

No. 493, S.]

[Published August 11, 1955.

**CHAPTER 551**

AN ACT to renumber 189.02 (9) and (10); to amend 189.03, 189.04 (1) (a) and (c), (2) (intro. par.), (3), (4), (5) and (6) (a), 189.17 (5), 189.19 (2) (intro. par.) and (4), 189.21 (3) and (5), 189.29 (1) and (4); and to create 189.02 (9) and (10) and 189.04 (7) of the statutes, relating to the licensing of investment advisers and providing penalties.

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

SECTION 1. 189.02 (9) and (10) of the statutes are renumbered 189.02 (11) and (12).

SECTION 2. 189.02 (9) and (10) of the statutes are created to read:

189.02 (9) "Investment adviser" includes every person, not a licensed dealer, or a bank licensed under s. 189.28, who engages in the business of advising others, except persons to whom sales are exempted by s. 189.07 (10), either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing or selling securities, and every person who as a part of a regular business, issues or promulgates analyses or reports concerning securities, but does not include:

(a) Any licensed practicing attorney or accountant who renders or performs any of said services incidental to the practice of his profession;

(b) The publisher of any bona fide newspaper, news magazine or business or financial publication of general and regular circulation; or

(c) Any person whose advice, analyses or reports relate only to securities exempted by s. 189.05.

(10) "Licensed investment adviser" means an investment adviser licensed under s. 189.04. No licensed investment adviser shall use the title "investment counsel" in the conduct of his business unless he is authorized to use such title under section 208 (c) of the federal investment advisers act of 1940.

SECTION 3. 189.03 of the statutes is amended to read:

189.03 No dealer shall act as such unless such dealer \* \* \* is a licensed dealer; \* \* \* no agent shall act as such unless such agent \* \* \* is a licensed agent; and no investment adviser shall act as such after January 1, 1956, unless such investment adviser is a licensed investment adviser. All licenses issued pursuant to this chapter shall terminate on December 31 following the date thereof.

SECTION 4. 189.04 (1) (a) and (c), (2) (intro. par.), (3), (4), (5) and (6) (a) of the statutes are amended to read:

189.04 (1) (a) Each applicant for a \* \* \* license as a dealer, agent or investment adviser shall file with the department a verified application in such form and setting forth such information as the department may require to determine the competency and trustworthiness of the applicant and, in the case of a dealer or an investment adviser, of its officers, directors, partners, members or trustees and of such owners or holders of its securities as the department shall require. The department may make a detailed investigation into the business and affairs of the applicant and such related persons and shall issue such license, upon payment of the prescribed fee and of the expense attributable to any investigation by the department, if it shall find, from the information submitted and from any investigation made by the department, that it is appropriate in the public interest that such license be issued; otherwise it shall by order deny such application. No licensed agent shall at any time represent or act for more than one licensed dealer or one issuer, who shall join in the application for such agent's license and be specified in such license except that an agent may represent a partnership and a corporation where substantially all of the officers of the corporation are also members of the partnership and both partnership and corporation are licensed dealers operating at the same location.

(c) Each dealer or investment adviser shall promptly file with the department a full statement of any change in the officers, directors, partners, members or trustees of such dealer or investment adviser, or in such owners or holders of its securities as to whom the department shall require such information, and such other information and reports as the department may \* \* \* at any time require.

(2) (intro. par.) The department may, after a hearing on not less than 5 days' notice, revoke the license of a dealer \* \* \*, agent or investment adviser if it finds that such dealer \* \* \*, agent or investment adviser or any officer, director, partner, member, trustee or agent of such dealer or investment adviser, or any owner or holder of a material interest through voting securities or otherwise in such dealer or investment adviser, whether prior to or subsequent to becoming such:

(3) The enumeration of the foregoing grounds for revocation of a license shall not be exclusive, and the department shall have power to revoke the license of any dealer \* \* \*, agent or investment adviser for any cause, whether similar to or different from the foregoing, rendering such revocation necessary or appropriate in the public interest or for the protection of investors.

(4) Pending final determination as to whether the license of any dealer \* \* \*, agent or investment adviser shall be revoked, the department may, at the time of issuance of the notice of hearing referred to in sub.

(2) \* \* \*, or at any time thereafter, suspend such license if it shall have reason to believe that such suspension may be necessary or appropriate in the public interest or for the protection of investors.

(5) The department may require dealers to submit reports of sales of securities at such times and in such form as it may prescribe, may fix fair and reasonable maximum charges, profits, commissions, or other compensation in or for the sale of securities and may establish such other rules and regulations for the conduct of the business of dealers \* \* \*, agents and investment advisers as may be reasonable and necessary to assure compliance with this chapter.

(6) (a) Every dealer shall maintain an accurate record of all transactions in securities, and the department may prescribe the records to be kept by dealers and investment advisers. All such records shall be kept within this state or shall at the request of the department, be made available at any time for examination by it either in the central office or by production of exact copies thereof in this state \* \* \*.

SECTION 5. 189.04 (7) of the statutes is created to read:

189.04 (7) (a) An investigation of the business of each investment adviser of a scope to be determined by the department shall be made at least once in each calendar year at such time as the department shall determine, and may be made without notice to the investment adviser. The expense reasonably attributable to any such investigation shall be paid by the investment adviser whose business is investigated but the liability of such investment adviser for such expense in any one calendar year shall not exceed the sum of \$50 plus \$50 for each office in excess of one maintained in this state.

(b) The investigation provided for in par. (a) shall be limited to the records which the department shall prescribe to be kept by investment adviser, but the department shall not communicate with any client of such investment adviser except when necessary or appropriate in a particular proceeding or investigation for the enforcement of this chapter. The director and every employe of the department shall be bound by oath to keep secret all information obtained in the course of such examinations, except so far as the public duty of such officer or employe requires him to report upon or take special action regarding the affairs of any investment adviser, and except when called as a witness in any criminal proceeding or trial in a court of justice.

(c) All charges by investment adviser for services shall be reasonable and no such charges shall be based upon a share of capital gains or profits or capital appreciation in the funds of any client of an investment adviser

nor shall the charges be based upon the number or volume of transactions recommended or executed. Charges or fees may be based upon the total value of a fund averaged over a definite period or as of definite dates or taken as of a specific date.

(d) It is unlawful for any investment adviser to retain in his possession or to take custody of or to have access to any securities or cash belonging to his clients.

SECTION 6. 189.17 (5) of the statutes is amended to read:

189.17 (5) Whenever it shall appear, either upon complaint or otherwise, that in the issuance, sale, promotion, negotiation, advertisement or distribution of any securities any person shall have employed, employs or is about to employ any device, scheme or artifice to defraud or to obtain money or property by any false or misleading statement or representation, or that any person shall have made, makes, or is about to make fictitious or pretended purchases or sales of securities, or shall have engaged in, engages in, or is about to engage in any practice or transaction or course of business relating to the purchase or sale of securities which is contrary to law or is unfair, inequitable or fraudulent, or that any person is acting as dealer \* \* \* , agent or *investment adviser* within this state without being duly licensed, all of which acts, practices and transactions are declared to be fraudulent, the department or the attorney general or the district attorney of the proper county may investigate and may, in addition to any other remedies, bring action in the name and on behalf of the state \* \* \* against any person concerned in or in any way participating in or about to participate in such acts, practices or transactions, to enjoin such person from continuing the same or engaging therein or doing any act in furtherance thereof or in violation of this chapter. In any such action the department or the attorney general or the district attorney may apply for the court's subpoena requiring forthwith the appearance of any defendant and his employes, salesmen or agents to testify and give evidence concerning the acts, practices or transactions complained of in such action and requiring the production of such documents, books and records as may be necessary for any hearing in such action.

SECTION 7. 189.19 (2) (intro. par.) and (4) of the statutes are amended to read:

189.19 (2) (intro. par.) Every director, officer, agent or employe of any issuer and every dealer, agent, *investment adviser* or other person shall be \* \* \* *imprisoned* in the state prison not exceeding 5 years, or in a county jail not exceeding one year, or \* \* \* *fined* not exceeding \$5,000, or \* \* \* both, who shall directly or indirectly:

(4) No dealer, agent, *investment adviser*, issuer or other person, or any officer, agent or employe thereof shall be excused from attending or testifying, or from producing books, papers, contracts, agreements, records, files or documents in his possession or under his control in obedience to an order or subpoena of the department for use in any investigation or hearing by or for the department, on the ground that the testimony, evidence or information, documentary or otherwise, so given, produced or submitted to examination, may tend to incriminate him or subject him to a penalty or forfeiture, but no dealer, agent, *investment adviser*, issuer or other person, or officer, agent or employe thereof, shall be prosecuted or subjected to penalty or forfeiture for or on account of any transaction made or thing concerning which he may testify or produce evidence, documentary or otherwise, in such investigation or hearing, except for perjury or false swearing in connection therewith.

SECTION 8. 189.21 (3) and (5) of the statutes are amended to read:

189.21 (3) The certificate of the director of the department to the effect that a specified person is not or was not on a specified date licensed as a dealer \* \* \* , agent or investment adviser or under s. 189.28, or to the effect that a specified security had not been registered, or that registration of such security was not in effect on a date specified, or as to the issuance or revocation of any such license or registration, or as to the existence or nonexistence of the same, or as to the issuance and terms of any order of the department, or as to the giving or submission or failure to give or submit to the department any notice or information, shall be prima facie evidence of the facts stated therein for all purposes in any action or proceeding.

(5) In any prosecution for violation of s. 189.03 proof of the fact that a person acted as a dealer \* \* \* , agent or investment adviser shall be prima facie proof that compensation therefor was received or promised.

SECTION 9. 189.29 (1) and (4) of the statutes are amended to read:

189.29 (1) The department shall collect, as a filing fee, \$25 for each application for a dealer's license, \* \* \* \$5 for each application for an agent's license, \$25 for each application for an investment adviser's license, and \$10 for each application for a license under s. 189.28.

(4) The expense reasonably attributable to any investigation, including any examination, inspection, appraisal or audit, in connection with any application for a dealer's \* \* \* , agent's or investment adviser's license, any application for registration under s. 189.13, any notice under s. 189.08, or any other matter under this chapter which may require investigation, shall be borne by the applicant or, in the case of notice under s. 189.08, proportionately by the dealer giving the first notice and all dealers giving notices in respect of the same security within 30 days thereafter, unless the department shall otherwise direct. A sum deemed sufficient to cover such expense, in an amount from time to time prescribed by the department, shall be deposited with the department prior to the commencement of any such investigation, unless the department shall otherwise direct. If the department shall find during its investigation that the expense of same will exceed the amount deposited, it shall advise the applicant or dealer giving notice under s. 189.08 of the estimated additional amount, who shall thereupon deposit such amount with the department. Upon the completion of any such investigation, the department shall ascertain the expense reasonably attributable thereto and render a bill therefor by registered mail to the applicant or dealer giving notice under s. 189.08, and complete payment shall thereupon be made. If the amount of deposits exceeds the expense reasonably attributable to such investigation, the department shall refund the difference. No security shall be registered and no license concerning which any investigation is made shall be issued until the entire expense reasonably attributable thereto shall have been paid to the department. If complete payment is not made within 30 days after the submission of the final bill, the application for a license or for registration may be denied and sales pursuant to a notice filed under s. 189.08 may be prohibited.

Approved August 4, 1955.