a regular business, issues or promulgates analyses or reports relating to securities, to do any of the following:

(a) To employ a device, scheme, or artifice to defraud another person.

(b) To engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

(2) RULES DEFINING FRAUD. A rule adopted under this chapter may define an act, practice, or course of business of an investment adviser or an investment adviser representative, other than a supervised person of a federal covered investment adviser, as fraudulent, deceptive, or manipulative, and prescribe means reasonably designed to prevent investment advisers and investment adviser representatives, other than supervised persons of a federal covered investment adviser, from

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1 engaging in acts, practices, and courses of business defined as fraudulent, deceptive,  
2 or manipulative.

\*\*\*\*NOTE: This provision follows the uniform act but I wonder about use of the term "supervised person of a federal covered investment adviser." Under current law, the division may define such a "supervised person" by rule under s. 551.02 (7m) (a) 1., but this provision of current law is repealed by the act. This provision of the uniform act also does not cross-reference the analogous federal law, as does s. 551.102 (16) (c) 2., and such a "supervised person" is not defined within the act. Do you want to make any changes to this provision?

3 (3) RULES SPECIFYING CONTENTS OF ADVISORY CONTRACT. A rule adopted under  
4 this chapter may specify the contents of an investment advisory contract entered  
5 into, extended, or renewed by an investment adviser.

6 **551.503 Evidentiary burden.** (1) CIVIL. In a civil action or administrative  
7 proceeding under this chapter, a person claiming an exemption, exception,  
8 preemption, or exclusion has the burden to prove the applicability of the claim.

9 (2) CRIMINAL. In a criminal proceeding under this chapter, a person claiming  
10 an exemption, exception, preemption, or exclusion has the burden of going forward  
11 with evidence of the claim.

12 **551.504 Filing of sales and advertising literature.** (1) FILING  
13 REQUIREMENT. Except as otherwise provided in sub. (2), a rule adopted or order issued  
14 under this chapter may require the filing of a prospectus, pamphlet, circular, form  
15 letter, advertisement, sales literature, or other advertising record relating to a  
16 security or investment advice, addressed or intended for distribution to prospective  
17 investors, including clients or prospective clients of a person registered or required  
18 to be registered as an investment adviser under this chapter.

19 (2) EXCLUDED COMMUNICATIONS. This section does not apply to sales and  
20 advertising literature specified in sub. (1) which relates to a federal covered security,

1 a federal covered investment adviser, or a security or transaction exempted by s.  
2 551.201, 551.202, or 551.203 except as required pursuant to s. 551.201 (7).

3 **551.505 Misleading filings.** It is unlawful for a person to make or cause to  
4 be made, in a record that is used in an action or proceeding or filed under this chapter,  
5 a statement that, at the time and in the light of the circumstances under which it is  
6 made, is false or misleading in a material respect, or, in connection with the  
7 statement, to omit to state a material fact necessary to make the statement made,  
8 in the light of the circumstances under which it was made, not false or misleading.

9 **551.506 Misrepresentations concerning registration or exemption.**  
10 The filing of an application for registration, a registration statement, a notice filing  
11 under this chapter, the registration of a person, the notice filing by a person, or the  
12 registration of a security under this chapter does not constitute a finding by the  
13 administrator that a record filed under this chapter is true, complete, and not  
14 misleading. The filing or registration or the availability of an exemption, exception,  
15 preemption, or exclusion for a security or a transaction does not mean that the  
16 administrator has passed upon the merits or qualifications of, or recommended or  
17 given approval to, a person, security, or transaction. It is unlawful to make, or cause  
18 to be made, to a purchaser, customer, client, or prospective customer or client a  
19 representation inconsistent with this section.

20 **551.507 Qualified immunity.** A broker-dealer, agent, investment adviser,  
21 federal covered investment adviser, or investment adviser representative is not  
22 liable to another broker-dealer, agent, investment adviser, federal covered  
23 investment adviser, or investment adviser representative for defamation relating to  
24 a statement that is contained in a record required by the administrator, or designee  
25 of the administrator, the Securities and Exchange Commission, or a self-regulatory

1 organization, unless the person knew, or should have known at the time that the  
2 statement was made, that it was false in a material respect or the person acted in  
3 reckless disregard of the statement's truth or falsity.

4 **551.508 Criminal penalties. (1) CRIMINAL PENALTIES.** A person that willfully  
5 violates this chapter, or a rule adopted or order issued under this chapter, except s.  
6 551.504 or the notice filing requirements of s. 551.302 or 551.405, or that willfully  
7 violates s. 551.505 knowing the statement made to be false or misleading in a  
8 material respect, upon conviction, shall be guilty of a Class H felony. An individual  
9 convicted of violating a rule or order under this chapter may be fined, but may not  
10 be imprisoned, if the individual did not have knowledge of the rule or order. Each  
11 of the acts specified shall constitute a separate offense and a prosecution or  
12 conviction for any one of such offenses shall not bar prosecution or conviction for any  
13 other offense.

14 **(2) CRIMINAL REFERENCE NOT REQUIRED.** The attorney general or the district  
15 attorney of the appropriate county, with or without a reference from the  
16 administrator, may institute criminal proceedings under this chapter.

17 **(3) NO LIMITATION ON OTHER CRIMINAL ENFORCEMENT.** This chapter does not limit  
18 the power of this state to punish a person for conduct that constitutes a crime under  
19 other laws of this state.

20 **551.509 Civil liability. (1) SECURITIES LITIGATION UNIFORM STANDARDS ACT.**  
21 Enforcement of civil liability under this section is subject to the Securities Litigation  
22 Uniform Standards Act of 1998.

23 **(2) LIABILITY OF SELLER TO PURCHASER.** A person is liable to the purchaser if the  
24 person sells a security in violation of s. 551.301 or 551.501 and, as to s. 551.501 (2),  
25 the purchaser did not know the untruth or omission and the seller cannot sustain the

1 burden of proof that the seller did not know and, in the exercise of reasonable care,  
2 could not have known of the untruth or omission. An action under this subsection  
3 is governed by the following:

4 (a) The purchaser may maintain an action to recover the consideration paid for  
5 the security, less the amount of any income received on the security, and interest at  
6 the legal rate under s. 138.04 from the date of the purchase, costs, and reasonable  
7 attorney fees determined by the court, upon the tender of the security, or for actual  
8 damages as provided in par. (c).

9 (b) The tender referred to in par. (a) may be made any time before entry of  
10 judgment. Tender requires only notice in a record of ownership of the security and  
11 willingness to exchange the security for the amount specified. A purchaser that no  
12 longer owns the security may recover actual damages as provided in par. (c).

13 (c) Actual damages in an action arising under this subsection are the amount  
14 that would be recoverable upon a tender less the value of the security when the  
15 purchaser disposed of it, and interest at the legal rate under s. 138.04 from the date  
16 of the purchase, costs, and reasonable attorney fees determined by the court.

\*\*\*NOTE: I adopted the phrase "interest at the legal rate under s. 138.04" from s.  
551.59 (1) (a) and (2) (a).

17 **(3) LIABILITY OF PURCHASER TO SELLER.** A person is liable to the seller if the  
18 person buys a security in violation of s. 551.501 and, as to s. 551.501 (2), the seller  
19 did not know the untruth or omission and the purchaser cannot sustain the burden  
20 of proof that the purchaser did not know and, in the exercise of reasonable care, could  
21 not have known of the untruth or omission. An action under this subsection is  
22 governed by the following:

1 (a) The seller may maintain an action to recover the security, and any income  
2 received on the security, costs, and reasonable attorney fees determined by the court,  
3 upon the tender of the purchase price, or for actual damages as provided in par. (c).

4 (b) The tender referred to in par. (a) may be made any time before entry of  
5 judgment. Tender requires only notice in a record of the present ability to pay the  
6 amount tendered and willingness to take delivery of the security for the amount  
7 specified. If the purchaser no longer owns the security, the seller may recover actual  
8 damages as provided in par. (c).

9 (c) Actual damages in an action arising under this subsection are the difference  
10 between the price at which the security was sold and the value the security would  
11 have had at the time of the sale in the absence of the purchaser's conduct causing  
12 liability, and interest at the legal rate under s. 138.04 from the date of the sale of the  
13 security, costs, and reasonable attorney fees determined by the court.

14 (4) LIABILITY OF UNREGISTERED BROKER-DEALER AND AGENT. A person acting as  
15 a broker-dealer or agent that sells or buys a security in violation of s. 551.401 (1),  
16 551.402 (1), or 551.506 is liable to the customer. The customer, if a purchaser, may  
17 maintain an action for recovery of actual damages as specified in sub. (2) (a) to (c),  
18 or, if a seller, for a remedy as specified in sub. (3) (a) to (c).

19 (5) LIABILITY OF UNREGISTERED INVESTMENT ADVISER AND INVESTMENT ADVISER  
20 REPRESENTATIVE. A person acting as an investment adviser or investment adviser  
21 representative that provides investment advice for compensation in violation of s.  
22 551.403 (1), 551.404 (1), or 551.506 is liable to the client. The client may maintain  
23 an action to recover the consideration paid for the advice, interest at the legal rate  
24 under s. 138.04 from the date of payment, costs, and reasonable attorney fees  
25 determined by the court.

1           **(6) LIABILITY FOR INVESTMENT ADVICE.** A person that receives directly or  
2 indirectly any consideration for providing investment advice to another person and  
3 that employs a device, scheme, or artifice to defraud the other person or engages in  
4 an act, practice, or course of business that operates or would operate as a fraud or  
5 deceit on the other person is liable to the other person. An action under this  
6 subsection is governed by the following:

7           (a) The person defrauded may maintain an action to recover the consideration  
8 paid for the advice and the amount of any actual damages caused by the fraudulent  
9 conduct, interest at the legal rate under s. 138.04 from the date of the fraudulent  
10 conduct, costs, and reasonable attorney fees determined by the court, less the  
11 amount of any income received as a result of the fraudulent conduct.

12           (b) This subsection does not apply to a broker-dealer or its agents if the  
13 investment advice provided is solely incidental to transacting business as a  
14 broker-dealer and no special compensation is received for the investment advice.

15           **(7) JOINT AND SEVERAL LIABILITY.** The following persons are liable jointly and  
16 severally with and to the same extent as persons liable under subs. (2) to (6):

17           (a) A person that directly or indirectly controls a person liable under subs. (2)  
18 to (6), unless the controlling person sustains the burden of proof that the person did  
19 not know, and in the exercise of reasonable care could not have known, of the  
20 existence of conduct by reason of which the liability is alleged to exist.

21           (b) An individual who is a managing partner, executive officer, or director of a  
22 person liable under subs. (2) to (6), including an individual having a similar status  
23 or performing similar functions, unless the individual sustains the burden of proof  
24 that the individual did not know, and in the exercise of reasonable care could not have  
25 known, of the existence of conduct by reason of which the liability is alleged to exist.



1 (c) An individual who is an employee of or associated with a person liable under  
2 subs. (2) to (6) and who materially aids the conduct giving rise to the liability, unless  
3 the individual sustains the burden of proof that the individual did not know, and in  
4 the exercise of reasonable care could not have known, of the existence of conduct by  
5 reason of which the liability is alleged to exist.

6 (d) A person that is a broker-dealer, agent, investment adviser, or investment  
7 adviser representative that materially aids the conduct giving rise to the liability  
8 under subs. (2) to (6), unless the person sustains the burden of proof that the person  
9 did not know, and in the exercise of reasonable care could not have known, of the  
10 existence of conduct by reason of which liability is alleged to exist.

11 **(8) RIGHT OF CONTRIBUTION.** A person liable under this section has a right of  
12 contribution as in cases of contract against any other person liable under this section  
13 for the same conduct.

14 **(9) SURVIVAL OF CAUSE OF ACTION.** A cause of action under this section survives  
15 the death of an individual who might have been a plaintiff or defendant.

16 **(10) STATUTE OF LIMITATIONS.** A person may not obtain relief:

17 (a) Under sub. (2) for violation of s. 551.301, or under sub. (4) or (5), unless the  
18 action is instituted within one year after the violation occurred.

19 (b) Under sub. (2), other than for violation of s. 551.301, or under sub. (3) or (6),  
20 unless the action is instituted within the earlier of 2 years after discovery of the facts  
21 constituting the violation or 5 years after the violation.

22 **(11) NO ENFORCEMENT OF VIOLATIVE CONTRACT.** A person that has made, or has  
23 engaged in the performance of, a contract in violation of this chapter or a rule adopted  
24 or order issued under this chapter, or that has acquired a purported right under the

1 contract with knowledge of conduct by reason of which its making or performance  
2 was in violation of this chapter, may not base an action on the contract.

3 (12) NO CONTRACTUAL WAIVER. A condition, stipulation, or provision binding a  
4 person purchasing or selling a security or receiving investment advice to waive  
5 compliance with this chapter or a rule adopted or order issued under this chapter is  
6 void.

7 (13) SURVIVAL OF OTHER RIGHTS OR REMEDIES. The rights and remedies provided  
8 by this chapter are in addition to any other rights or remedies that may exist, but this  
9 chapter does not create a cause of action not specified in this section or s. 551.411 (5).

\*\*\*\*NOTE: My renumbering changes to the bill have corrected what I believe was  
a mistaken cross-reference in the Wisconsin study group draft. Please let me know if you  
believe the study group cross-reference was correct.

10 **551.511 Rescission offers.** A purchaser, seller, or recipient of investment  
11 advice may not maintain an action under s. 551.509 if all of the following apply:

12 (1) The purchaser, seller, or recipient of investment advice receives in a record,  
13 before the action is instituted, an offer stating the respect in which liability under  
14 s. 551.509 may have arisen and fairly advising the purchaser, seller, or recipient of  
15 investment advice of that person's rights in connection with the offer, and any  
16 financial or other information necessary to correct all material misrepresentations  
17 or omissions in the information that was required by this chapter to be furnished to  
18 that person at the time of the purchase, sale, or investment advice, and any of the  
19 following:

20 (a) If the basis for relief under this section may have been a violation of s.  
21 551.509 (2), an offer to repurchase the security for cash, payable on delivery of the  
22 security, equal to the consideration paid, and interest at the legal rate under s. 138.04  
23 from the date of the purchase, less the amount of any income received on the security,

1 or, if the purchaser no longer owns the security, an offer to pay the purchaser upon  
2 acceptance of the offer damages in an amount that would be recoverable upon a  
3 tender, less the value of the security when the purchaser disposed of it, and interest  
4 at the legal rate under s. 138.04 from the date of the purchase in cash equal to the  
5 damages computed in the manner provided in this subsection.

6 (b) If the basis for relief under this section may have been a violation of s.  
7 551.509 (3), an offer to tender the security, on payment by the seller of an amount  
8 equal to the purchase price paid, less income received on the security by the  
9 purchaser and interest at the legal rate under s. 138.04 from the date of the sale, or,  
10 if the purchaser no longer owns the security, an offer to pay the seller upon  
11 acceptance of the offer, in cash, damages in the amount of the difference between the  
12 price at which the security was purchased and the value the security would have had  
13 at the time of the purchase in the absence of the purchaser's conduct that may have  
14 caused liability and interest at the legal rate under s. 138.04 from the date of the sale.

15 (c) If the basis for relief under this section may have been a violation of s.  
16 551.509 (4), and if the customer is a purchaser, an offer to pay as specified in par. (a),  
17 or, if the customer is a seller, an offer to tender or to pay as specified in par. (b).

\*\*\*\*NOTE: I believe that modifications made by the Wisconsin study group have  
made the cross-reference here used by the study group incorrect. I have inserted what  
I believe to be the correct cross-references based upon the uniform act. Please advise if  
you believe the cross-references I used in this provision are incorrect.

18 (d) If the basis for relief under this section may have been a violation of s.  
19 551.509 (5), an offer to reimburse in cash the consideration paid for the advice and  
20 interest at the legal rate under s. 138.04 from the date of payment.

21 (e) If the basis for relief under this section may have been a violation of s.  
22 551.509 (6), an offer to reimburse in cash the consideration paid for the advice, the  
23 amount of any actual damages that may have been caused by the conduct, and

1 interest at the legal rate under s. 138.04 from the date of the violation causing the  
2 loss.

\*\*\*\*NOTE: The structure of sub. (1) was modified from the uniform act by the WI study group and I have made some modification to accommodate this change in structure.

3 (2) The offer under sub. (1) states that it must be accepted by the purchaser,  
4 seller, or recipient of investment advice within 30 days after the date of its receipt  
5 by the purchaser, seller, or recipient of investment advice or any shorter period, of  
6 not less than 3 days, that the administrator, by order, specifies.

7 (3) The offeror has the present ability to pay the amount offered or to tender  
8 the security under sub. (1).

9 (4) The offer under sub. (1) is delivered to the purchaser, seller, or recipient of  
10 investment advice, or sent in a manner that ensures receipt by the purchaser, seller,  
11 or recipient of investment advice.

12 (5) The purchaser, seller, or recipient of investment advice that accepts the  
13 offer under sub. (1) in a record within the period specified under sub. (2) is paid in  
14 accordance with the terms of the offer.

## 15 SUBCHAPTER VI

### 16 ADMINISTRATION AND JUDICIAL

#### 17 REVIEW

18 **551.601 Administration.** (1) ADMINISTRATION. The administrator shall  
19 administer this chapter.

20 (2) UNLAWFUL USE OF RECORDS OR INFORMATION. It is unlawful for the  
21 administrator or an officer, employee, or designee of the administrator to use for  
22 personal benefit or the benefit of others records or other information obtained by or  
23 filed with the administrator that are not public under s. 551.607 (2). This chapter

1 does not authorize the administrator or an officer, employee, or designee of the  
2 administrator to disclose the record or information, except in accordance with s.  
3 551.602, 551.607 (3), or 551.608.

4 (3) NO PRIVILEGE OR EXEMPTION CREATED OR DIMINISHED. This chapter does not  
5 create or diminish a privilege or exemption that exists at common law, by statute or  
6 rule, or otherwise.

7 (4) INVESTOR EDUCATION. The administrator may develop and implement  
8 investor education initiatives to inform the public about investing in securities, with  
9 particular emphasis on the prevention and detection of securities fraud. In  
10 developing and implementing these initiatives, the administrator may collaborate  
11 with public and nonprofit organizations with an interest in investor education. The  
12 administrator may accept a grant or donation from a person that is not affiliated with  
13 the securities industry or from a nonprofit organization, regardless of whether the  
14 organization is affiliated with the securities industry, to develop and implement  
15 investor education initiatives. This subsection does not authorize the administrator  
16 to require participation or monetary contributions of a registrant in an investor  
17 education program.

18 (5) SECURITIES INVESTOR EDUCATION AND TRAINING FUNDING. All moneys collected  
19 from the administrative assessment under s. 551.604 (4) shall be credited to the  
20 appropriation under s. 20.144 (1) (i). Subject to s. 20.144 (1) (i), the division shall use  
21 moneys credited to that appropriation for the purposes specified in sub. (4) and s.  
22 20.144 (1) (i).

\*\*\*\*NOTE: I have modified this provision significantly to conform to restrictions under this state's law. These modifications in part are modeled after s. 551.605 (2) of current law. Article X, section 2, of the Wisconsin Constitution requires the proceeds of court-collected fines and forfeitures to be deposited into the common school fund. Accordingly, I have drafted this provision to apply only to administrative assessments.

1           **551.602 Investigations and subpoenas. (1) AUTHORITY TO INVESTIGATE.** The  
2 administrator may do any of the following:

3           (a) Conduct public or private investigations within or outside of this state  
4 which the administrator considers necessary or appropriate to determine whether  
5 a person has violated, is violating, or is about to violate this chapter or a rule adopted  
6 or order issued under this chapter, or to aid in the enforcement of this chapter or in  
7 the adoption of rules and forms under this chapter.

8           (b) Require or permit a person to testify, file a statement, or produce a record,  
9 under oath or otherwise as the administrator determines, as to all the facts and  
10 circumstances concerning a matter to be investigated or about which an action or  
11 proceeding is to be instituted.

12           (c) Publish a record concerning an action, proceeding, or an investigation  
13 under, or a violation of, this chapter or a rule adopted or order issued under this  
14 chapter.

15           **(2) ADMINISTRATOR POWERS TO INVESTIGATE.** For the purpose of an investigation  
16 under this chapter, the administrator or its designated officer may administer oaths  
17 and affirmations, subpoena witnesses, seek compulsion of attendance, take  
18 evidence, require the filing of statements, and require the production of any records  
19 that the administrator considers relevant or material to the investigation.

20           **(3) PROCEDURE AND REMEDIES FOR NONCOMPLIANCE.** If a person does not appear  
21 or refuses to testify, file a statement, produce records, or otherwise does not obey a  
22 subpoena as required by the administrator under this chapter, the administrator  
23 may apply to, or may refer the matter to the attorney general, district attorney of the  
24 appropriate county, or appropriate federal authority who may apply to, the circuit

1 court of of the appropriate county or a court of another state to enforce compliance.

2 The court may do any of the following:

\*\*\*\*NOTE: The "appropriate federal authority" is intended to include a U.S. attorney, pursuant to the WI study group comment.

3 (a) Hold the person in contempt.

4 (b) Order the person to appear before the administrator.

5 (c) Order the person to testify about the matter under investigation or in  
6 question.

7 (d) Order the production of records.

8 (e) Grant injunctive relief, including restricting or prohibiting the offer or sale  
9 of securities or the providing of investment advice.

10 (f) Impose a civil penalty of not less than \$5,000 and not greater than \$250,000  
11 for each violation.

12 (g) Grant any other necessary or appropriate relief.

13 (4) APPLICATION FOR RELIEF. This section does not preclude a person from  
14 applying to the circuit court of the appropriate county or a court of another state for  
15 relief from a request to appear, testify, file a statement, produce records, or obey a  
16 subpoena.

17 (5) USE IMMUNITY PROCEDURE. <sup>(a)</sup> An individual is not excused from attending,  
18 testifying, filing a statement, producing a record or other evidence, or obeying a  
19 subpoena of the administrator under this chapter or in an action or proceeding  
20 instituted by the administrator under this chapter on the ground that the required  
21 testimony, statement, record, or other evidence, directly or indirectly, may tend to  
22 incriminate the individual or subject the individual to a criminal fine, penalty, or  
23 forfeiture. If the individual refuses to testify, file a statement, or produce a record

1 or other evidence on the basis of the individual's privilege against self-incrimination,  
 2 the administrator may apply to the circuit court of the appropriate county to compel  
 3 the testimony, the filing of the statement, the production of the record, or the giving  
 4 of other evidence. The testimony, record, or other evidence compelled under such an  
 5 order may not be used, directly or indirectly, against the individual in a criminal case,  
 6 except in a prosecution for perjury or contempt or otherwise failing to comply with  
 7 the order.

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\*\*\*\*NOTE: Under current law, use immunity is subject to s. 972.085. See s. 551.56  
 (3). The WI study group did not modify the uniform act to correspond to existing  
 Wisconsin law, so I have not created a similar provision here. See also the \*\*\*\*NOTE after  
 s. 972.085 in this bill.

8 (6) ASSISTANCE TO SECURITIES REGULATOR OF ANOTHER JURISDICTION. At the  
 9 request of the securities regulator of another state or a foreign jurisdiction, the  
 10 administrator may provide assistance if the requesting regulator states that it is  
 11 conducting an investigation to determine whether a person has violated, is violating,  
 12 or is about to violate a law or rule of the other state or foreign jurisdiction relating  
 13 to securities matters that the requesting regulator administers or enforces. The  
 14 administrator may provide the assistance by using the authority to investigate and  
 15 the powers conferred by this section as the administrator determines is necessary or  
 16 appropriate. The assistance may be provided without regard to whether the conduct  
 17 described in the request would also constitute a violation of this chapter or other law  
 18 of this state if occurring in this state. In deciding whether to provide the assistance,  
 19 the administrator may consider whether the requesting regulator is permitted and  
 20 has agreed to provide assistance reciprocally within its state or foreign jurisdiction  
 21 to the administrator on securities matters when requested; whether compliance with  
 22 the request would violate or prejudice the public policy of this state; and the



1 availability of resources and employees of the administrator to carry out the request  
2 for assistance.

3 **551.603 Civil enforcement. (1) CIVIL ACTION INSTITUTED BY ADMINISTRATOR.**

4 If the administrator believes that a person has engaged, is engaging, or is about to  
5 engage in an act, practice, or course of business constituting a violation of this  
6 chapter or a rule adopted or order issued under this chapter or that a person has, is,  
7 or is about to engage in an act, practice, or course of business that materially aids a  
8 violation of this chapter or a rule adopted or order issued under this chapter, the  
9 administrator may maintain, or may refer the matter to the attorney general or  
10 district attorney of the appropriate county who may maintain, an action in the circuit  
11 court of the appropriate county to enjoin the act, practice, or course of business and  
12 to enforce compliance with this chapter or a rule adopted or order issued under this  
13 chapter.

14 **(2) RELIEF AVAILABLE.** In an action under this section and on a proper showing,  
15 the court may do any of the following:

16 (a) Issue a permanent or temporary injunction, restraining order, or  
17 declaratory judgment.

18 (b) Order other appropriate or ancillary relief, which may include any of the  
19 following:

20 1. An asset freeze, accounting, writ of attachment, writ of general or specific  
21 execution, and appointment of a receiver or conservator, that may be the  
22 administrator, for the defendant or the defendant's assets.

23 2. Ordering the administrator to take charge and control of a defendant's  
24 property, including investment accounts and accounts in a depository institution,  
25 rents, and profits; to collect debts; and to acquire and dispose of property.

1           3. Imposing a civil penalty up to \$5,000 for a single violation or up to \$250,000  
2 for more than one violation; an order of rescission, restitution, or disgorgement  
3 directed to a person that has engaged in an act, practice, or course of business  
4 constituting a violation of this chapter or the predecessor act or a rule adopted or  
5 order issued under this chapter or the predecessor act.

6           4. Ordering the payment of prejudgment and postjudgment interest.

7           (c) Order such other relief as the court considers appropriate.

8           **(3) NO BOND REQUIRED.** The administrator may not be required to post a bond  
9 in an action or proceeding under this chapter.

10           **551.604 Administrative enforcement. (1) ISSUANCE OF AN ORDER OR NOTICE.**

11 If the administrator determines that a person has engaged, is engaging, or is about  
12 to engage in an act, practice, or course of business constituting a violation of this  
13 chapter or a rule adopted or order issued under this chapter or that a person has  
14 materially aided, is materially aiding, or is about to materially aid an act, practice,  
15 or course of business constituting a violation of this chapter or a rule adopted or order  
16 issued under this chapter, the administrator may do any of the following:

17           (a) Issue an order directing the person to cease and desist from engaging in the  
18 act, practice, or course of business or to take other action necessary or appropriate  
19 to comply with this chapter.

20           (b) Issue an order denying, suspending, revoking, or conditioning the  
21 exemptions for a broker-dealer under s. 551.401 (2) (d) or (f) or an investment adviser  
22 under s. 551.403 (2) (a) 3.

23           (c) Issue an order under s. 551.204.

24           **(2) SUMMARY PROCESS.** An order under sub. (1) is effective on the date of  
25 issuance. Upon issuance of the order, the administrator shall promptly serve each

1 person subject to the order with a copy of the order and a notice that the order has  
2 been entered. The order must include a statement of any civil penalty or costs of  
3 investigation the administrator will seek, a statement of the reasons for the order,  
4 and notice that, within 15 days after receipt of a request in a record from the person,  
5 the matter will be scheduled for a hearing. If a person subject to the order does not  
6 request a hearing and none is ordered by the administrator within 30 days after the  
7 date of service of the order, the order, including the imposition of a civil penalty or  
8 requirement for payment of the costs of investigation sought in a statement in the  
9 order, becomes final as to that person by operation of law. If a hearing is requested  
10 or ordered, the administrator, after notice of and opportunity for hearing to each  
11 person subject to the order, may modify or vacate the order or extend it until final  
12 determination.

13 (3) PROCEDURE FOR FINAL ORDER. If a hearing is requested or ordered pursuant  
14 to sub. (2), a hearing must be held pursuant to ch. 227. A final order may not be  
15 issued unless the administrator makes findings of fact and conclusions of law in a  
16 record in accordance with ch. 227. The final order may make final, vacate, or modify  
17 the order issued under sub. (1).

18 (4) CIVIL PENALTY. In a final order under sub. (3), the administrator may impose  
19 a civil penalty in the form of an administrative assessment up to \$5,000 for a single  
20 violation or up to \$250,000 for more than one violation.

\*\*\*\*NOTE: I have added the term "administrative assessment" to address the  
constitutional concern mentioned in the \*\*\*\*NOTE following s. 551.601 (5).

21 (5) COSTS. In a final order, the administrator may charge the actual cost of an  
22 investigation or proceeding for a violation of this chapter or a rule adopted or order  
23 issued under this chapter.

1           **(6) FILING OF CERTIFIED FINAL ORDER WITH COURT; EFFECT OF FILING.** If a petition  
2 for judicial review of a final order is not filed in accordance with s. 551.609, the  
3 administrator may file a certified copy of the final order with the clerk of a court of  
4 competent jurisdiction. The order so filed has the same effect as a judgment of the  
5 court and may be recorded, enforced, or satisfied in the same manner as a judgment  
6 of the court.

7           **(7) ENFORCEMENT BY COURT; FURTHER CIVIL PENALTY.** If a person does not comply  
8 with an order under this section, the administrator may petition a court of competent  
9 jurisdiction to enforce the order. The court may not require the administrator to post  
10 a bond in an action or proceeding under this section. If the court finds, after service  
11 and opportunity for hearing, that the person was not in compliance with the order,  
12 the court may adjudge the person in civil contempt of the order. The court may  
13 impose a further civil penalty against the person for contempt in an amount not less  
14 than \$5,000 but not greater than \$100,000 for each violation and may grant any  
15 other relief the court determines is just and proper in the circumstances.

~~\*\*\*NOTE: I note that the administrative assessment under sub. (4) that is being  
enforced would be credited to the appropriation account under s. 20.144 (1) (i), but the  
court's additional penalty would not; it would go to the common school fund, as do all other  
forfeitures and fines.~~

16           **551.605 Rules, forms, orders, interpretative opinions, and hearings.**

17           **(1) ISSUANCE AND ADOPTION OF FORMS, ORDERS, AND RULES.** The administrator may do  
18 any of the following:

19           (a) Issue forms and orders and, after notice and comment, adopt and amend  
20 rules necessary or appropriate to carry out this chapter, and repeal rules, including  
21 rules and forms governing registration statements, applications, notice filings,  
22 reports, and other records.

1 (b) By rule, define terms, whether or not used in this chapter, but those  
2 definitions may not be inconsistent with this chapter.

3 (c) By rule, classify securities, persons, and transactions and adopt different  
4 requirements for different classes.

5 (2) FINDINGS AND COOPERATION. Under this chapter, except as provided under  
6 s. 551.412 (4g) (b) and (c), a rule or form may not be adopted or amended, or an order  
7 issued or amended, unless the administrator finds that the rule, form, order, or  
8 amendment is necessary or appropriate in the public interest or for the protection  
9 of investors and is consistent with the purposes intended by this chapter. In  
10 adopting, amending, and repealing rules and forms, s. 551.608 applies in order to  
11 achieve uniformity among the states and coordination with federal laws in the form  
12 and content of registration statements, applications, reports, and other records,  
13 including the adoption of uniform rules, forms, and procedures.

14 (3) FINANCIAL STATEMENTS. Subject to section 15 (h) of the Securities Exchange  
15 Act and section 222 of the Investment Advisers Act of 1940, the administrator may  
16 require that a financial statement filed under this chapter be prepared in accordance  
17 with generally accepted accounting principles in the United States and comply with  
18 other requirements specified by rule adopted or order issued under this chapter. A  
19 rule adopted or order issued under this chapter may establish:

20 (a) Subject to section 15 (h) of the Securities Exchange Act and section 222 of  
21 the Investment Advisers Act of 1940, the form and content of financial statements  
22 required under this chapter.

23 (b) Whether unconsolidated financial statements must be filed.

24 (c) Whether required financial statements must be audited by an independent  
25 certified public accountant.

1           (4) INTERPRETATIVE OPINIONS. The administrator may provide interpretative  
2 opinions or issue determinations that the administrator will not institute a  
3 proceeding or an action under this chapter against a specified person for engaging  
4 in a specified act, practice, or course of business if the determination is consistent  
5 with this chapter. A rule adopted or order issued under this chapter may establish  
6 a reasonable charge for interpretative opinions or determinations that the  
7 administrator will not institute an action or a proceeding under this chapter.

8           (5) EFFECT OF COMPLIANCE. A penalty under this chapter may not be imposed  
9 for, and liability does not arise from, conduct that is engaged in or omitted in good  
10 faith in conformity with a rule, form, or order of the administrator under this chapter.

11           (6) PRESUMPTION FOR PUBLIC HEARINGS. A hearing in an administrative  
12 proceeding under this chapter must be conducted in public unless the administrator  
13 for good cause consistent with this chapter determines that the hearing will not be  
14 so conducted.

15           **551.606 Administrative files and opinions. (1) PUBLIC REGISTER OF FILINGS.**  
16 The administrator shall maintain, or designate a person to maintain, a register of  
17 applications for registration of securities; registration statements; notice filings;  
18 applications for registration of broker-dealers, agents, investment advisers, and  
19 investment adviser representatives; notice filings by federal covered investment  
20 advisers that are or have been effective under this chapter or the predecessor act;  
21 notices of claims of exemption from registration or notice filing requirements  
22 contained in a record; orders issued under this chapter or the predecessor act; and  
23 interpretative opinions or no action determinations issued under this chapter.

24           (2) PUBLIC AVAILABILITY. The administrator shall make all rules, forms,  
25 interpretative opinions, and orders available to the public.

1           **(3) COPIES OF PUBLIC RECORDS.** The administrator shall furnish a copy of a  
2 record that is a public record or a certification that the public record does not exist  
3 to a person that so requests. A rule adopted under this chapter may establish a  
4 reasonable charge for furnishing the record or certification. A copy of the record  
5 certified or a certificate by the administrator of a record's nonexistence is prima facie  
6 evidence of a record or its nonexistence.

7           **551.607 Public records; confidentiality. (1) PRESUMPTION OF PUBLIC**  
8 **RECORDS.** Except as otherwise provided in sub. (2), records obtained by the  
9 administrator or filed under this chapter, including a record contained in or filed with  
10 a registration statement, application, notice filing, or report, are public records and  
11 are available for public examination.

12           **(2) NONPUBLIC RECORDS.** The following records are not public records and are  
13 not available for public examination under sub. (1):

14           (a) Information and records obtained by the administrator in connection with  
15 an audit or inspection under s. 551.411 (4) or a pending investigation under s.  
16 551.602.

17           (b) A part of a record filed in connection with a registration statement under  
18 ss. 551.301 and 551.303 to 551.305 or a record under s. 551.411 (4) that contains trade  
19 secrets or confidential information if the person filing the registration statement or  
20 record has asserted a claim of confidentiality or privilege that is authorized by law.

21           (c) A record that is not required to be provided to the administrator or filed  
22 under this chapter and is provided to the administrator only on the condition that  
23 the record will not be subject to public examination or disclosure.

24           (d) A nonpublic record received from a person specified in s. 551.608 (1).

1 (e) Subject to s. 551.406 (6) (a), any social security number, residential address  
2 unless used as a business address, and residential telephone number unless used as  
3 a business telephone number, contained in a record that is filed.

\*\*\*\*NOTE: I have added to this uniform act provision the cross-reference to s.  
551.406 (6) (a), a provision added by the WI study group to follow current law.

4 (f) A record obtained by the administrator through a designee of the  
5 administrator that a rule or order under this chapter determines has been  
6 appropriately expunged from the administrator's records by the designee.

7 (3) ADMINISTRATOR DISCRETION TO DISCLOSE. If disclosure is for the purpose of  
8 a civil, administrative, or criminal investigation, action, or proceeding or to a person  
9 specified in s. 551.608 (1), the administrator may disclose a record or information  
10 obtained in connection with an audit or inspection under s. 551.411 (4) or a record  
11 or information obtained in connection with a pending investigation under s. 551.602.

12 **551.608 Uniformity and cooperation with other agencies. (1) OBJECTIVE**  
13 **OF UNIFORMITY.** The administrator shall, in its discretion, cooperate, coordinate,  
14 consult, and, subject to s. 551.607, share records and information with the securities  
15 regulator of another state, Canada, a Canadian province or territory, a foreign  
16 jurisdiction, the Securities and Exchange Commission, the United States  
17 Department of Justice, the Commodity Futures Trading Commission, the Federal  
18 Trade Commission, the Securities Investor Protection Corporation, a self-regulatory  
19 organization, a national or international organization of securities regulators, a  
20 federal or state banking or insurance regulator, and a governmental law  
21 enforcement agency to effectuate greater uniformity in securities matters among the  
22 federal government, self-regulatory organizations, states, and foreign governments.



1           **(2) POLICIES TO CONSIDER.** In cooperating, coordinating, consulting, and sharing  
2 records and information under this section and in acting by rule, order, or waiver  
3 under this chapter, the administrator shall, in its discretion, take into consideration  
4 in carrying out the public interest the following general policies:

5           (a) Maximizing effectiveness of regulation for the protection of investors.

6           (b) Maximizing uniformity in federal and state regulatory standards.

7           (c) Minimizing burdens on the business of capital formation, without adversely  
8 affecting essentials of investor protection.

9           **(3) SUBJECTS FOR COOPERATION.** The cooperation, coordination, consultation,  
10 and sharing of records and information authorized by this section includes:

11           (a) Establishing or employing one or more designees as a central depository for  
12 registration and notice filings under this chapter and for records required or allowed  
13 to be maintained under this chapter.

14           (b) Developing and maintaining uniform forms.

15           (c) Conducting a joint examination or investigation.

16           (d) Holding a joint administrative hearing.

17           (e) Instituting and prosecuting a joint civil or administrative proceeding.

18           (f) Sharing and exchanging personnel.

19           (g) Coordinating registrations under ss. 551.301 and 551.401 to 551.404 and  
20 exemptions under s. 551.203.

21           (h) Sharing and exchanging records, subject to s. 551.607.

22           (i) Formulating rules, statements of policy, guidelines, forms, and  
23 interpretative opinions and releases.

24           (j) Formulating common systems and procedures.

1 (k) Notifying the public of proposed rules, forms, statements of policy, and  
2 guidelines.

3 (L) Attending conferences and other meetings among securities regulators,  
4 which may include representatives of governmental and private sector organizations  
5 involved in capital formation, deemed necessary or appropriate to promote or achieve  
6 uniformity.

7 (m) Developing and maintaining a uniform exemption from registration for  
8 small issuers, and taking other steps to reduce the burden of raising investment  
9 capital by small businesses.

10 **551.609 Judicial review.** A final order issued by the administrator under this  
11 chapter is subject to judicial review in accordance with ch. 227, but administrative  
12 enforcement orders originally entered without hearing may be reviewed only if the  
13 party seeking review has requested a hearing within the time provided by s. 551.604  
14 (2).

15 **551.611 Service of process. (1) SIGNED CONSENT TO SERVICE OF PROCESS.** A  
16 consent to service of process complying with this section required by this chapter  
17 must be signed and filed in the form required by a rule or order under this chapter.  
18 A consent appointing the administrator the person's agent for service of process in  
19 a noncriminal action or proceeding against the person, or the person's successor or  
20 personal representative under this chapter or a rule adopted or order issued under  
21 this chapter after the consent is filed, has the same force and validity as if the service  
22 were made personally on the person filing the consent. A person that has filed a  
23 consent complying with this subsection in connection with a previous application for  
24 registration or notice filing need not file an additional consent.

1           **(2) CONDUCT CONSTITUTING APPOINTMENT OF AGENT FOR SERVICE.** If a person,  
2 including a nonresident of this state, engages in an act, practice, or course of business  
3 prohibited or made actionable by this chapter or a rule adopted or order issued under  
4 this chapter and the person has not filed a consent to service of process under sub.  
5 (1), the act, practice, or course of business constitutes the appointment of the  
6 administrator as the person's agent for service of process in a noncriminal action or  
7 proceeding against the person or the person's successor or personal representative.

8           **(3) PROCEDURE FOR SERVICE OF PROCESS.** Service under sub. (1) or (2) may be  
9 made by providing a copy of the process to the office of the administrator, but it is not  
10 effective unless all of the following apply:

11           (a) The plaintiff, which may be the administrator, promptly sends notice of the  
12 service and a copy of the process, return receipt requested, to the defendant or  
13 respondent at the address set forth in the consent to service of process or, if a consent  
14 to service of process has not been filed, at the last known address, or takes other  
15 reasonable steps to give notice.

16           (b) The plaintiff files an affidavit of compliance with this subsection in the  
17 action or proceeding on or before the return day of the process, if any, or within the  
18 time that the court, or the administrator in a proceeding before the administrator,  
19 allows.

20           **(4) SERVICE IN ADMINISTRATIVE PROCEEDINGS OR CIVIL ACTIONS BY ADMINISTRATOR.**  
21 Service pursuant to sub. (3) may be used in a proceeding before the administrator or  
22 by the administrator in a civil action in which the administrator is the moving party.

23           **(5) OPPORTUNITY TO DEFEND.** If process is served under sub. (3), the court, or the  
24 administrator in a proceeding before the administrator, shall order continuances as

1 are necessary or appropriate to afford the defendant or respondent reasonable  
2 opportunity to defend.

3 **551.612 Severability clause.** If any provision of this chapter or its  
4 application to any person or circumstances is held invalid, the invalidity does not  
5 affect other provisions or applications of this chapter that can be given effect without  
6 the invalid provision or application, and to this end the provisions of this chapter are  
7 severable.

\*\*\*\*NOTE: Wisconsin statutes have a global severability provision. See s. 990.001  
(11). In light of this, do you want this provision of the uniform act eliminated from the  
bill?

8 **551.613 Jurisdiction. (1) SALES AND OFFERS TO SELL.** Sections 551.301,  
9 551.302, 551.401 (1), 551.402 (1), 551.403 (1), 551.404 (1), 551.501, 551.506, 551.509,  
10 and 551.511 do not apply to a person that sells or offers to sell a security unless the  
11 offer to sell or the sale is made in this state or the offer to purchase or the purchase  
12 is made and accepted in this state.

13 **(2) PURCHASES AND OFFERS TO PURCHASE.** Sections 551.401 (1), 551.402 (1),  
14 551.403 (1), 551.404 (1), 551.501, 551.506, 551.509, and 551.511 do not apply to a  
15 person that purchases or offers to purchase a security unless the offer to purchase  
16 or the purchase is made in this state or the offer to sell or the sale is made and  
17 accepted in this state.

18 **(3) OFFERS IN THIS STATE.** For the purpose of this section, an offer to sell or to  
19 purchase a security is made in this state, whether or not either party is then present  
20 in this state, if the offer meets any of the following criteria:

21 (a) The offer originates from within this state.

1           (b) The offer is directed by the offeror to a place in this state and received at the  
2 place to which it is directed, but for purposes of s. 551.301, an offer to sell which is  
3 not directed to or received by the offeree in this state is not made in this state.

4           (4) ACCEPTANCES IN THIS STATE. For the purpose of this section, an offer to  
5 purchase or to sell is accepted in this state, whether or not either party is then  
6 present in this state, if the acceptance meets all of the following criteria:

7           (a) The acceptance is communicated to the offeror in this state and the offeree  
8 reasonably believes the offeror to be present in this state and the acceptance is  
9 received at the place in this state to which it is directed.

10           (b) The acceptance has not previously been communicated to the offeror, orally  
11 or in a record, outside this state.

12           (5) PUBLICATIONS, RADIO, TELEVISION, OR ELECTRONIC COMMUNICATIONS. An offer  
13 to sell or to purchase is not made in this state when a publisher circulates or there  
14 is circulated on the publisher's behalf in this state a bona fide newspaper or other  
15 publication of general, regular, and paid circulation that is not published in this  
16 state, or that is published in this state but has had more than two-thirds of its  
17 circulation outside this state during the previous 12 months, or when a radio or  
18 television program or other electronic communication originating outside this state  
19 is received in this state. A radio, television program, or other electronic  
20 communication is considered as having originated in this state if either the broadcast  
21 studio or the originating source of transmission is located in this state, unless any  
22 of the following apply:

23           (a) The program or communication is syndicated and distributed from outside  
24 this state for redistribution to the general public in this state.

1 (b) The program or communication is supplied by a radio, television, or other  
2 electronic network with the electronic signal originating from outside this state for  
3 redistribution to the general public in this state.

4 (c) The program or communication is an electronic communication that  
5 originates outside this state and is captured for redistribution to the general public  
6 in this state by a community antenna or cable, radio, cable television, or other  
7 electronic system.

8 (d) The program or communication consists of an electronic communication  
9 that originates in this state, but which is not intended for distribution to the general  
10 public in this state.

11 (6) INVESTMENT ADVICE AND MISREPRESENTATIONS. Sections 551.403 (1), 551.404  
12 (1), 551.405 (1), 551.502, 551.505, and 551.506 apply to a person if the person engages  
13 in an act, practice, or course of business instrumental in effecting prohibited or  
14 actionable conduct in this state, whether or not either party is then present in this  
15 state.

\*\*\*NOTE: This section, "Jurisdiction," was section 610 of the uniform act. However,  
because there is an existing s. 551.61, I had to use a different statutory number.

16 **551.614 Fees and expenses. (1) REGISTRATION AND NOTICE FILING FEES AND**  
17 **REPORTING.** (a) There shall be a filing fee of \$750 for every registration statement filed  
18 under s. 551.303 or 551.304, and for every notice filing under s. 551.302. If a  
19 registration statement is denied or withdrawn before the effective date or a  
20 pre-effective stop order is entered under s. 551.306, or a notice filing is withdrawn,  
21 the filing fee shall be retained.

22 (b) 1. An indefinite amount of securities shall be registered for offer and sale  
23 in this state under a registration statement relating to redeemable securities issued

1 by an open-end management company or a face amount certificate company, as  
2 defined in the Investment Company Act of 1940, and the applicant shall pay the fee  
3 under par. (a). The registrant also shall, within 60 days after the end of each fiscal  
4 year during which its registration statement is effective and within 60 days after the  
5 registration is terminated, file a report on a form prescribed by rule of the division.  
6 The form shall require the registrant to do one of the following:

7 a. Elect not to include the information under subd. 1. b. and instead pay a fee  
8 of \$1,500.

9 b. Report the amount of securities sold to persons in this state during the  
10 preceding fiscal year or, if the registration is terminated, during the portion of the  
11 preceding fiscal year during which the registration was effective, and pay a fee of 0.05  
12 percent of the dollar amount of the securities sold to persons in this state, but not less  
13 than \$150 nor more than \$1,500.

14 2. An indefinite amount of securities is eligible for offer and sale in this state  
15 resulting from a notice filing under s. 551.302 for the initial offer of a federal covered  
16 security under section 18 (b) (2) of the Securities Act of 1933, if the filing party has  
17 notified the division of securities of the issuer's fiscal year, and the filing party pays  
18 the fee under par. (a). The filing party shall also, within 90 days after the end of each  
19 fiscal year following the filing under s. 551.302, and within 90 days after sales in this  
20 state have terminated, file a report to allow the division of securities to determine  
21 that the amount of the fee paid is correct. The report shall be on a form prescribed  
22 by rule of the division and shall require the filing party to do one of the following:

23 a. Elect not to include the information under subd. 2. b. and instead pay a fee  
24 of \$1,500.

1           b. Report the amount of securities sold to persons in this state during the  
2 preceding fiscal year or, if sales have terminated, during the portion of the preceding  
3 fiscal year during which sales were made, and pay a fee of 0.05 percent of the dollar  
4 amount of the securities sold to persons in this state, but not less than \$150 nor more  
5 than \$1,500.

6           **(2) FEES RELATED TO BROKER-DEALERS, AGENTS, INVESTMENT ADVISERS, INVESTMENT**  
7 **ADVISER REPRESENTATIVES, AND FEDERAL COVERED ADVISERS.** Every applicant for an  
8 initial or renewal license under s. 551.401, 551.402, 551.403, or 551.404 shall pay a  
9 filing fee of \$200 in the case of a broker-dealer or investment adviser and \$30 in the  
10 case of an agent representing a broker-dealer or issuer or an investment adviser  
11 representative. Every federal covered adviser in this state that is required to make  
12 a notice filing under s. 551.405 shall pay an initial or renewal notice filing fee of \$200.  
13 A broker-dealer, investment adviser, or federal covered adviser maintaining a  
14 branch office within this state shall pay an additional filing fee of \$30 for each branch  
15 office. When an application is denied, or an application or a notice filing is  
16 withdrawn, the filing fee shall be retained.

17           **(3) EXAMINATION EXPENSES.** The expenses reasonably attributable to the  
18 examination of any matter arising under this chapter shall be charged to the  
19 applicant, registrant, or licensee involved, but the expenses so charged shall not  
20 exceed such maximum amounts as the division of securities by rule prescribes.

21           **(4) OTHER FEES.** The division of securities may by rule require the payment of  
22 prescribed fees for delinquent or materially deficient filings of information or  
23 documents required under this chapter to be filed with the division or an  
24 organization designated under s. 551.406 (1) (intro.).



Insert 126-2

1 (5) FEES PAID TO STATE. All fees and expenses collected by the division under this  
2 section shall be paid into the state treasury.

\*\*\*NOTE: I added "by the division" in sub. (5) because one might argue that payments to IARD and Web-CRD are "under this section." Although sub. (5) is modeled after existing s. 551.52 (5), the language is somewhat antiquated. It would be preferable to say that such fees are deposited into the general fund and credited to a specified appropriation account.

Insert 126-2 1/2

3 SUBCHAPTER VII

4 TRANSITION

5 551.701 Effective date. This chapter takes effect on the effective date of this  
6 section .... [revisor inserts date].

\*\*\*NOTE: This provision of the uniform act is unnecessary but may be useful in allowing readers to easily identify, from the statutory text, when this recodification of ch. 551 becomes effective.

7 551.703 Application of act to existing proceeding and existing rights  
8 and duties. (1) APPLICABILITY OF PREDECESSOR ACT TO PENDING PROCEEDINGS AND  
9 EXISTING RIGHTS. The predecessor act exclusively governs all actions or proceedings  
10 that are pending on the effective date of this subsection .... [revisor inserts date], or  
11 may be instituted on the basis of conduct occurring before the effective date of this  
12 subsection .... [revisor inserts date], but a civil action may not be maintained to  
13 enforce any liability under the predecessor act unless instituted within any period  
14 of limitation that applied when the cause of action accrued or within 5 years after the  
15 effective date of this subsection .... [revisor inserts date], whichever is earlier.

16 (2) CONTINUED EFFECTIVENESS UNDER PREDECESSOR ACT. All effective  
17 registrations under the predecessor act, and all administrative orders relating to the  
18 registrations, rules, statements of policy, interpretative opinions, declaratory  
19 rulings, no action determinations, and conditions imposed on the registrations under  
20 the predecessor act, remain in effect while they would have remained in effect if this

1 chapter had not been reenacted. They are considered to have been filed, issued, or  
2 imposed under this chapter, but are exclusively governed by the predecessor act.

3 **(3) APPLICABILITY OF PREDECESSOR ACT TO OFFERS OR SALES.** The predecessor act  
4 exclusively applies to an offer or sale made within one year after the effective date  
5 of this subsection .... [revisor inserts date], pursuant to an offering made in good faith  
6 before the effective date of this subsection .... [revisor inserts date], on the basis of  
7 an exemption available under the predecessor act.

8 **SECTION 17.** 552.01 (6) (c) of the statutes is amended to read:

9 552.01 **(6) (c)** Whose equity securities of any class are or have been registered  
10 under ch. 551 or predecessor laws, or are registered under section 12 of the securities  
11 exchange act of 1934 or which is an entity identified in s. ~~551.22 (3), (4) or (5)~~ 551.201  
12 (3); and

13 **SECTION 18.** 552.05 (2) (intro.) of the statutes is amended to read:

14 552.05 **(2) (intro.)** The registration statement shall be filed on forms prescribed  
15 by the division, and shall be accompanied by a consent by the offeror to service of  
16 process specified in s. ~~551.65 (1)~~ 551.611 and the filing fee specified in s. 552.15 (1),  
17 and shall contain the following information and such additional information as the  
18 division by rule prescribes:

19 **SECTION 19.** 560.036 (1) (fm) 2. of the statutes is amended to read:

20 560.036 **(1) (fm) 2.** It serves as a manager, comanager or in any other  
21 underwriting capacity with regard to the sale of evidences of indebtedness or other  
22 obligations or as a broker-dealer as defined in s. ~~551.02 (3)~~ 551.102 (4).

23 **SECTION 20.** 611.76 (11) of the statutes is amended to read:

24 611.76 **(11) SECURITY REGULATION.** The filing with the division of securities of  
25 a certified copy of the plan of conversion as approved by the commissioner constitutes

1 registration under s. ~~551.27~~ 551.305 of the securities authorized to be issued  
2 thereunder.

3 **SECTION 21.** 644.22 of the statutes is amended to read:

4 **644.22 Securities regulation.** A membership interest in a domestic mutual  
5 holding company shall not constitute a security, as defined in s. ~~551.02 (13)~~ 551.102  
6 (28).

7 **SECTION 22.** 893.66 (3) of the statutes is amended to read:

8 893.66 (3) This section does not apply to actions subject to s. ~~551.59 (5)~~ 551.509  
9 (10) or 553.51 (4).

10 **SECTION 23.** 946.79 (1) (a) of the statutes is amended to read:

11 946.79 (1) (a) "Financial institution" means a bank, savings bank, savings and  
12 loan association, credit union, loan company, sales finance company, insurance  
13 premium finance company, community currency exchange, seller of checks,  
14 insurance company, trust company, securities broker-dealer, as defined in s. ~~551.02~~  
15 ~~(3)~~ 551.102 (4), mortgage banker, mortgage broker, pawnbroker, as defined in s.  
16 134.71 (1) (e), telegraph company, or dealer in precious metals, stones, or jewels.

17 **SECTION 24.** 946.82 (4) of the statutes is amended to read:

18 946.82 (4) "Racketeering activity" means any activity specified in 18 USC 1961  
19 (1) in effect as of April 27, 1982, or the attempt, conspiracy to commit, or commission  
20 of any of the felonies specified in: chs. 945 and 961, subch. V of ch. 551, and ss. 49.49,  
21 134.05, 139.44 (1), 180.0129, 181.0129, 185.825, 201.09 (2), 215.12, 221.0625,  
22 221.0636, 221.0637, 221.1004, ~~551.41, 551.42, 551.43, 551.44~~, 553.41 (3) and (4),  
23 553.52 (2), 940.01, 940.19 (4) to (6), 940.20, 940.201, 940.203, 940.21, 940.30,  
24 940.305, 940.31, 941.20 (2) and (3), 941.26, 941.28, 941.298, 941.31, 941.32, 942.09,  
25 943.01 (2), (2d), or (2g), 943.011, 943.012, 943.013, 943.02, 943.03, 943.04, 943.05,

1 943.06, 943.10, 943.20 (3) (bf) to (e), 943.201, 943.203, 943.23 (1g), (2) and (3), 943.24  
 2 (2), 943.27, 943.28, 943.30, 943.32, 943.34 (1) (bf), (bm), and (c), 943.38, 943.39,  
 3 943.40, 943.41 (8) (b) and (c), 943.50 (4) (bf), (bm), and (c), 943.60, 943.70, 943.76,  
 4 943.81, 943.82, 943.83, 943.84, 943.85, 943.86, 943.87, 943.88, 943.89, 943.90, 944.21  
 5 (5) (c) and (e), 944.32, 944.33 (2), 944.34, 945.03 (1m), 945.04 (1m), 945.05 (1), 945.08,  
 6 946.10, 946.11, 946.12, 946.13, 946.31, 946.32 (1), 946.48, 946.49, 946.61, 946.64,  
 7 946.65, 946.72, 946.76, 946.79, 947.015, 948.05, 948.08, 948.12, and 948.30.

8 SECTION 25. 972.085 of the statutes is amended to read:

9 **972.085 Immunity; use standard.** Immunity from criminal or forfeiture

10 prosecution under ss. 13.35, 17.16 (7), 77.61 (12), 93.17, 111.07 (2) (b), 128.16, 133.15,

11 139.20, 139.39 (5), 195.048, 196.48, 551.56 (3), <sup>551.602 (5)</sup> 553.55 (3), 601.62 (5), 767.87 (4),  
 12 885.15, 885.24, 885.25 (2), 891.39 (2), 968.26, 972.08 (1) and 979.07 (1) and ch. 769,  
 13 provides immunity only from the use of the compelled testimony or evidence in

14 subsequent criminal or forfeiture proceedings, as well as immunity from the use of  
 15 evidence derived from that compelled testimony or evidence.

\*\*\*NOTE: Because s. 551.602 (5) does not provide that immunity is subject to s. 972.085, I am striking the cross-reference rather than changing the cross-reference.

16 SECTION 26. Effective date.

17 (1) This act takes effect on <sup>January 1, 2009</sup> the first day of the 3rd month beginning after  
 18 publication.

19 (END)

2007-2008 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-1109/1ins  
ARG:.....

**INSERT ANAL-A:**

(no P) represents a broker-dealer and effects transactions in this state exclusively with certain customers (those whose transactions with a broker-dealer do not require the broker dealer to be registered);

**INSERT ANAL-B:**

(no P) ; an individual who is employed by or associated with an investment adviser or a federal covered investment adviser and has in this state only certain clients (those whose business with an investment adviser do not require the investment adviser to be registered);

**INSERT 31-11:**

(no P) the entire interest or any fractional or pool interest in a life insurance policy or certificate of insurance or in the death benefit thereunder that is the subject of a viatical settlement, as defined in s. 632.68 (1) (b), but does not include any of the following: +

(a) The assignment, transfer, sale, devise or bequest of a death benefit, life insurance policy, or certificate of insurance by the viator to a viatical settlement provider pursuant to s. 632.68.

(b) The exercise of accelerated benefits pursuant to the life insurance policy or certificate and consistent with applicable law.

**INSERT 69-18:**

(hm) An individual who represents a broker-dealer and effects transactions in this state exclusively with customers listed under s. 551.401 (2) (a) to (d) and (h).

**INSERT 73-3:**

(am) An individual who is employed by or associated with an investment adviser or a federal covered investment adviser and whose clients in the state are exclusively those clients listed in s. 551.403 (2) (a) 1. to 2m. and 4. ✓

**INSERT 95-22 and 95-25:** ✓

(no P) , as defined in section 202 (a) (25) of the Investment Advisers Act of 1940 (15 USC 80b-2 (a) (25)),

**INSERT 109-7:**

✓ (b) The immunity provided under par. (a) ✓ is subject to the restrictions under s. 972.085. ✓

**INSERT 126-2:**

(no P) ✓ deposited into the general fund and credited to the appropriation account under s. 20.144 (1) (g) ✓

**INSERT 126-2 1/2:**

**551.615 Statutory policy.** This chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact the "Uniform Securities Act of 2002" and to coordinate the interpretation and administration of this chapter with related federal regulation.

**Gary, Aaron**

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**From:** Schumann, Randall [Randall.Schumann@dfi.state.wi.us]  
**Sent:** Tuesday, December 18, 2007 11:39 AM  
**To:** Gary, Aaron  
**Cc:** Struck, Patricia D - DFI; Haberland, Catherine; brooke.billick@artisanpartners.com  
**Subject:** RE: "/1" Draft of Wisconsin Uniform Securities Act

That sounds good. Thanks, Aaron.

Randy

-----Original Message-----

**From:** Gary, Aaron [mailto:Aaron.Gary@legis.wisconsin.gov]  
**Sent:** Tuesday, December 18, 2007 11:26 AM  
**To:** Schumann, Randall E - DFI  
**Cc:** Struck, Patricia D - DFI; Haberland, Catherine; brooke.billick@artisanpartners.com  
**Subject:** RE: "/1" Draft of Wisconsin Uniform Securities Act

Yes, they are duplicative - s. 551.701 will just insert the effective date from bill section 26. (The difference is that s. 551.701 will appear in the stats but bill section 26 won't.) I recall a discussion at some point of whether s. 551.701 should be kept in since it is not technically necessary. I believe the rationale for keeping it in was that it might be convenient for some to be able to see, in the statutes, when the USA of 2002 actually became effective.

So I'll just make the one change in the "/2" and get it out to you (unless I hear differently). Thanks. Aaron

Aaron R. Gary  
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*Legislative Reference Bureau*  
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608.264.6948 (fax)  
aaron.gary@legis.state.wi.us

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**From:** Schumann, Randall [mailto:Randall.Schumann@dfi.state.wi.us]  
**Sent:** Tuesday, December 18, 2007 10:25 AM  
**To:** Gary, Aaron  
**Cc:** Struck, Patricia D - DFI; Haberland, Catherine; brooke.billick@artisanpartners.com  
**Subject:** RE: "/1" Draft of Wisconsin Uniform Securities Act

Re the Effective Date aspect, there appears to be 2 separate provisions -- the Effective Date section of 551.701 on page 121 that has a [revisor inserts date] treatment, and the Section 26 Effective Date provision that is on page 124 which does specify 1/1/2009. Are they duplicative? We defer to you to make the call on the basis of LRB Drafting protocol re where the provision should be plugged in.

Re the second item, at this point I don't believe there needs to be added to the Draft any submission date for proposed rules.

Thanks,

Randy

-----Original Message-----

**From:** Gary, Aaron [mailto:Aaron.Gary@legis.wisconsin.gov]  
**Sent:** Tuesday, December 18, 2007 9:52 AM  
**To:** Schumann, Randall E - DFI  
**Cc:** Struck, Patricia D - DFI; Haberland, Catherine; brooke.billick@artisanpartners.com  
**Subject:** RE: "/1" Draft of Wisconsin Uniform Securities Act

OK, I'll make this change in a "/2".

On the effective date, it should be in there - p. 124, lines 9-10. If I'm missing something on that, please let me know. If you want me to add a provision to the draft providing for submission date of proposed rules to leg council rules clearinghouse and allowing use of emergency rules until final rules become effective, let me know. Thanks. Aaron

Aaron R. Gary  
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---

**From:** Schumann, Randall [mailto:Randall.Schumann@dfi.state.wi.us]  
**Sent:** Tuesday, December 18, 2007 9:43 AM  
**To:** Gary, Aaron  
**Cc:** Struck, Patricia D - DFI; Haberland, Catherine; brooke.billick@artisanpartners.com  
**Subject:** RE: "/1" Draft of Wisconsin Uniform Securities Act

Aaron:

That would be great if a "/2" could be done now to include the correction. Separately, with regard to providing for a January 1, 2009 effective date to enable the necessary related rulemaking to take place [as mentioned in my December 7 memo after Item (6)], should that be put in the Draft now as well?

Randy

-----Original Message-----

**From:** Gary, Aaron [mailto:Aaron.Gary@legis.wisconsin.gov]  
**Sent:** Tuesday, December 18, 2007 9:10 AM  
**To:** Schumann, Randall E - DFI  
**Cc:** Struck, Patricia D - DFI; Haberland, Catherine; brooke.billick@artisanpartners.com  
**Subject:** RE: "/1" Draft of Wisconsin Uniform Securities Act

Randy,

Thanks for the note.

If you want, I can make this correction now in a "/2" version, before the bill gets introduced.



Or you can have the "/1" introduced and I can do an amendment later to the bill.  
Usually it's better to try to make the correction before introduction, but that's your call.

Aaron

Aaron R. Gary  
*Legislative Attorney*  
*Legislative Reference Bureau*  
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aaron.gary@legis.state.wi.us

---

**From:** Schumann, Randall [mailto:Randall.Schumann@dfi.state.wi.us]  
**Sent:** Monday, December 17, 2007 4:35 PM  
**To:** Gary, Aaron  
**Cc:** Struck, Patricia D - DFI; Haberland, Catherine; 'brooke.billick@artisanpartners.com'  
**Subject:** "/1" Draft of Wisconsin Uniform Securities Act

Aaron:

This is a short note to thank for the excellent work that you (with assistance from the LRB editing section) did to enable a "/1" Legislative Draft of the Wisconsin Uniform Securities Act (based on the 2002 NCCUSL Model Act) to be available for our meeting last Thursday with Senator Sullivan regarding his acting as lead sponsor.

I have completed a line-by-line review of all 124 pages of the "/1" Draft, and there is only one minor item that would require a slight amendment during the legislative process. [Adding "or seller" after "issuer" on page 40, line 20, consistent with the request in our September 23, 2007 Memorandum regarding page 42 of the prior draft (item iii).]

With much appreciation for all you have done from the start of the drafting process earlier this year.

For the Division and DFI,

Randy Schumann

Legal Counsel for the DFI Division of Securities