

1981 Senate Bill 127

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CHAPTER 53 , Laws of 1981

AN ACT to repeal 551.02 (7) (e) and 551.32 (1) (b); to renumber 551.02 (7) (f) and (g); to renumber and amend 551.59 (1) and (2) and 551.61 (1), (3) and (4); to amend 551.02 (2), (3) (intro.), (7) (d) and (11) (b), 551.22 (intro.), (1), (8), (10) and (14), 551.23 (intro.), (3) (c), (12) and (15) (intro.), 551.26 (4), 551.27 (11), 551.28 (2), (4) and (5), 551.31 (1) to (3), (5) and (6), 551.32 (1) (a) and (7), 551.33 (1), (3), (4) and (6), 551.34 (1) (intro.), (f) to (h), (j), (L) and (m) and (3) to (7), 551.44, 551.51 (2), 551.52 (4), 551.53, 551.54, 551.56 (1) and (3), 551.58 (1) and (2), 551.59 (6) (c), 551.60 (3), 551.64 (1) and (3), 551.65 (1) and (2) and 551.66 (4); to repeal and recreate 551.24; and to create 551.32 (1) (c) and

(d), 551.34 (1) (n), 551.59 (1) (b) and (2) (b), 551.60 (5) and 551.61 (1) and (3) of the statutes, relating to changes in laws regulating securities and security transactions and granting rule-making authority.

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

SECTION 1. 551.02 (2), (3) (intro.) and (7) (d) of the statutes are amended to read:

551.02 (2) "Agent" means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect transactions in securities. A partner, officer or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions, is an agent if he or she is within this definition. "Agent" does not include an individual who represents an issuer in ~~effecting transactions~~:

(a) Effecting transactions in a security exempted by s. 551.22, ~~effecting~~;

(b) Effecting transactions exempted by s. 551.23, ~~or effecting~~

(c) Effecting other transactions if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state. ~~A partner, officer or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions, is an agent if he comes within this definition.~~

(3) (intro.) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for ~~his~~ the person's own account. "Broker-dealer" does not include:

(7) (d) A publisher of any bona fide newspaper, news magazine or business or financial publication ~~of general, with a regular and paid circulation or a publisher of any securities advisory newsletter with a regular and paid circulation which does not provide advice to subscribers on their specific investment situation~~;

SECTION 2. 551.02 (7) (e) of the statutes is repealed.

SECTION 3. 551.02 (7) (f) and (g) of the statutes are renumbered 551.02 (7) (e) and (f).

SECTION 4. 551.02 (11) (b) of the statutes is amended to read:

551.02 (11) (b) "Offer" or "offer to sell" includes every attempt or offer to sell or dispose of, or solicitation of an offer to purchase, a security or interest in a security for value, but does not include solicitation by a licensed broker-dealer of tentative reservations of securities which shall not be binding upon the purchaser until ratified by ~~him~~ the purchaser after the securities may legally be sold.

SECTION 5. 551.22 (intro.), (1), (8), (10) and (14) of the statutes are amended to read:

551.22 Exempt securities. (intro.) The following securities are ~~exempted~~ exempt from registration under s. 551.21 (1):

(1) Any security, including a revenue obligation, issued or guaranteed by the United States, any state, any political subdivision of a state or any agency or corporate or other instrumentality of one or more of the foregoing; or any certificate of deposit for any of the foregoing; but any revenue obligation payable from payments to be made in respect of property or money used under a lease, sale or loan arrangement by or for a nongovernmental industrial or commercial enterprise is exempted subject to ~~such rules as~~ adopted by the commissioner may establish. A security, other than a revenue obligation or security issued or guaranteed by the United States or an agency or corporate instrumentality of the United States, is exempt under this subsection only if the issuer's financial statements

are prepared according to generally accepted accounting principles or guidelines which the commissioner designates by rule.

(8) Any security issued to its members by a domestic corporation organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic or reformatory purposes; and any evidences of debt issued by any such corporation to nonmembers in compliance with rules ~~established~~ adopted by the commissioner.

(10) Any investment contract or other security issued in connection with an ~~employees'~~ employee's stock purchase, savings, pension, profit sharing or similar benefit plan if, in the case of plans which are not qualified under section 401 of the internal revenue code and which provide for contribution by employees, there is filed with the commissioner prior to any offer or sale a notice specifying the terms of the plan and the commissioner does not by order disallow the exemption within 10 days.

(14) Any security issued by a licensed broker-dealer to its officers, partners or employees, subject to ~~such~~ rules as adopted by the commissioner ~~may establish~~.

SECTION 6. 551.23 (intro.) and (3) (c) of the statutes are amended to read:

551.23 Exempt transactions. (intro.) The following transactions are ~~exempted~~ exempt from registration under s. 551.21 (1):

(3) (c) Securities of the same class have been registered under the securities act of 1933 and there is filed with the commissioner prior to any offer or sale a notice of the proposed sale and other information as ~~he shall~~ the commissioner by rule ~~require~~ requires and the commissioner does not by order disallow the exemption within 10 days; or

SECTION 7. 551.23 (12) and (15) (intro.) of the statutes are amended to read:

551.23 (12) Any transaction pursuant to an offer to existing security holders of the issuer or of a corporation which, prior to the offer, owned substantially all of the voting stock of the issuer or whose controlling persons organized the issuer for the purpose of the offer, if no commission or other remuneration other than a standby commission is paid or given directly or indirectly for soliciting any security holder in this state, and if, prior to any offer or sale, the issuer files a notice specifying the terms of the offer and all other information which the commissioner by rule requires and the commissioner does not by order disallow the exemption within 10 days. "Security holders" include persons who at the time of the transaction are holders of convertible securities, nontransferable warrants or transferable warrants exercisable within not more than 90 days of their issuance.

(15) (intro.) Any offer or sale of an evidence of debt issued by a corporation organized and operated not for private profit but exclusively for religious, educational, benevolent or charitable purposes if the security qualifies under this exemption, and if there has been filed with the commissioner prior to any offer or sale a notice identifying the security and the basis of its qualification under this exemption together with any further information as the commissioner by rule or order requires, and if the commissioner does not by order disallow the exemption within 10 days or such shorter period as ~~he may permit~~ the commissioner permits. The security qualifies under this exemption if the issuer and any predecessor have not defaulted within the current fiscal year or the 3 preceding fiscal years in any fixed interest or principal obligation; and the issuer complies with rules of the commissioner with respect to trust indentures and the use of a prospectus; and the security qualifies under either of the following:

SECTION 8. 551.24 of the statutes is repealed and recreated to read:

551.24 Exemption proceedings. (1) The commissioner may by order deny or revoke any exemption under s. 551.22 or 551.23 with respect to a specified security or transaction.

(2) If the public interest and the protection of investors so require, the commissioner may by order summarily deny or revoke any exemption under s. 551.22 or 551.23 with respect to a specified security or transaction. Upon entry of the order, the commissioner shall serve upon all named parties a copy of the order and notify the parties of their right to request a hearing.

(3) No order under this section may operate retroactively.

(4) A person who offers or sells a security pursuant to an exemption under s. 551.22 or 551.23 after the exemption is denied or revoked by an order of the commissioner does not violate s. 551.21 (1) if:

(a) The person was not given notice of the order; and

(b) The person sustains the burden of proof to establish that he or she was not given notice and did not know and, in the exercise of reasonable care, could not have known of the order.

(5) In any proceeding under this chapter, the burden of proving an exemption or an exception from a definition is upon the person claiming it.

SECTION 9. 551.26 (4) of the statutes is amended to read:

551.26 (4) The commissioner may by rule or order require as a condition of registration under this section that a prospectus containing any designated part of the information contained in the registration statement or filed with it be sent or given to each person to whom an offer is made before or concurrently with the first written offer made to ~~him~~ the person, otherwise than by means of a public advertisement, by or for the account of the issuer or any other person on whose behalf the offering is made, or by any underwriter or broker-dealer who is offering part of an unsold allotment or subscription taken by him or her as a participant in the distribution; or the confirmation of any sale made by or for the account of any person; or the payment pursuant to any sale; or the delivery of the security pursuant to any sale; whichever first occurs.

SECTION 10. 551.27 (11) of the statutes is amended to read:

551.27 (11) A registration statement is effective for one year from its effective date, ~~or any longer period during which the security is being offered or distributed in a nonexempted transaction by or for the account of the issuer or other person on whose behalf the offering is being made or by any underwriter or broker-dealer who is still offering part of an unsold allotment or subscription taken by him as a participant in the distribution, provided that the commissioner has been notified of such continued offering and the period thereof. Any extension of the offering period shall be subject to rules established by the commissioner.~~ unless extended by rule or order of the commissioner. All outstanding securities of the same class as a registered security are considered to be registered for the purpose of any transaction by or on behalf of a person not the issuer and not in control of the issuer or controlled by the issuer or under common control with the issuer, so long as the registration statement is effective, unless otherwise prescribed by order. A registration statement may not be withdrawn after its effective date if any of the securities registered have been sold in this state, unless permitted by rule or order of the commissioner. No registration statement is effective during the time a stop order is in effect under s. 551.28.

SECTION 11. 551.28 (2), (4) and (5) of the statutes are amended to read:

551.28 (2) The commissioner may not institute a stop order proceeding against an effective registration statement on the basis of a fact or transaction known to ~~him~~ the commissioner when the registration statement became effective unless the proceeding is instituted within the next 30 180 days after the effective date.

(4) ~~The If the public interest and the protection of investors so require, the commissioner may issue a summary order denying, postponing, suspending or revoking, by order, summarily deny, postpone, suspend or revoke the effectiveness of the registration statement pending final determination of any proceeding under this section. Upon the entry of the order, the commissioner shall serve upon all named parties a copy of the order and notify the parties of their right to request a hearing under s. 551.61 (1).~~

(5) ~~No stop order may be entered under this section, except under sub. (4) without, unless s. 551.61 (1) is complied with and appropriate prior notice is given to the applicant or registrant, the issuer and the person on whose behalf the securities are to be or have been offered; opportunity for hearing; and written findings of fact and conclusions of law.~~

SECTION 12. 551.31 (1) to (3) of the statutes are amended to read:

551.31 (1) ~~It is unlawful for any person to transact business in this state as a broker-dealer or agent unless so licensed under this chapter, except that a person who has no place of business in this state and who effects transactions in this state exclusively with or through for the account of persons specified in s. 551.23 (8) is not required to be so licensed.~~

(2) ~~It is unlawful for any broker-dealer or issuer to employ an agent to represent him it in this state unless the agent is licensed. The licensing of an agent is not effective during any period when he is not associated with a specified broker-dealer licensed under this chapter or a specified issuer for that broker-dealer or issuer or the agent is excluded from the licensing requirement under sub. (1). No agent shall may at any time represent more than one broker-dealer or issuer, except that where organizations an agent may represent licensed broker-dealers or issuers of securities registered under this chapter, or both, who are affiliated by direct or indirect common control are licensed broker-dealers or issuers of securities registered under this chapter, an agent may represent any such organization. When an agent begins or terminates his employment with a broker-dealer or issuer, or begins or terminates those activities which make him that individual an agent, or transfers employment between licensed broker-dealers, the agent as well as, the broker-dealer or the issuer shall promptly notify the commissioner file a notice in accordance with rules adopted by the commissioner.~~

(3) ~~It is unlawful for any person to transact business in this state as an investment adviser unless so licensed or licensed as a broker-dealer under this chapter, except that a person who has no place of business in this state and whose only clients in this state are persons specified in s. 551.23 (8) may transact business without a license.~~

SECTION 13. 551.31 (5) and (6) of the statutes are amended to read:

551.31 (5) ~~A bank, savings institution or trust company not licensed as a broker-dealer may execute orders for the purchase or sale of securities as agent for the purchaser or seller thereof in accordance with rules which adopted by the commissioner establishes.~~

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

SECTION 14. 551.32 (1) (a) of the statutes is amended to read:

551.32 (1) (a) ~~A broker-dealer, agent or investment adviser may obtain an initial or renewal license by filing with the commissioner, or an organization which the commissioner by rule designates, an application together with a consent to service of process pursuant to under s. 551.65 (1). The~~

(b) An application under par. (a) shall contain whatever information the commissioner by rule requires concerning the applicant's form and place of organization, proposed method of doing business and financial condition, the qualifications and experience of the applicant, including, in the case of a broker-dealer or investment adviser, the qualifications and experience of any partner, officer, director, or controlling person, any injunction or administrative order or conviction of a misdemeanor involving securities and any conviction of a felony, and any other matters which the commissioner determines are relevant to the application. The commissioner may by rule or order require an applicant for an initial license to publish an announcement of the application in one or more specified newspapers published in this state.

SECTION 15. 551.32 (1) (b) of the statutes is repealed.

SECTION 16. 551.32 (1) (c) and (d) of the statutes are created to read:

551.32 (1) (c) Licensing under this subchapter is effective 30 days after an application is filed except:

1. Licensing is not effective if an order is in effect, or a proceeding is pending, under s. 551.34;

2. If the commissioner makes a written request for additional information relevant to the application within 30 days after the application is filed, the licensing is effective 30 days after the information is filed;

3. If an amendment to a pending application is filed, licensing is effective 30 days after the amendment is filed; and

4. The commissioner may by rule or order specify an earlier effective date.

(d) The commissioner shall cooperate with other securities administrators and regulatory authorities to simplify and coordinate license application and renewal procedures.

SECTION 17. 551.32 (7) of the statutes is amended to read:

551.32 (7) The commissioner may by rule or order impose other conditions or limitations in connection with the issuance of licenses under this chapter as ~~he~~ the commissioner deems appropriate in the public interest ~~and~~ or for the protection of investors.

SECTION 18. 551.33 (1), (3), (4) and (6) of the statutes are amended to read:

551.33 (1) Every licensed broker-dealer, agent and investment adviser shall make and keep all accounts, correspondence, memoranda, papers, books and other records which the commissioner by rule prescribes. All records required shall be preserved for 3 years unless the commissioner by rule prescribes otherwise for particular types of records. All required records shall be kept within this state or shall, at the request of the commissioner, be made available at any time for examination by ~~him~~ the commissioner either in the principal office of the licensee or by production of exact copies thereof in this state.

(3) If the information contained in any application for license or other document filed with the commissioner or an organization designated under s. 551.32 (1) (a) is or becomes inaccurate or incomplete in any material respect, the licensee shall promptly file a correcting amendment.

(4) The commissioner shall make periodic examinations, within or without this state, of the business and records of each licensed broker-dealer and investment adviser, at such times and in such scope as ~~he~~ the commissioner determines. The examinations may be made without prior notice to the broker-dealer or investment adviser. The expense reasonably attributable to any such examination shall be paid by the broker-dealer or investment adviser whose business is examined, but the expense so payable shall not exceed an amount which the commissioner by rule prescribes. For the purpose of avoiding unnecessary duplication of examinations, the commissioner, insofar as ~~he deems~~ it is practicable in administering this subsection, may cooperate with securities administrators of other states, the securities and exchange commission, and any national securities exchange or

national securities association registered under the securities exchange act of 1934. The commissioner shall not make public the information obtained in the course of examinations, except when ~~his~~ the commissioner's duty under this chapter requires ~~him~~ the commissioner to take action regarding any broker-dealer or investment adviser or to make the information available to one of the ~~agencies~~ organizations specified ~~herein~~ in this subsection, or except when called as a witness in any criminal or civil proceeding.

(6) The commissioner may ~~prescribe rules by rule~~ establish standards for the conduct of business by broker-dealers, agents, investment advisers, and clearing corporations as defined in s. 408.102 (3), ~~appropriate in the public interest and for the protection of investors.~~

SECTION 19. 551.34 (1) (intro.), (f) to (h), (j), (L) and (m) of the statutes are amended to read:

551.34 (1) (intro.) The commissioner may by order deny an application for, or postpone the effective date of, a license or suspend or revoke any license or may censure the licensee, if the commissioner finds that the order is in the public interest and that the applicant or licensee or, in the case of a broker-dealer or investment adviser, any partner, officer or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser:

(f) Is the subject of an order entered within the past 5 years by the securities administrator of any other state or by the securities and exchange commission denying, suspending or revoking the person's registration or license as a broker-dealer, agent or investment adviser, or is the subject of an order of the securities and exchange commission or of a securities exchange or association registered under the securities exchange act of 1934 suspending or expelling such person from a national securities exchange or association or forbidding the association or affiliation of the person with a broker-dealer or investment adviser, or is the subject of a U.S. ~~post office~~ postal service fraud order. The commissioner may not institute a revocation or suspension proceeding under this paragraph more than one year from the date of the order relied on, and the commissioner may not enter an order under this paragraph on the basis of an order under another state law or federal law unless the order was based on facts which would currently constitute a ground for an order under this section;

(g) Has engaged in dishonest or unethical practices in the securities or investment advisory business or has taken unfair advantage of a customer;

(h) Is insolvent, ~~either in the sense that his liabilities exceed his assets or in the sense that he or that the person cannot meet his obligations as they mature, or is in such financial condition that he~~ the person cannot continue in business with safety to his customers, or ~~has the person does not have~~ sufficient financial responsibility to carry out the obligations incident to his the person's operations;

(j) Has failed reasonably to supervise his agents if ~~he is~~ a broker-dealer or ~~his employees if he is,~~ in the case of an investment adviser, employees, to assure their compliance with this chapter, but no person shall may be deemed to have failed in such supervision if there have been established written procedures, and a system for applying such procedures, which would reasonably be expected to prevent and detect, insofar as practicable, any violations of statutes, rules or orders and if ~~such~~ the person has reasonably discharged the duties incumbent upon ~~him~~ the person by reason of such procedures and system ~~without reasonable cause to believe that such procedures and system were not being complied with;~~

(L) Is selling or has sold, or is offering or has offered for sale, in this state securities through any unlicensed agent or for any dealer or issuer with knowledge that ~~such~~ the dealer or issuer ~~had not or~~ has not complied with this chapter; ~~or~~

(m) Has made any material misrepresentation to or withheld or concealed any material fact from the commissioner or any of his or her representatives, or has refused to furnish information reasonably requested by the commissioner; or

SECTION 20. 551.34 (1) (n) of the statutes is created to read:

551.34 (1) (n) Has not complied with the conditions or limitations of a license issued under this chapter.

SECTION 21. 551.34 (3) to (7) of the statutes are amended to read:

551.34 (3) The commissioner may not institute a suspension or revocation proceeding on the basis of a fact or transaction known to ~~him~~ the commissioner when the license was issued unless the proceeding is instituted within ~~the next 30~~ 180 days following issuance of the license.

(4) ~~The~~ If the public interest or the protection of investors so requires, the commissioner may by order summarily deny, ~~postpone~~ or suspend a license or ~~an application for license pending final determination of any proceeding under this section~~ postpone the effective date of a license. Upon the entry of the order, the commissioner shall serve upon all named parties a copy of the order and notify the parties of their right to request a hearing ~~under s. 551.61 (1)~~.

(5) If the commissioner finds that any licensee or applicant is no longer in existence or has ceased to do business as a broker-dealer, agent or investment adviser, or is subject to an adjudication of mental incompetence or to the control of a committee, conservator or guardian, or cannot be located after reasonable search, the commissioner may by order issued summarily revoke the license or deny the application.

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

(7) No order may be entered under this section except under sub. (4) without appropriate prior notice to the applicant or licensee, as well as the employer or prospective employer if the applicant or licensee is an agent, ~~opportunity for hearing and written findings of fact and conclusions of law~~. In cases of denial orders such written findings of fact and conclusions shall be provided of law are required only if requested by the applicant.

SECTION 22. 551.44 of the statutes is amended to read:

551.44 Advisory activities. It is unlawful for any person who receives any consideration from another person primarily for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise, in this state, to employ any device, scheme or artifice to defraud the other person; or ~~to~~ engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon the other person; or ~~to~~ take or have custody of any securities or funds of any client unless the adviser is licensed as a broker-dealer under this chapter. The commissioner may ~~prescribe~~ adopt rules defining the terms used ~~herein~~ in this section.

SECTION 23. 551.51 (2) of the statutes is amended to read:

551.51 (2) It is unlawful for the commissioner or any ~~of his~~ officers or employes of the office of the commissioner to use for personal benefit any information which is filed with or obtained by the commissioner or an organization designated under s. 551.32 (1) (a) and which is not generally available to the public. Nothing in this chapter authorizes the commissioner or any ~~of his~~ officers or employes of the office of the commissioner to disclose any confidential information except among themselves or to other securities administrators or regulatory authorities or when necessary or appropriate in a proceeding or investigation under this chapter. No provision of this chapter either creates or derogates from any privilege which exists at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the commissioner or any ~~of his~~ officers or employes of the office of the commissioner.

SECTION 24. 551.52 (4) of the statutes is amended to read:

551.52 (4) The commissioner may by rule require the payment of prescribed fees for delinquent or materially deficient filings of information or documents required under this chapter to be filed with the commissioner ~~under this chapter~~ or an organization designated under s. 551.32 (1) (a).

SECTION 25. 551.53 of the statutes is amended to read:

551.53 Advertising. (1) It is unlawful for any person, in connection with the offer, sale or purchase of any security in this state, to publish, circulate or use any advertising which contains an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. All advertising shall be filed with the commissioner not later than the date of publication or circulation, except as the commissioner may otherwise provide by rule or order.

(2) The commissioner may by rule or order prohibit the publication, circulation or use of any advertising deemed false or misleading.

SECTION 26. 551.54 of the statutes is amended to read:

551.54 Misleading filings. It is unlawful for any person to make or cause to be made, in any document filed with the commissioner or filed under s. 551.32 (1) (a) with an organization designated by the commissioner or in any proceeding under this chapter, any statement which is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect or, in connection with such statement, to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading.

SECTION 27. 551.56 (1) and (3) of the statutes are amended to read:

551.56 (1) The commissioner ~~in his discretion~~ may:

(a) ~~May make~~ Make such public or private investigations within or without this state as ~~he deems~~ are necessary to determine whether any person has violated or is about to violate this chapter or any rule or order ~~hereunder~~ under this chapter, or to aid in the enforcement of this chapter or in the prescribing of rules and forms ~~hereunder~~ under this chapter;

(b) ~~May require~~ Require or permit any person to file a statement in writing, under oath or otherwise as the commissioner determines, as to all the facts and circumstances concerning the matter being investigated;

(c) ~~May publish~~ Publish information concerning any violation of this chapter or any rule or order ~~hereunder~~ under this chapter or concerning securities, or practices in the sale ~~thereof~~ of securities, which appear or tend to be unfair, inequitable or fraudulent; and

(d) ~~May hold~~ Hold hearings, upon reasonable notice, and issue orders on the basis thereof, in respect of any matter arising out of the administration of this chapter.

(3) No person is excused from attending and testifying or from producing any document or record before the commissioner, or in obedience to the subpoena of the commissioner or any officer designated by ~~him~~ the commissioner, or in any proceeding instituted by the commissioner, on the ground that the testimony or evidence required of ~~him~~ the person may tend to incriminate him or her or subject ~~him~~ the person to a penalty or forfeiture; but no individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which ~~he~~ the individual is compelled, after claiming his or her privilege against self-incrimination, to testify or produce evidence, except that the individual testifying is not exempt from prosecution and punishment for perjury or contempt committed in testifying.

SECTION 28. 551.58 (1) and (2) of the statutes are amended to read:

551.58 (1) Any person who wilfully violates any provision of this chapter except s. 551.54, or any rule under this chapter, or any order of which ~~he~~ the person has notice, or who violates s. 551.54 knowing or having reasonable cause to believe that the statement made was false or misleading in any material respect, may be fined not more than \$5,000 or imprisoned not more than 5 years or both. Each of the acts specified shall constitute a separate offense and a prosecution or conviction for any one of such offenses shall not bar prosecution or conviction for any other offense. ~~No indictment or information may be returned under this chapter more than 6 years after the alleged violation.~~

(2) The commissioner may refer such evidence as is available concerning violations of this chapter or of any rule or order ~~hereunder~~ under this chapter to the attorney general or the district attorney of the appropriate county, who may, with or without any reference, institute the appropriate criminal proceedings under this chapter. If referred to a district attorney, ~~he~~ the district attorney shall, within 90 days, file with the commissioner a statement concerning any action taken or, if no action has been taken, the reasons therefor.

SECTION 29. 551.59 (1) of the statutes is renumbered 551.59 (1) (a) and amended to read:

551.59 (1) (a) Any person who: ~~a)~~ offers or sells a security in violation of s. 551.21, 551.31, 551.41 or 551.55 or any rule relating thereto, or any condition imposed under s. 551.26 or 551.27 or any order under this chapter of which ~~he~~ the person has notice; ~~or b)~~ ~~offers or sells a security by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, the purchaser not knowing of the untruth or omission, and who does not sustain the burden of proof that he did not know and in the exercise of reasonable care could not have known of the untruth or omission, shall be~~ is liable to the person purchasing the security from him, ~~who~~ or her. The person purchasing the security may sue either at law or in equity to recover the consideration paid for the security, together with interest at the legal rate from the date of payment, less the amount of any income received on the security, upon the tender of the security, or for damages if he the person no longer owns the security. Damages are the amount that would be recoverable upon a tender less the value of the security when the purchaser disposed of it and interest at the legal rate from the date of disposition. Tender shall require only notice of willingness to exchange the security for the amount specified. Any notice may be given by service as in civil actions or by certified mail addressed to the ~~last known~~ last-known address of the person liable.

SECTION 30. 551.59 (1) (b) of the statutes is created to read:

551.59 (1) (b) A person who offers or sells a security in violation of s. 551.41 (2) is not liable under par. (a) if the purchaser knew of the untrue statement of a material fact or omission of a statement of a material fact or the person sustains the burden of proof to establish that he or she did not know and in the exercise of reasonable care could not have known of the untrue statement or omission.

SECTION 31. 551.59 (2) of the statutes is renumbered 551.59 (2) (a) and amended to read:

551.59 (2) (a) Any person who purchases a security ~~by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, shall be in violation of s. 551.41 (2) is~~ liable to the person selling the security to him or her, who may sue either at law or in equity to recover the security, plus any income received by the purchaser thereon, upon tender of the consideration received, or for damages if the purchaser no longer owns the security. Damages are the excess of the value of the security when the purchaser disposed of it, plus interest at the legal rate from the date of disposition, over the consideration paid for the security. Tender requires only notice of willingness to pay the amount specified in exchange for the security. Any notice may be given by service as in civil actions or by certified mail to the ~~last known~~ last-known address of the person liable.

SECTION 32. 551.59 (2) (b) of the statutes is created to read:

551.59 (2) (b) A person who purchases a security in violation of s. 551.41 (2) is not liable under par. (a) if the seller knew of the untrue statement of a material fact or omission of a statement of a material fact or the person sustains the burden of proof to establish that he or she did not know and in the exercise of reasonable care could not have known of the untrue statement or omission.

SECTION 33. 551.59 (6) (c) of the statutes is amended to read:

551.59 (6) (c) Offers shall be in the form and contain the information the commissioner by rule prescribes. Every offer under this subsection shall be delivered to the offeree or sent by certified mail addressed to ~~him the offeree at his last known~~ the offeree's last-known address. If an offer is not performed in accordance with its terms, suit by the offeree under this section shall be permitted without regard to this subsection.

SECTION 34. 551.60 (3) of the statutes is amended to read:

551.60 (3) ~~If in the commissioner's opinion~~ the public interest and the protection of investors so require, the commissioner may by order summarily suspend all trading in this state by broker-dealers and agents in any security for any period specified. No broker-dealer or agent shall may effect any transaction in, or induce or attempt to induce the purchase or sale of, any security in this state in which trading is so suspended, except in performance of a contract previously entered into. At any time after the issuance of an order under this subsection, any interested person may in writing request that the suspension of trading be vacated. Upon the receipt of a written request, the matter shall be noticed for hearing and a hearing shall be held in the manner provided in s. 551.61 ~~(1)~~ (2). After the hearing, the commissioner may order the suspension to be continued until modified or vacated by further order upon a finding that trading in the security will be unfair or inequitable or will tend to work a fraud upon the purchasers or sellers of the security. Otherwise, the commissioner shall vacate the suspension of trading and no further order may be entered under this subsection with respect to the same security in the absence of changed circumstances justifying an order.

SECTION 35. 551.60 (5) of the statutes is created to read:

551.60 (5) The commissioner may take such action as is authorized under 7 USC 13a-2, as amended.

SECTION 36. 551.61 (1) of the statutes is renumbered 551.61 (2) and amended to read:

551.61 (2) Within 30 days after ~~any order has become effective without a hearing, any~~ the commissioner has issued an order summarily, an interested party may file a written request with the commissioner for a hearing in respect to any matters determined by the order, except a party may file a request for a hearing regarding an order issued under s.

551.60 (3) at any time. Within 15 10 days after the filing of the request an interested person files a written request with the commissioner for a hearing, the matter shall be noticed for hearing, and a hearing shall be held within 30 60 days after notice, unless extended by order of the commissioner for good cause. After the hearing, the commissioner may affirm, vacate or modify the order as appropriate. During the pendency of any hearing requested under this subsection, the order issued summarily shall remain in effect unless vacated or modified by the commissioner.

SECTION 37. 551.61 (1) of the statutes is created to read:

551.61 (1) No order, other than an order issued summarily subject to sub. (2), may be entered by the commissioner under s. 551.24, 551.28, 551.34 or 551.53 (2) without appropriate prior notice to all interested parties, opportunity for a hearing and, except as provided by s. 551.34 (7), written findings of fact and conclusions of law.

SECTION 38. 551.61 (3) and (4) of the statutes are renumbered 551.61 (4) and (5) and amended to read:

551.61 (4) Hearings and rehearings shall be public ~~unless the commissioner grants a request joined in by all parties that the hearing be conducted privately.~~

(5) Orders of the commissioner ~~shall be~~ are subject to judicial review under ch. 227 but orders originally entered without a hearing may be reviewed only if the party seeking review has requested a hearing within the time provided by sub. ~~(4)~~ (2).

SECTION 39. 551.61 (3) of the statutes is created to read:

551.61 (3) After a hearing, the commissioner may issue a final order as appropriate. The final order may affirm, vacate or modify an order issued summarily in effect during the pendency of the hearing as appropriate, or may include such other sanctions as are provided for under s. 551.24, 551.28 or 551.34. An order issued summarily against a party becomes a final order if the party fails to request a hearing under sub. (2) or if the party defaults after requesting a hearing.

SECTION 40. 551.64 (1) and (3) of the statutes are amended to read:

551.64 (1) A document is filed when it is received by the commissioner or, if authorized under s. 551.32 (1) (a), an organization designated by the commissioner.

(3) The information contained in or filed with any registration statement, application or report shall be made available to the public in accordance with rules ~~prescribed~~ adopted by the commissioner.

SECTION 41. 551.65 (1) and (2) of the statutes are amended to read:

551.65 (1) Every applicant for license or registration under this chapter and every issuer which proposes to offer a security in this state through any person acting as agent shall file with the commissioner, ~~in such form as he by rule prescribes or, if applying for a license, with the organization designated by the commissioner under s. 551.32 (1) (a), an irrevocable consent appointing the commissioner or his the commissioner's successor in office to be his or her attorney to receive service of any lawful process in any noncriminal suit, action or proceeding against him or her or his a successor, executor or administrator which arises under this chapter or any rule or order hereunder under this chapter after the consent has been filed, with the same validity as if served personally on the person filing the consent. The consent shall be in the form the commissioner by rule prescribes.~~ The consent need not be filed by a person who has filed a consent in connection with a previous registration or license which is then in effect. Service may be made by leaving a copy of the process in the office of the commissioner, but it is not effective unless the plaintiff, who may be the commissioner in a suit, action or proceeding instituted by ~~him~~ the commissioner, promptly sends notice of the service and a copy of the process by registered or certified mail to the defendant or respondent at ~~his~~ the person's last address on file with the commissioner, and the plaintiff's affidavit of compliance with this subsection is filed

in the case on or before the return day of the process, or within such time as the court allows.

(2) When any person, including any nonresident of this state, engages in conduct prohibited or made actionable by this chapter or any rule or order ~~hereunder~~ under this chapter, and ~~he~~ the person has not filed a consent to service of process under sub. (1) and personal jurisdiction over ~~him~~ the person cannot otherwise be obtained in this state, that conduct shall be considered equivalent to ~~his~~ the person's appointment of the commissioner to be ~~his or her~~ attorney to receive service of any lawful process in any noncriminal suit, action or proceeding against ~~him~~ the person or ~~his~~ the person's successor, executor or administrator which arises out of that conduct and which is brought under this chapter or any rule or order ~~hereunder~~ under this chapter, with the same validity as if served on ~~him~~ her personally. Service may be made by leaving a copy of the process in the office of the commissioner, but it is not effective unless the plaintiff, who may be the commissioner in a suit, action or proceeding instituted by ~~him~~ the commissioner, promptly sends notice of the service and a copy of the process by registered or certified mail to the defendant or respondent at ~~his last-known~~ the person's last-known address or takes other steps which are reasonably calculated to give actual notice; and the plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return day of the process or within such time as the court allows.

SECTION 42. 551.66 (4) of the statutes is amended to read:

551.66 (4) An offer to sell or to purchase is not made in this state when the publisher circulates or there is circulated on ~~his~~ the publisher's behalf in this state any bona fide newspaper or other publication of general, regular and paid circulation which is not published in this state, or a radio or television program originating outside this state is received in this state.

SECTION 43. **Change in terminology.** (1) Wherever the term "he" or "him" appears in the following sections of the statutes, the term "the commissioner" is substituted: 551.23 (3) (d), 551.25 (3) (b), 551.27 (7) and (8), 551.28 (1) (intro.), (c) and (g) and (6), 551.56 (2), 551.57, 551.60 (4) and 551.65 (3).

(2) Wherever the term "he" appears in the following sections of the statutes, the term "he or she" is substituted: 551.02 (2), 551.21 (2), 551.34 (1) (b), 551.42 (3) and 551.59 (4).

(4) Wherever the term "his" appears in the following sections of the statutes, the term "his or her" is substituted: 551.02 (7) (b) and (c) and 551.59 (3) and (6) (a) and (b).

(5) Wherever the term "his" appears in the following sections of the statutes, the term "the commissioner's" is substituted: 551.27 (5), 551.63 (1) and 551.64 (4).

SECTION 44. **Initial applicability.** Section 551.58 (1) of the 1979 statutes applies to any violation which occurred prior to the date which is 6 years prior to the day after this act is published. Section 939.74 of the statutes applies to any violation which occurs after that date.

SECTION 45. **Effective dates.** (1) Except as provided by subsection (2), this act takes effect on January 1, 1982, or on the day after its publication, whichever is later.

(2) The treatment of section 551.58 (1) of the statutes by this act takes effect on the day after publication of this act.