

West's Vermont Statutes Annotated Currentness
Title Nine. Commerce and Trade
→ Part 7. Landlord and Tenant
Chapter 137. Residential Rental Agreements

§ 4451. Definitions

As used in this chapter:

- (1) "Actual notice" means receipt of written notice hand-delivered or mailed to the last known address. A rebuttable presumption that the notice was received three days after mailing is created if the sending party proves that the notice was sent by first class or certified United States mail.
- (2) "Building, housing and health regulations" means any law, ordinance or governmental regulation concerning health, safety, sanitation or fitness for habitation, or concerning the construction, maintenance, operation, occupancy, use or appearance of any premises or dwelling unit.
- (3) "Dwelling unit" means a building or the part of a building that is used as a home, residence or sleeping place by one or more persons who maintain a household.
- (4) "Landlord" means the owner, lessor, or where applicable, the sublessor of a residential dwelling unit or the building of which it is a part.
- (5) "Normal wear and tear" means the deterioration which occurs, based upon the reasonable use for which the rental unit is intended, without negligence, carelessness, accident or abuse of the premises or equipment or chattels by the tenant or members of his or her household or their invitees or guests.
- (6) "Premises" means a dwelling unit, its appurtenances and the building, and the grounds, areas and facilities held out for the use of tenants generally or whose use is promised to the tenant.
- (7) "Rent" means all consideration to be made to or for the benefit of the landlord under the rental agreement, not including security deposits.
- (8) "Rental agreement" means all agreements, written or oral, embodying terms and conditions concerning the use and occupancy of a dwelling unit and premises.
- (9) "Tenant" means a person entitled under a rental agreement to occupy a residential dwelling unit to the exclusion of others.

§ 4452. Exclusions

Unless created to avoid the application of this chapter, this chapter does not apply to any of the following:

- (1) Occupancy at a public or private institution, operated for the purpose of providing medical, geriatric, educational, counseling, religious or similar service.

- (2) Occupancy under a contract of sale of a dwelling unit or the property of which it is a part, if the occupant is the purchaser or a person who succeeds to the interest of the purchaser.
- (3) Occupancy by a member of a fraternal, social or religious organization in the portion of a building operated for the benefit of the organization.
- (4) Transient occupancy in a hotel, motel or lodgings during the time the occupancy is subject to a tax levied under chapter 225 of Title 32.
- (5) Occupancy by the owner of a condominium unit or the holder of a proprietary lease in a cooperative.
- (6) Rental of a mobile home lot governed by chapter 153 of Title 10.
- (7) Transient residence in a campground, which for the purposes of this chapter means any property used for seasonal or short-term vacation or recreational purposes on which are located cabins, tents, or lean-tos or campsites designed for temporary set-up of portable or mobile camping, recreational, or travel dwelling units including tents, campers, and recreational vehicles such as motor homes, travel trailers, truck campers, and van campers.

§ 4453. Obligations implied

Obligations imposed on landlords and tenants under this chapter shall be implied in all rental agreements.

§ 4454. Attempt to circumvent

No rental agreement shall contain any provision which attempts to circumvent or circumvents obligations and remedies established by this chapter and any such provision shall be unenforceable and void.

§ 4455. Tenant obligations; payment of rent

- (a) Rent is payable without demand or notice at the time and place agreed upon by the parties.
- (b) An increase in rent shall take effect on the first day of the rental period following no less than 60 days' actual notice to the tenant.

§ 4456. Tenant obligations; use and maintenance of dwelling unit

- (a) The tenant shall not create or contribute to the noncompliance of the dwelling unit with applicable provisions of building, housing and health regulations.
- (b) The tenant shall conduct himself or herself and require other persons on the premises with the tenant's consent to conduct themselves in a manner that will not disturb other tenants' peaceful enjoyment of the premises.
- (c) The tenant shall not deliberately or negligently destroy, deface, damage or remove any part of the premises or its fixtures, mechanical systems or furnishings or deliberately or negligently permit any person to do so.
- (d) Unless inconsistent with a written rental agreement or otherwise provided by law, a tenant may terminate a

tenancy by actual notice given to the landlord at least one rental payment period prior to the termination date specified in the notice.

(e) If a tenant acts in violation of this section, the landlord is entitled to recover damages, costs and reasonable attorney's fees, and the violation shall be grounds for termination under [section 4467\(b\)](#) of this title.

§ 4456a. Residential rental application fees; prohibited

A landlord or a landlord's agent shall not charge an application fee to any individual in order to apply to enter into a rental agreement for a residential dwelling unit. This section shall not be construed to prohibit a person from charging a fee to a person in order to apply to rent commercial or nonresidential property.

§ 4457. Landlord obligations; habitability

(a) Warranty of habitability. In any residential rental agreement, the landlord shall be deemed to covenant and warrant to deliver over and maintain, throughout the period of the tenancy, premises that are safe, clean and fit for human habitation and which comply with the requirements of applicable building, housing and health regulations.

(b) Waiver. No rental agreement shall contain any provision by which the tenant waives the protections of the implied warranty of habitability. Any such waiver shall be deemed contrary to public policy and shall be unenforceable and void.

(c) Heat and water. As part of the implied warranty of habitability, the landlord shall ensure that the dwelling unit has heating facilities which are capable of safely providing a reasonable amount of heat. Every landlord who provides heat as part of the rental agreement shall at all times supply a reasonable amount of heat to the dwelling unit. The landlord shall provide an adequate amount of water to each dwelling unit properly connected with hot and cold water lines. The hot water lines shall be connected with supplied water-heating facilities which are capable of heating sufficient water to permit an adequate amount to be drawn. This subsection shall not apply to a dwelling unit intended and rented for summer occupancy or as a hunting camp.

§ 4458. Habitability; tenant remedies

(a) If the landlord fails to comply with the landlord's obligations for habitability and, after receiving actual notice of the noncompliance from the tenant, a governmental entity or a qualified independent inspector, the landlord fails to make repairs within a reasonable time and the noncompliance materially affects health and safety, the tenant may:

- (1) withhold the payment of rent for the period of the noncompliance;
- (2) obtain injunctive relief;
- (3) recover damages, costs and reasonable attorney's fees; and
- (4) terminate the rental agreement on reasonable notice.

(b) Tenant remedies under this section are not available if the noncompliance was caused by the negligent or deliberate act or omission of the tenant or a person on the premises with the tenant's consent.

§ 4459. Minor defects; repair and deduct

(a) If within 30 days of notice, the landlord fails to repair a minor defect in order to comply with this chapter or a material provision of the rental agreement, the tenant may repair the defect and deduct from the rent the actual and reasonable cost of the work, not to exceed one-half of one month's rent. The tenant shall provide the landlord with actual notice of the cost of the repair, when the cost is deducted from the rent.

(b) The tenant remedies under this section are not available if the noncompliance was caused by the negligent or deliberate act or omission of the tenant or a person on the premises with the tenant's consent.

§ 4460. Access

(a) A landlord may enter the dwelling unit with the tenant's consent, which shall not be unreasonably withheld.

(b) A landlord may also enter the dwelling unit for the following purposes between the hours of 9:00 A.M. and 9:00 P.M. on no less than 48 hours' notice:

- (1) when necessary to inspect the premises;
- (2) to make necessary or agreed repairs, alterations or improvements;
- (3) to supply agreed services; or
- (4) to exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workers or contractors.

(c) A landlord may only enter the dwelling unit without consent or notice when the landlord has a reasonable belief that there is imminent danger to any person or to property.

§ 4461. Security deposits

(a) A security deposit is any advance, deposit or prepaid rent, however named, which is refundable to the tenant at the termination or expiration of the tenancy. The function of a security deposit is to secure the performance of a tenant's obligations to pay rent and to maintain a dwelling unit.

(b) The landlord may retain all or a portion of the security deposit for:

- (1) nonpayment of rent;
- (2) damage to property of the landlord, unless the damage is the result of normal wear and tear or the result of actions or events beyond the control of the tenant;
- (3) nonpayment of utility or other charges which the tenant was required to pay directly to the landlord or to a utility; and

- (4) expenses required to remove from the rental unit articles abandoned by the tenant.
- (c) A landlord shall return the security deposit along with a written statement itemizing any deductions to a tenant within 14 days from the date on which the landlord discovers that the tenant vacated or abandoned the dwelling unit, or the date the tenant vacated the dwelling unit, provided the landlord received notice from the tenant of that date. In the case of the seasonal occupancy and rental of a dwelling unit not intended as a primary residence, the security deposit and written statement shall be returned within 60 days.
- (d) The landlord shall comply with this section by hand-delivering or mailing the statement and any payment required to the last known address of the tenant.
- (e) If a landlord fails to return the security deposit with a statement within 14 days, the landlord forfeits the right to withhold any portion of the security deposit. If the failure is wilful, the landlord shall be liable for double the amount wrongfully withheld, plus reasonable attorney's fees and costs.
- (f) Upon termination of the landlord's interest in the dwelling unit, the security deposit shall be transferred to the new landlord. The new landlord shall give the tenant actual notice of the new landlord's name and address with a statement that the security deposit has been transferred to the new landlord.
- (g) A town or municipality may adopt an ordinance governing security deposits on dwellings. The ordinance shall be supplemental to and not inconsistent with the minimum protections of the provisions of this section. The ordinance may not limit how a security deposit is held. The ordinance may authorize the payment of interest on a security deposit. The ordinance may provide that a housing board of review constituted pursuant to [section 5005 of Title 24](#) may hear and decide disputes related to security deposits upon request for a hearing by a landlord or tenant. The board's actions shall be reviewable under [section 5006 of Title 24](#).

§ 4462. Abandonment; unclaimed property

- (a) A tenant has abandoned a dwelling unit if:
- (1) there are circumstances which would lead a reasonable person to believe that the dwelling unit is no longer occupied as a full-time residence;
 - (2) rent is not current; and
 - (3) the landlord has made reasonable efforts to ascertain the tenant's intentions.
- (b) If the tenant abandons the dwelling unit the tenant shall remain liable for rent until the expiration of the rental agreement. However, if the landlord rents the dwelling unit before the expiration of the rental agreement, the agreement terminates on the date of the new tenancy.
- (c) If any property, except trash, garbage or refuse, is unclaimed by a tenant who has abandoned a dwelling unit, the landlord shall give written notice to the tenant mailed to the tenant's last known address that the landlord intends to dispose of the property after 60 days if the tenant has not claimed the property and paid any reasonable storage and other fees incurred by the landlord. The landlord shall place the property in a safe, dry, secured location, but may dispose of any trash, garbage or refuse left by the tenant. The tenant may claim the property by

providing the landlord with the following within 60 days after the date of the notice:

- (1) A reasonable written description of the property; and
- (2) Payment of the fair and reasonable cost of storage and any related reasonable expenses incurred by the landlord.

If the tenant does not claim the property within the required time, the property shall become the property of the landlord. If the tenant claims the property within the required time, the landlord shall immediately make the property available to the tenant at a reasonable place and the tenant shall take possession of the property at that time and place.

(d) Any personal property remaining in the dwelling unit or leased premises after the tenant has vacated may be disposed of by the landlord without notice or liability to the tenant or owner of the personal property, provided that one of the following has occurred:

- (1) The tenant provided actual notice to the landlord that the tenant has vacated the dwelling unit or leased premises.
- (2) The tenant has vacated the dwelling unit or leased premises at the end of the rental agreement.

§ 4463. Illegal evictions

(a) No landlord may willfully cause, directly or indirectly, the interruption or termination of any utility service being supplied to the tenant, except for temporary interruptions for emergency repairs.

(b) No landlord may directly or indirectly deny a tenant access to and possession of the tenant's rented or leased premises, except through proper judicial process.

(c) No landlord may directly or indirectly deny a tenant access to and possession of the tenant's property, except through proper judicial process.

§ 4464. Remedies for illegal evictions

(a) Any tenant who sustains damage or injury as a result of an illegal eviction may bring an action for injunctive relief, damages, costs and reasonable attorney's fees.

(b) A court may award reasonable attorney's fees to the landlord if, upon motion and hearing, it is determined that the action was not brought in good faith and was frivolous or intended for harassment only.

§ 4465. Retaliatory conduct prohibited

(a) A landlord of a residential dwelling unit may not retaliate by establishing or changing terms of a rental agreement or by bringing or threatening to bring an action against a tenant who:

- (1) has complained to a governmental agency charged with responsibility for enforcement of a building, housing or health regulation of a violation applicable to the premises materially affecting health and safety;

- (2) has complained to the landlord of a violation of this chapter; or
 - (3) has organized or become a member of a tenant's union or similar organization.
- (b) If the landlord acts in violation of this section, the tenant is entitled to recover damages and reasonable attorney's fees and has a defense in any retaliatory action for possession.
- (c) If a landlord serves notice of termination of tenancy on any grounds other than for nonpayment of rent within 90 days after notice by any municipal or state governmental entity that the premises are not in compliance with applicable health or safety regulations, there is a rebuttable presumption that any termination by the landlord is in retaliation for the tenant having reported the noncompliance.

§ 4466. Repealed

§ 4467. Termination of tenancy; notice

- (a) Termination for nonpayment of rent. The landlord may terminate a tenancy for nonpayment of rent by providing actual notice to the tenant of the date on which the tenancy will terminate which shall be at least 14 days after the date of the actual notice. The rental agreement shall not terminate if the tenant pays or tenders rent due through the end of the rental period in which payment is made or tendered. Acceptance of partial payment of rent shall not constitute a waiver of the landlord's remedies for nonpayment of rent.
- (b) Termination for breach of rental agreement.
- (1) The landlord may terminate a tenancy for failure of the tenant to comply with a material term of the rental agreement or with obligations imposed under this chapter, by actual notice given to the tenant at least 30 days prior to the termination date specified in the notice.
 - (2) When termination is based on criminal activity, illegal drug activity, or acts of violence any of which threaten the health or safety of other residents, the landlord may terminate the tenancy by providing actual notice to the tenant of the date on which the tenancy will terminate which shall be at least 14 days from the date of the actual notice.
- (c) Termination for no cause. In the absence of a written rental agreement, the landlord may terminate a tenancy for no cause as follows:
- (1) if rent is payable on a monthly basis, by providing actual notice to the tenant of the date on which the tenancy will terminate which shall be:
 - (A) For tenants who have resided continuously in the same premises for two years or less, at least 60 days after the date of the actual notice.
 - (B) For tenants who have resided continuously in the same premises for more than two years, at least 90 days after the date of the actual notice.
 - (2) if rent is payable on a weekly basis, by providing actual notice to the tenant of the date on which the ten-

- ancy will terminate which shall be at least 21 days after the date of the actual notice.
- (d) Termination of rental agreement when property is sold. In the absence of a written rental agreement a landlord who has contracted to sell the building may terminate a tenancy by providing actual notice to the tenant of the date on which the tenancy will terminate which shall be at least 30 days after the date of the actual notice.
- (e) Termination for no cause under terms of written rental agreement. If there is a written rental agreement, the notice to terminate for no cause shall be at least 30 days before the end or expiration of the stated term of the rental agreement, if the tenancy has continued for two years or less. The notice to terminate for no cause shall be at least 60 days before the end or expiration of the term of the rental agreement if the tenancy has continued for more than two years. If there is a written week-to-week rental agreement, the notice to terminate for no cause shall be at least seven days; however, a notice to terminate for nonpayment of rent shall be as provided in subsection (a) of this section.
- (f) In all cases the termination date shall be specifically stated in the notice.
- (g) If the building is being converted to condominiums, notice shall be given in accordance with subchapter 2 of chapter 15 of Title 27.
- (h) A rental arrangement whereby a person rents to another individual one or more rooms in his or her personal residence that includes the shared use of any of the common living spaces, such as the living room, kitchen or bathroom, may be terminated by either party by providing actual notice to the other of the date the rental agreement shall terminate, which shall be at least 15 days after the date of actual notice if the rent is payable monthly and at least seven days after the date of actual notice if the rent is payable weekly.
- (i) Multiple notices. All actual notices that are in compliance with this section shall not invalidate any other actual notice and shall be a valid basis for commencing and maintaining an action for possession pursuant to this chapter, chapter 153 of Title 10, chapter 14 of Title 11, or chapter 169 of Title 12, notwithstanding that the notices may be based on different or unrelated grounds, dates of termination, or that the notices are sent at different times prior to or during an ejectment action. A landlord may maintain an ejectment action and rely on as many grounds for ejectment as is allowed by law at any time during the eviction process.
- (j)(1) A landlord's acceptance of full or partial rent payment by or on behalf of a tenant after the termination of the tenancy for reasons other than nonpayment of rent or at any time during the ejectment action shall not result in the dismissal of an ejectment action or constitute a waiver of the landlord's remedies to proceed with an eviction action based on any of the following:
- (A) The tenant's breach of the terms of a rental agreement pursuant to subsection (b) of this section.
 - (B) The tenant's breach of the tenant's obligations pursuant to subsections 4456(a), (b), and (c) of this title.
 - (C) For no cause pursuant to subsections (c), (d), (e), and (h) of this section.
- (2) This subsection shall apply to chapter 153 of Title 10, chapter 14 of Title 11, and chapter 169 of Title 12.
- (k) A notice to terminate a tenancy shall be insufficient to support a judgment of eviction unless the proceeding

is commenced no later than 60 days from the termination date set forth in the notice.

§ 4468. Termination of tenancy; action for possession

If the tenant remains in possession after termination of the rental agreement, without the express consent of the landlord, the landlord may bring an action for possession, damages and costs under subchapter 3 of chapter 169 of Title 12.

§ 4469. Repealed by 1999, No. 36, § 6, eff. Feb. 15, 2203.

Chapter 138. Campgrounds

§ 4470. Campgrounds; removal

(a) Definition. A recreational campground or camping park is property where transient residence is offered or provided for seasonal or short-term vacation or recreational purposes on which may be located cabins, tents, or lean-tos or campsites designed for temporary set-up of portable or mobile camping, recreational, or travel dwelling units including tents, campers, and recreational vehicles such as motor homes, travel trailers, truck campers, and van campers.

(b) An owner, operator, or agent of a recreational campground or camping park may remove or cause to be removed from a recreational campground or camping park any person who does any of the following:

(1) refuses to pay registration or fees;

(2) violates any municipal or state law; or

(3) violates the published or posted rules of the recreational campground or camping park, which may include a rule that requires campers to respect the peace and quiet enjoyment of other campers and the owner, operator, or agent.

(c) A person who refuses to immediately leave the property after he or she has been told to do so by the owner, operator, or agent shall be in violation of 13 V.S.A. § 3705(a) and may be prosecuted for unlawful trespass. If any conduct involves the use of a motor vehicle, the person may be prosecuted for any applicable violation of Title 23. For the purposes of this section, the property on which a campground or camping park is located shall be considered open to the free flow and circulation of traffic. The person may be removed from the premises by a law enforcement officer on request of the owner, operator, or agent.

(d) The owner, operator, or agent shall employ reasonable means to protect any personal property left at a campground or camping park by a person who has left or has been removed. A reasonable storage fee which is published or posted may be charged for any personal property left at the campground or camping park. If the owner does not take possession of the personal property within six months of the date the property has been left at the campground, the owner, operator or agent may dispose of it in a commercially reasonable manner and then pay to the owner the sale proceeds less any storage and sales fees incurred.

Chapter 139. Discrimination; Public Accommodations; Rental and Sale of Real Estate (Refs & Annos)**§ 4500. Legislative intent**

(a) The provisions of this chapter establishing legal standards, duties and requirements with respect to persons with disabilities in places of public accommodation as defined herein, except those provisions relating to remedies, are intended to implement and to be construed so as to be consistent with the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.* and rules adopted thereunder, and are not intended to impose additional or higher standards, duties or requirements than that act.

(b) Subsections 4502(b) and (c) of Title 9 shall not be construed to create or impose on governmental entities additional or higher standards, duties or requirements than that imposed by Title II of the Americans with Disabilities Act.

§ 4501. Definitions

As used in this chapter:

- (1) "Place of public accommodation" means any school, restaurant, store, establishment or other facility at which services, facilities, goods, privileges, advantages, benefits or accommodations are offered to the general public.
- (2) "Handicap" or "disability," with respect to an individual, means:
 - (A) a physical or mental impairment which limits one or more major life activities;
 - (B) a history or record of such an impairment; or
 - (C) being regarded as having such an impairment.
- (3) "Physical or mental impairment" means:
 - (A) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; or endocrine;
 - (B) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities;
 - (C) The term "physical or mental impairment" includes but is not limited to such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism. A handicapped individual does not include any individual who is an alcoholic or drug abuser who, by reason of current alcohol or drug use, constitutes a direct threat to property or safety of others.

- (4) "Owner" includes any person having a legal or beneficial interest in real estate which gives him or her the right to possession thereof.
- (5) "Dwelling" means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.
- (6) "Public assistance" includes any assistance provided by federal, state or local government, including medical and housing assistance.
- (7) "Auxiliary aids and services" mean the following:
- (A) Qualified interpreters, notetakers, computer-aided transcription services, written materials, telephone handset amplifiers, assistive listening devices and systems, hearing aid compatible telephones, closed caption decoders, open and closed captioning telecommunications devices for deaf persons, videotext displays or other effective methods of making aurally delivered materials available to individuals with hearing impairments.
 - (B) Qualified readers, taped texts, audio recordings, Braille materials, large print materials or other effective methods of making visually delivered materials available to individuals with visual impairments.
 - (C) Modification of equipment or devices.
 - (D) Other similar services and actions.
- (8) "Public accommodation" means an individual, organization, governmental or other entity that owns, leases, leases to or operates a place of public accommodation.
- (9) "Readily achievable" means easily accomplishable and able to be carried out without much difficulty or expense. In determining whether an action is readily achievable, the factors considered in determining whether an action is an undue burden pursuant to subsection (10) of this section apply.
- (10) "Undue burden" means significant difficulty or expense. In determining whether an action would result in an undue burden, the following factors shall be considered:
- (A) The nature and cost of the action needed.
 - (B) The overall financial resources of the site or sites involved in the action; the number of persons employed at the site; the effect on expenses and resources; legitimate safety requirements necessary for safe operation, including crime prevention measures, or any other impact of the action on the operation of the site.
 - (C) The geographic separateness and the administrative or fiscal relationship of the site or sites in question to any parent corporation or entity.
 - (D) If applicable, the overall financial resources of any parent corporation or entity; the overall size of the

parent corporation or entity with respect to the number of its employees; and the number, type and location of its facilities.

(E) If applicable, the type of operation or operations of any parent corporation or entity, including the composition, structure and functions of the workforce of the parent corporation or entity.

§ 4502. Public accommodations

(a) An owner or operator of a place of public accommodation or an agent or employee of such owner or operator shall not, because of the race, creed, color, national origin, marital status, sex, sexual orientation, or gender identity of any person, refuse, withhold from, or deny to that person any of the accommodations, advantages, facilities, and privileges of the place of public accommodation.

(b) An owner or operator of a place of public accommodation or his or her employee or agent shall not prohibit from entering a place of public accommodation:

(1) An individual with a disability accompanied by a service animal.

(2) An individual who is training an animal to perform as a service animal for an individual with a disability.

(c) No individual with a disability shall be excluded from participation in or be denied the benefit of the services, facilities, goods, privileges, advantages, benefits or accommodations, or be subjected to discrimination by any place of public accommodation on the basis of his or her disability as follows:

(1) A public accommodation shall provide an individual with a disability the opportunity to participate in its services, facilities, privileges, advantages, benefits and accommodations. It is discriminatory to offer an individual an unequal opportunity or separate benefit; however it is permissible to provide a separate benefit if that benefit is necessary to provide an individual or class of individuals an opportunity that is as effective as that provided to others.

(2) A public accommodation shall afford goods, services, facilities, privileges, advantages and accommodations to an individual with a disability in the most integrated setting which is appropriate for the needs of the individual. Notwithstanding the existence of separate or different programs or activities, a public accommodation shall not deny an individual with a disability an opportunity to participate in such programs or activities that are not separate or different. Nothing in this subsection shall be construed to require an individual with a disability to accept an accommodation, aid, service, opportunity or benefit which the individual chooses not to accept.

(3) A public accommodation shall not exclude or otherwise deny equal goods, services, facilities, privileges, advantages, accommodations or other opportunities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association.

(4) No public accommodation shall discriminate against any individual because that individual has opposed any act or practice made unlawful by this section or because that individual made a charge, testified, assisted or participated in any manner in an investigation, proceeding or hearing under this section. No public accommodation shall coerce, intimidate, threaten or interfere with any individual in the exercise or enjoyment of or

on account of his or her having exercised or enjoyed or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of any right granted or protected by this section.

(5) A public accommodation shall make reasonable modifications in policies, practices or procedures when those modifications are necessary to offer goods, services, facilities, privileges, advantages or accommodations to individuals with disabilities, unless the public accommodation can demonstrate that making the modifications would fundamentally alter the nature of the goods, services, facilities, privileges, advantages or accommodations.

(6) A public accommodation shall take whatever steps may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the public accommodation can demonstrate that taking those steps would fundamentally alter the nature of the goods, services, facilities, privileges, advantages or accommodations being offered or would result in an undue burden on the public accommodation.

(7) A public accommodation shall not be required to provide to individuals with disabilities personal devices, such as wheelchairs, eyeglasses, hearing aids or readers for personal use or study or personal services to assist with feeding, toileting or dressing.

(8) Notwithstanding the provisions of this section, if a place of public accommodation has an architectural or communication barrier, in order to comply with this section, the public accommodation shall remove the barrier, if removal is readily achievable, or shall make its goods, services, facilities, privileges, advantages or accommodations available through alternative methods, if those alternative methods are readily achievable. Nothing in this subsection shall be construed to alter architectural barrier removal requirements under the federal Americans with Disabilities Act [FN1] and its regulations as they relate to governmental entities.

(9) Any public accommodation that offers examinations or courses related to applications, licensing, certification or credentialing for secondary or post-secondary education, professional or trade purposes shall offer such examinations or courses in a place and manner accessible to persons with disabilities or offer alternative accessible arrangements for such individuals.

(d) This section shall not prohibit an owner or operator of an inn, hotel, motel or other establishment which provides lodging to transient guests, and which has five or fewer rooms for rent or hire, from restricting such accommodation on the basis of sex or marital status.

(e) It is a violation of this section for a gas station or other facility which sells gasoline or other motor vehicle fuel for sale to the public to fail to comply with the provisions of section [§ 4110a](#) of this title.

(f) It is a violation of this section for a public accommodation to fail to comply with the provisions or rules pertaining to public buildings pursuant to chapter 4 of Title 21.

(g) This chapter shall not apply to:

(1) Special education claims and issues covered by federal and state special education laws, regulations and procedures, pursuant to [20 U.S.C. § 1404 et seq.](#) and 16 V.S.A. chapter 101.

(2) An insurer underwriting risks, classifying risks or administering risks that are based on or are not inconsistent with 8 V.S.A. §§ 4724 and 4084 or other applicable state laws.

(h) This section shall not be construed to require a public accommodation to permit an individual to participate in or benefit from the services, facilities, goods, privileges, advantages and accommodations of that public accommodation when that individual poses a direct threat to the health or safety of others. For the purposes of this subsection, "direct threat" means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices or procedures or by the provision of auxiliary aids or services. In determining whether an individual poses a direct threat to the health or safety of others, a public accommodation shall make an individualized assessment based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence to ascertain:

(1) the nature, duration and severity of the risk; and

(2) the probability that the potential injury will actually occur; and

(3) whether reasonable modifications of policies, practices or procedures will mitigate the risk.

(i) Nothing in this section shall be construed to prohibit a public accommodation from excluding a person engaged in disruptive behavior which the place of public accommodation has reason to believe is the result of alcohol or illegal drug use.

(j) Notwithstanding any other provision of law, a mother may breastfeed her child in any place of public accommodation in which the mother and child would otherwise have a legal right to be.

(k) A police officer, a firefighter, or a member of a rescue squad, search and rescue squad, first response team, or ambulance corps who is accompanied by a service dog shall be permitted in any place of public accommodation, and the service dog shall be permitted to stay with its master. For the purposes of this subsection, "service dog" means a dog owned, used, or in training by any police or fire department, rescue or first response squad, ambulance corps, or search and rescue organization for the purposes of locating criminals and lost persons, or detecting illegal substances, explosives, cadavers, accelerants, or school or correctional facility contraband.

[FN1] 42 U.S.C.A. § 12101 et seq.

§ 4503. Unfair housing practices

(a) It shall be unlawful for any person:

(1) To refuse to sell or rent, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling or other real estate to any person because of the race, sex, sexual orientation, gender identity, age, marital status, religious creed, color, national origin, or handicap of a person, or because a person intends to occupy a dwelling with one or more minor children, or because a person is a recipient of public assistance.

(2) To discriminate against, or to harass any person in the terms, conditions, or privileges of the sale or rental of a dwelling or other real estate, or in the provision of services or facilities in connection therewith, because of the race, sex, sexual orientation, gender identity, age, marital status, religious creed, color, national origin,

or handicap of a person, or because a person intends to occupy a dwelling with one or more minor children, or because a person is a recipient of public assistance.

(3) To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling or other real estate that indicates any preference, limitation, or discrimination based on race, sex, sexual orientation, gender identity, age, marital status, religious creed, color, national origin, or handicap of a person, or because a person intends to occupy a dwelling with one or more minor children, or because a person is a recipient of public assistance.

(4) To represent to any person because of the race, sex, sexual orientation, gender identity, age, marital status, religious creed, color, national origin, or handicap of a person, or because a person intends to occupy a dwelling with one or more minor children, or because a person is a recipient of public assistance, that any dwelling or other real estate is not available for inspection, sale, or rental when the dwelling or real estate is in fact so available.

(5) To coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of any right granted or protected by this chapter or for having filed a charge, testified or cooperated in any investigation or enforcement action pursuant to chapter 139 or 141 of this title.

(6) To discriminate against any person in the making or purchasing of loans or providing other financial assistance for real estate related transactions or in the selling, brokering, or appraising of residential real property, because of the race, sex, sexual orientation, gender identity, age, marital status, religious creed, color, national origin, or handicap of a person, or because a person intends to occupy a dwelling with one or more minor children, or because a person is a recipient of public assistance.

(7) To engage in blockbusting practices, for profit, which may include inducing or attempting to induce a person to sell or rent a dwelling by representations regarding the entry into the neighborhood of a person or persons of a particular race, sex, sexual orientation, gender identity, age, marital status, religious creed, color, national origin, or handicap of a person, or because a person intends to occupy a dwelling with one or more minor children, or because a person is a recipient of public assistance.

(8) To deny any person access to or membership or participation in any multiple listing service, real estate brokers' organization, or other service, organization or facility relating to the business of selling or renting dwellings, or to discriminate against any person in the terms or conditions of such access, membership, or participation, on account of race, sex, sexual orientation, gender identity, age, marital status, religious creed, color, national origin, or handicap of a person, or because a person is a recipient of public assistance.

(9) To discriminate in the sale or rental of a dwelling because a person relies upon aids such as attendants, specially trained animals, wheelchairs, or similar appliances or devices but the owner shall not be required to modify or alter the building in any way in order to comply with this chapter. An owner shall permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by the handicapped person if the modifications are necessary to afford the person full enjoyment of the premises. The owner may, if reasonable, require the person to agree to restore the premises to the condition that existed before the modification, reasonable wear and tear excepted, but the owner may not require an additional security deposit for this purpose.

(10) To refuse to make reasonable accommodations in rules, policies, practices or services when such accommodations may be necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling unit, including public and common areas.

(11) To fail to comply with provisions or rules pertaining to covered multifamily dwellings, as defined in [section 271 of Title 21](#), pursuant to chapter 4 of Title 21.

(b) The provisions of subsection (a) of this section with respect to discrimination in sales and rentals of dwellings on the basis of age or on the basis of a person's intention to occupy with one or more minor children shall not apply to the sale or rental of a dwelling in a housing complex:

(1) intended for, and solely occupied by, persons 62 years of age or older; or

(2) intended and operated for occupancy by at least one person 55 years of age or older per unit. This subsection shall only apply if the following conditions are met:

(A) The housing complex has significant facilities and services specifically designed to meet the physical or social needs of older persons, or if it is not practicable to provide those facilities and services, that the housing complex is necessary to provide important housing opportunities for older persons; and

(B) At least 80 percent of the units are occupied by at least one person 55 years of age or older per unit, except that a newly constructed housing complex in which first occupancy will begin after enactment of this act need not comply with this subsection until 25 percent of the units are occupied; and

(C) There are written and enforced policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older.

(3) established under any federal or state program specifically designed and operated to assist elderly persons, as defined in the federal or state program.

(c) The housing exemption in subsection (b) of this section shall not fail to apply due to persons residing in such dwellings as of July 1, 1989, who do not meet the age requirements of subsection (b) of this section, provided that new occupants of such dwellings meet the age requirements of that subsection, and that unoccupied units as of July 1, 1989 are reserved for occupancy by persons who meet the age requirements of that subsection.

§ 4504. Rental of housing; exemptions

The provisions of [section 4503](#) of this title relating to the rental of a dwelling shall not apply:

(1) if the dwelling unit is inadequate, under applicable laws and ordinances relating to occupancy, to house all persons who intend to live there;

(2) if the dwelling unit is in a building with three or fewer units and the owner or a member of the owner's immediate family resides in one of the units;

(3) to the refusal to rent to a person because the person is under the age of majority;

(4) to limit a landlord's right to establish and enforce legitimate business practices necessary to protect and manage the rental property, such as the use of references. However, this subdivision shall not be used as a pretext for discrimination in violation of this section; or

(5) to a religious organization, association or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association or society, which limits the sale, rental or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in that religion is restricted on the basis of race, color or national origin. The religious restriction or preference must be stated in written policies and procedures of the religious organization, association or society.

§ 4505. Repealed

§ 4506. Enforcement; civil action

(a) A person aggrieved by a violation of this chapter may file a charge of discrimination with the human rights commission pursuant to chapter 141 of this title or may bring an action for injunctive relief and compensatory and punitive damages and any other appropriate relief in the superior court of the county in which the violation is alleged to have occurred.

(b) The court may award costs and reasonable attorney's fees to an aggrieved person who prevails in an action brought under subsection (a) of this section.

(c) The human rights commission may bring an action in the name of the commission to enforce the provisions of this chapter in accordance with its powers established in chapter 141 of this title.

(d) The initiation or completion of an investigation by the human rights commission shall not be a condition precedent to the filing of any lawsuit for violation of this chapter.

§ 4507. Criminal penalty

A person who violates a provision of this chapter shall be fined not more than \$1,000.00.

§ 4508. Repealed

Chapter 141. Human Rights Commission

§ 4551. Human rights commission; members; compensation

(a) The human rights commission is hereby established. It shall consist of five members to be appointed by the governor, with the advice and consent of the senate, who shall designate one member to be its chair. No more than three members shall be of the same political party. At least one member shall be of a racial minority.

(b) The members of the commission shall be appointed for terms of five years each, except that of the members first appointed, the governor shall designate one for a term of one year, one for a term of two years, one for a term of three years and one for a term of four years. A member of the commission appointed to fill a vacancy

occurring other than by expiration of a term shall be appointed only for the unexpired portion of the term. Members of the commission shall be eligible for reappointment.

(c) A member of the commission whose term has expired or who resigned during a term shall be eligible to act as an alternate at the request of the executive director of the commission if necessary to convene a quorum of the commission to act upon complaints pursuant to [section 4554](#) of this title. An alternate shall only participate in the consideration of complaints at meetings attended and shall not be involved in setting the policies of the commission.

(d) Each member of the commission, including an alternate who is called to act, shall receive compensation as provided by [32 V.S.A. § 1010](#) with a maximum of \$1,000.00 a year, and shall be entitled to expenses actually and necessarily incurred in the performance of his or her duties.

(e) Three members of the commission shall constitute a quorum. Alternate members may not make up a majority of a quorum.

§ 4552. Duties; jurisdiction

(a) The commission shall endeavor through public education to increase awareness of the importance of full civil and human rights for each inhabitant of this state. The commission shall also examine and evaluate generally the effectiveness of this chapter as well as the existence of practices of discrimination which detract from the enjoyment of full civil and human rights and shall recommend measures designed to protect those rights.

(b) The commission shall have jurisdiction to investigate and enforce complaints of unlawful discrimination in violation of chapter 139 of this title, discrimination in public accommodations and rental and sale of real estate. The commission shall also have jurisdiction when the party complained against is a state agency in matters for which the attorney general would otherwise have jurisdiction under subsection (c) of this section.

(c) All complaints of unlawful discrimination in violation of [sections 495 et seq.](#) and [710 of Title 21](#), the Fair Employment Practices Act and the provisions for workers' compensation discrimination, respectively, and of [section 471 et seq. of Title 21](#) shall be referred to the attorney general's office, for investigation and enforcement.

§ 4553. Powers

(a) To carry out its duties the commission may:

- (1) establish and maintain a principal office and such other offices within the state as it deems necessary;
- (2) meet and hold hearings at any place within the state;
- (3) appoint employees as necessary to carry out the purposes of this chapter;
- (4) administer oaths and take the testimony of any person under oath in connection with a complaint filed under [section 4554](#) of this title;

(5) issue subpoenas to compel testimony or access to or production of records, documents and other evidence or possible sources of evidence or the appearance of persons, provided that the subpoena is issued pursuant to a complaint filed in accordance with [section 4554](#) of this title and that there is reasonable cause to believe that those materials or the testimony of the person are material to the complaint. Subpoenas issued under this subdivision shall be accompanied with a notice that informs the person that the person has a right to contest the subpoena at a hearing before not less than three members of the commission and that the person has the additional right to contest the subpoena in court. Subpoenas issued under this subdivision shall be enforced as provided in [sections 809a](#) and [809b of Title 3](#);

(6)(A) enforce conciliation agreements and prohibitions against discrimination by bringing an action in the name of the commission seeking any of the following:

- (i) temporary or permanent injunctive relief in the public interest and for an individual aggrieved by unlawful discrimination;
- (ii) the imposition of a civil penalty of not more than \$10,000.00 for each violation of law including violations of any temporary restraining order issued pursuant to this section. For an intentional and continuing violation of a court order after a date set in the order, each day of violation shall be a separate offense;
- (iii) compensatory and punitive damages on behalf of an aggrieved individual or class of individuals similarly situated;
- (iv) costs and reasonable attorney's fees associated with the investigation and enforcement of actions; any such costs or fees recovered by the human rights commission under this chapter shall be deposited in the commission's special fund and shall be available to the commission to offset the costs of providing legal services;
- (v) other appropriate relief;
- (vi) trial by jury.

(B) The action may be brought in the superior court of the county in which the violation is alleged to have occurred, or in Washington county, and the court is authorized to render all of the relief listed in this subdivision (6);

(7) utilize voluntary and uncompensated services of private individuals and organizations for administrative and educational purposes as may from time to time be offered and needed; however, volunteers may not be used to investigate complaints;

(8) conduct educational activities and publicize how and where to file complaints.

(b) The human rights commission shall forward, on or before January 1 of each year, to the speaker of the house and the president of the senate an annual report on the status of commission program operations, the number and type of calls received, complaints filed and investigated, closure of litigated and nonlitigated complaints, public educational activities undertaken and recommendations for improved human rights advocacy and activities.

(c) To carry out its duties under this chapter, the commission shall adopt procedural and substantive rules in accordance with the provisions of chapter 25 of Title 3.

§ 4554. Complaint; investigation and conciliation

(a) Any person who believes he or she has been subject to unlawful discrimination may file a complaint under oath with the commission stating the facts concerning the alleged discrimination. Every complaint shall be reviewed by the staff of the commission. If a complaint states a prima facie case, it may be accepted for investigation.

(b) An employee of the commission may file a complaint alleging a prima facie violation of a prohibition against discrimination, for the benefit of the victim of the alleged discrimination or of a described class. If at any time it is determined that a complaint filed under this subsection or under subsection (a) of this section does not state a prima facie case, it shall be dismissed.

(c) Upon receipt of such complaint under subsection (a) or (b) of this section, the commission or its designated representative shall make every reasonable effort to resolve the matter by informal means prior to a determination whether there are reasonable grounds to believe that unlawful discrimination has occurred. The commission or its designated representative shall conduct such preliminary investigation as it deems necessary to determine whether there are reasonable grounds to believe that unlawful discrimination has occurred. In conducting an investigation, the commission or its designated representative, shall have access at all reasonable times to premises, records, documents, individuals and other evidence or possible sources of evidence and may examine, record and copy those materials and take and record the testimony or statements of such persons as are reasonably necessary. The commission shall make every reasonable effort to interview each relevant and noncumulative witness identified by a party. If a witness is interviewed, a summary of the witness statement shall be included in any report prepared in connection with the complaint. Such statement shall be taken into consideration in determining whether or not there are reasonable grounds to believe that unlawful discrimination has occurred.

(d) If, after investigation, the staff of the commission makes a preliminary recommendation that there are no reasonable grounds to believe unlawful discrimination occurred, the parties shall be notified of this preliminary recommendation of no reasonable grounds of unlawful discrimination prior to their appearance before the full commission. If the commission does not find reasonable grounds to believe that unlawful discrimination has occurred, it shall enter an order so finding, and dismiss the proceeding.

(e) If the commission finds reasonable grounds to believe that unlawful discrimination has occurred, but does not find an emergency, it shall make every reasonable effort to eliminate the discrimination by informal means such as conference, conciliation and persuasion. If the case is disposed of by informal means in a manner satisfactory to a majority of the commission, it shall dismiss the proceeding. If the case is not disposed of by informal means in a manner satisfactory to a majority of the commission within six months, it shall either bring an action in superior court as provided in [section 4553](#) of this title or dismiss the proceedings, unless an extension is necessary to complete ongoing good faith negotiations and all parties consent to the extension.

(f) Failure to file a complaint under this section shall not affect any other remedies available under any other provision of state or federal law, unless the other provision of law specifically so provides.

(g) The commission shall not represent the charging party or the respondent nor shall it favor any party in its handling of a complaint.

(h) In attempting to resolve the matter informally, the commission may transmit to a party an offer of settlement. When an offer is transmitted the commission shall:

(1) indicate which portion of the offer represents the settlement offer of the other party and which portion represents an offer by the commission; and

(2) state that it has made no finding nor takes a position as to the reasonableness of the party's offer.

§ 4555. Information; disclosure and confidentiality

(a) The human rights commission's complaint files and investigative files shall be confidential except that the human rights commission shall make the investigative file available to the charging party, the respondent, their attorneys, and any state or federal law enforcement agency seeking to enforce anti-discrimination statutes, upon reasonable request. The identities of nonparty witnesses to the investigation may be revealed as part of the investigative file, upon request, unless good cause is shown to protect the witness' confidentiality.

(b) Nothing said or done as part of conciliation efforts under this chapter may be made a matter of public record or used as evidence in a subsequent civil action without written consent of the parties. Final settlement agreements shall be public documents and the parties shall be so informed.

(c) If the commission determines that there are reasonable grounds to believe that discrimination has occurred, that determination and the names of the parties may be made public after the parties have been notified of the commission's determination. If the commission finds that there are no reasonable grounds to find discrimination, the identity of the parties and any information that would identify the parties shall remain confidential. The commission shall inform the parties about the provisions of this subsection. In all cases, even if the records are confidential, the facts may be used for educational purposes if sufficiently altered so that no person involved in a case can be identified.

§ 4556. Performance standards; audit

The human rights commission shall adopt formal performance standards for all of the commission's staff.

Chapter 143. Trade Secrets (Refs & Annos)

§ 4601. Definitions

As used in this chapter:

(1) "Improper means" includes theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy, or espionage through electronic or other means.

(2) "Misappropriation" means:

(A) acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or

(B) disclosure or use of a trade secret of another without express or implied consent by a person who:

(i) used improper means to acquire knowledge of the trade secret; or

(ii) at the time of disclosure or use, knew or had reason to know that his or her knowledge of the trade secret was:

(I) derived from or through a person who had utilized improper means to acquire it;

(II) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or

(III) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or

(iii) before a material change of his or her position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake.

(3) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that:

(A) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and

(B) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

§ 4602. Injunctive relief

(a) Actual or threatened misappropriation may be enjoined. Upon application to the court, an injunction shall be terminated when the trade secret has ceased to exist, but the injunction may be continued for an additional reasonable period of time in order to eliminate commercial advantage that otherwise would be derived from the misappropriation.

(b) In exceptional circumstances, an injunction may condition future use upon payment of a reasonable royalty for no longer than the period of time for which use could have been prohibited. Exceptional circumstances include, but are not limited to, a material and prejudicial change of position prior to acquiring knowledge or reason to know of misappropriation that renders a prohibitive injunction inequitable.

(c) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.

§ 4603. Damages

(a) Except to the extent that a material and prejudicial change of position prior to acquiring knowledge or reason to know of misappropriation renders a monetary recovery inequitable, a complainant is entitled to recover dam-

ages for misappropriation. Damages can include both the actual loss caused by misappropriation and the unjust enrichment caused by misappropriation that is not taken into account in computing actual loss. In lieu of damages measured by any other methods, the damages caused by misappropriation may be measured by imposition of liability for a reasonable royalty for a misappropriator's unauthorized disclosure or use of a trade secret.

(b) If malicious misappropriation exists, the court may award punitive damages.

§ 4604. Reserved

§ 4605. Preservation of secrecy

In an action under this chapter, a court shall preserve the secrecy of an alleged trade secret by reasonable means, which may include granting protective orders in connection with discovery proceedings, holding in-camera hearings, sealing the records of the action, and ordering any person involved in the litigation not to disclose an alleged trade secret without prior court approval.

§ 4606. Reserved

§ 4607. Effect on other law

(a) Except as provided in subsection (b) of this section, this chapter displaces conflicting tort, restitutionary, and any other law of this state providing civil remedies for misappropriation of a trade secret.

(b) This chapter does not affect:

- (1) contractual remedies, whether or not based upon misappropriation of a trade secret;
- (2) other civil remedies that are not based upon misappropriation of a trade secret; or
- (3) criminal remedies, whether or not based upon misappropriation of a trade secret.

§ 4608. Uniformity of application and construction

This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

§ 4609. Time of taking effect

This chapter shall take effect on July 1, 1996, and does not apply to misappropriation occurring prior to the effective date. With respect to a continuing misappropriation that began prior to the effective date, the chapter also does not apply to the continuing misappropriation that occurs after the effective date.

Chapter 147. Uniform Prudent Investor Act (Refs & Annos)

§ 4651. Prudent investor rule

(a) Except as otherwise provided in subsection (b) of this section, a trustee who invests and manages trust assets

owes a duty to the beneficiaries of the trust to comply with the prudent investor rule set forth in this chapter.

(b) The prudent investor rule, a default rule, may be expanded, restricted, eliminated, or otherwise altered by the provisions of a trust. A trustee is not liable to a beneficiary to the extent that the trustee acted in reasonable reliance on the provisions of the trust.

§ 4652. Standard of care; portfolio strategy; risk and return objectives

(a) A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

(b) A trustee's investment and management decisions respecting individual assets must be evaluated not in isolation but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

(c) Among circumstances that a trustee shall consider in investing and managing trust assets are such of the following as are relevant to the trust or its beneficiaries:

- (1) general economic conditions;
- (2) the possible effect of inflation or deflation;
- (3) the expected tax consequences of investment decisions or strategies;
- (4) the role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interests in closely held enterprises, tangible and intangible personal property, and real property;
- (5) the expected total return from income and the appreciation of capital;
- (6) other resources of the beneficiaries;
- (7) needs for liquidity, regularity of income, and preservation or appreciation of capital; and
- (8) an asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.

(d) A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust assets.

(e) A trustee may invest in any kind of property or type of investment consistent with the standards of this chapter.

(f) A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, has a duty to use those special skills or expertise.

§ 4653. Diversification

A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying.

§ 4654. Duties at inception of trusteeship

Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee shall review the trust assets and make and implement decisions concerning the retention and disposition of assets, in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements, and other circumstances of the trust, and with the requirements of this chapter.

§ 4655. Loyalty

A trustee shall invest and manage the trust assets solely in the interest of the beneficiaries.

§ 4656. Impartiality

If a trust has two or more beneficiaries, the trustee shall act impartially in investing and managing the trust assets, taking into account any differing interests of the beneficiaries.

§ 4657. Investment costs

In investing and managing trust assets, a trustee may only incur costs that are appropriate and reasonable in relation to the assets, the purposes of the trust, and the skills of the trustee.

§ 4658. Reviewing compliance

Compliance with the prudent investor rule is determined in light of the facts and circumstances existing at the time of a trustee's decision or action and not by hindsight.

§ 4659. Delegation of investment and management functions

(a) A trustee may delegate investment and management functions that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill, and caution in:

- (1) selecting an agent;
- (2) establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and
- (3) periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.

(b) In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

(c) A trustee who complies with the requirements of subsection (a) of this section is not liable to the beneficiar-

ies or to the trust for the decisions or actions of the agent to whom the function was delegated.

(d) By accepting the delegation of a trust function from the trustee of a trust that is subject to the law of this state, an agent submits to the jurisdiction of the courts of this state.

§ 4660. Language invoking standard of this chapter

The following terms or comparable language in the provisions of a trust, unless otherwise limited or modified, authorizes any investment or strategy permitted under this chapter: "investments permissible by law for investment of trust funds," "legal investments," "authorized investments," "using the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital," "prudent man rule," "prudent trustee rule," "prudent person rule," and "prudent investor rule."

§ 4661. Application to existing trusts

This chapter applies to trusts existing on and created after its effective date. As applied to trusts existing on its effective date, this chapter governs only decisions or actions occurring after that date.

§ 4662. Uniformity of application and construction

This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among the states enacting it.

Chapter 150. Securities Act (Refs & Annos)

Subchapter 1. General Provisions

§ 5101. Short title

This chapter may be cited as the Vermont Uniform Securities Act (2002).

§ 5102. Definitions

In this chapter, unless the context otherwise requires:

- (1) "Agent" means an individual, other than a broker-dealer, who represents a broker-dealer in effecting or attempting to effect purchases or sales of securities or represents an issuer in effecting or attempting to effect purchases or sales of the issuer's securities. But a partner, officer, or director of a broker-dealer or issuer or an individual having a similar status or performing similar functions is an agent only if the individual otherwise comes within the term. The term does not include an individual excluded by rule adopted or order issued under this chapter.
- (2) "Bank" means:

- (A) a banking institution organized under the laws of the United States ;
- (B) a member bank of the Federal Reserve System;
- (C) any other banking institution, whether incorporated or not, doing business under the laws of a state or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to be exercised by national banks under the authority of the Comptroller of the Currency pursuant to [12 U.S.C. § 92a](#), and which is supervised and examined by a state or federal agency having supervision over banks, and which is not operated for the purpose of evading this chapter; and
- (D) a receiver, conservator, or other liquidating agent of any institution or firm included in subdivision (2)(A), (B), or (C) of this section.
- (3) "Broker-dealer" means a person engaged in the business of effecting transactions in securities for the account of others or for the person's own account. The term does not include:
- (A) an agent;
- (B) an issuer;
- (C) a bank or savings institution if its activities as a broker-dealer are limited to those specified in subdivisions [15 U.S.C. § 78c\(a\)\(4\)\(B\)\(i\)](#) through (vi), (viii) through (x), and (xi) if limited to unsolicited transactions; and [15 U.S.C. § 78c\(a\)\(5\)\(B\)](#) and (C) or a bank that satisfies the conditions described in [15 U.S.C. § 78c\(a\)\(4\)\(E\)](#);
- (D) an international banking institution; or
- (E) a person excluded by rule adopted or order issued under this chapter.
- (4) "Commissioner" means the commissioner of banking, insurance, securities, and health care administration.
- (5) "Depository institution" means:
- (A) a bank; or
- (B) a savings institution, trust company, credit union, or similar institution that is organized or chartered under the laws of a state or of the United States, authorized to receive deposits, and supervised and examined by an official or agency of a state or the United States if its deposits or share accounts are insured to the maximum amount authorized by statute by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, or a successor authorized by federal law. The term does not include:
- (i) an insurance company or other organization primarily engaged in the business of insurance;
- (ii) a Morris Plan bank; or
- (iii) an industrial loan company that is not an "insured depository institution" as defined in Section 3(c)(2)

of the Federal Deposit Insurance Act, [12 U.S.C. § 1813\(c\)\(2\)](#), or any successor federal statute.

- (6) "Federal covered investment adviser" means a person registered under [15 U.S.C. § 80b-1 et seq.](#)
- (7) "Federal covered security" means a security that is, or upon completion of a transaction will be, a covered security under [15 U.S.C. § 77r\(b\)](#) or rules or regulations adopted pursuant to that provision.
- (8) "Filing" means the receipt under this chapter of a record by the commissioner or a designee of the commissioner.
- (9) "Fraud," "deceit," and "defraud" are not limited to common law deceit.
- (10) "Guaranteed" means guaranteed as to payment of all principal and all interest.
- (11) "Institutional investor" means any of the following, whether acting for itself or for others in a fiduciary capacity:
- (A) a depository institution or international banking institution;
 - (B) an insurance company;
 - (C) a separate account of an insurance company;
 - (D) an investment company as defined in [15 U.S.C. § 80a-1 et seq.](#);
 - (E) a broker-dealer registered under [15 U.S.C. § 78a et seq.](#);
 - (F) an employee pension, profit-sharing, or benefit plan if the plan has total assets in excess of \$10,000,000.00 or its investment decisions are made by a named fiduciary, as defined in [29 U.S.C. § 1001 et seq.](#), that is a broker-dealer registered under [15 U.S.C. § 78a et seq.](#), an investment adviser registered or exempt from registration under [15 U.S.C. § 80a-1 et seq.](#), an investment adviser registered under this chapter, a depository institution, or an insurance company;
 - (G) a plan established and maintained by a state, a political subdivision of a state, or an agency or instrumentality of a state or a political subdivision of a state for the benefit of its employees, if the plan has total assets in excess of \$10,000,000.00 or its investment decisions are made by a duly designated public official or by a named fiduciary, as defined in [29 U.S.C. § 1001 et seq.](#), that is a broker-dealer registered under [15 U.S.C. § 78a et seq.](#), an investment adviser registered or exempt from registration under [15 U.S.C. § 80a-1 et seq.](#), an investment adviser registered under this chapter, a depository institution, or an insurance company;
 - (H) a trust, if it has total assets in excess of \$10,000,000, its trustee is a depository institution, and its participants are exclusively plans of the types identified in subdivision (11)(F) or (G) of this section, regardless of the size of their assets, except a trust that includes as participants self-directed individual retirement accounts or similar self-directed plans;
 - (I) an organization described in [26 U.S.C. § 501\(c\)\(3\)](#), corporation, Massachusetts trust or similar business

trust, limited liability company, or partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of \$10,000,000.00;

(J) a small business investment company licensed by the Small Business Administration under [15 U.S.C. § 681\(c\)](#) with total assets in excess of \$10,000,000.00;

(K) a private business development company as defined in [15 U.S.C. § 80b-2\(a\)\(22\)](#) with total assets in excess of \$10,000,000.00;

(L) a federal covered investment adviser acting for its own account;

(M) a "qualified institutional buyer" as defined in [17 C.F.R. 230.144A\(a\)\(1\)](#), other than subdivision [17 C.F.R. 230.144A\(a\)\(1\)\(i\)\(H\)](#);

(N) a "major U.S. institutional investor" as defined in [17 C.F.R. 240.15a-6\(b\)\(4\)\(i\)](#);

(O) any other person, other than an individual, of institutional character with total assets in excess of \$10,000,000.00 not organized for the specific purpose of evading this chapter; or

(P) any other person specified by rule adopted or order issued under this chapter.

(12) "Insurance company" means a company organized as an insurance company whose primary business is writing insurance or reinsuring risks underwritten by insurance companies and which is subject to supervision by the insurance commissioner or a similar official or agency of a state.

(13) "Insured" means insured as to payment of all principal and all interest.

(14) "International banking institution" means an international financial institution of which the United States is a member and whose securities are exempt from registration under [15 U.S.C. § 77a et seq.](#)

(15) "Investment adviser" means a person that, for compensation, engages in the business of advising others, either directly 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 a part of a regular business, issues or promulgates analyses or reports concerning securities. The term includes a financial planner or other person that, as an integral component of other financially related services, provides investment advice to others for compensation as part of a business or that holds itself out as providing investment advice to others for compensation. The term does not include:

(A) an investment adviser representative;

(B) a lawyer, accountant, engineer, or teacher whose performance of investment advice is solely incidental to the practice of the person's profession;

(C) a broker-dealer or its agents whose performance of investment advice is solely incidental to the conduct of business as a broker-dealer and that does not receive special compensation for the investment advice;

(D) a publisher of a bona fide newspaper, news magazine, or business or financial publication of general

and regular circulation;

(E) a federal covered investment adviser;

(F) a bank or savings institution;

(G) any other person that is excluded by [15 U.S.C. § 80b-1 et seq.](#) from the definition of investment adviser; or

(H) any other person excluded by rule adopted or order issued under this chapter.

(16) "Investment adviser representative" means an individual employed by or associated with an investment adviser or federal covered investment adviser and who makes any recommendations or otherwise gives investment advice regarding securities, manages accounts or portfolios of clients, determines which recommendation or advice regarding securities should be given, provides investment advice or holds himself or herself out as providing investment advice, receives compensation to solicit, offer, or negotiate for the sale of or for selling investment advice, or supervises employees who perform any of the foregoing. The term does not include an individual who:

(A) performs only clerical or ministerial acts;

(B) is an agent whose performance of investment advice is solely incidental to the individual acting as an agent and who does not receive special compensation for investment advisory services;

(C) is employed by or associated with a federal covered investment adviser, unless the individual has a "place of business" in this state as that term is defined by rule adopted under [15 U.S.C. § 80b-3a](#), and is:

(i) an "investment adviser representative" as that term is defined by rule adopted under [15 U.S.C. § 80b-3a](#); or

(ii) not a "supervised person" as that term is defined in [15 U.S.C. § 80b-2\(a\)\(25\)](#); or

(D) is excluded by rule adopted or order issued under this chapter.

(17) "Issuer" means a person that issues or proposes to issue a security, subject to the following:

(A) The issuer of a voting trust certificate, collateral trust certificate, certificate of deposit for a security, or share in an investment company without a board of directors or individuals performing similar functions is the person performing the acts and assuming the duties of depositor or manager pursuant to the trust or other agreement or instrument under which the security is issued.

(B) The issuer of an equipment trust certificate or similar security serving the same purpose as the person by which the property is or will be used or to which the property or equipment is or will be leased or conditionally sold or that is otherwise contractually responsible for assuring payment of the certificate.

(C) The issuer of a fractional undivided interest in an oil, gas, or other mineral lease or in payments out of production under a lease, right, or royalty is the owner of an interest in the lease or in payments out of pro-

duction under a lease, right, or royalty, whether whole or fractional, that creates fractional interests for the purpose of sale.

(18) "Nonissuer transaction" or "nonissuer distribution" means a transaction or distribution not directly or indirectly for the benefit of the issuer.

(19) "Offer to purchase" includes an attempt or offer to obtain, or solicitation of an offer to sell, a security or interest in a security for value. The term does not include a tender offer that is subject to [15 U.S.C. § 78n\(d\)](#).

(20) "Person" means an individual; corporation; business trust; estate; trust; partnership; limited liability company; association; joint venture; government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

(21) "Place of business" of a broker-dealer, an investment adviser, or a federal covered investment adviser means:

(A) an office at which the broker-dealer, investment adviser, or federal covered investment adviser regularly provides brokerage or investment advice or solicits, meets with, or otherwise communicates with customers or clients; or

(B) any other location that is held out to the general public as a location at which the broker-dealer, investment adviser, or federal covered investment adviser provides brokerage or investment advice or solicits, meets with, or otherwise communicates with customers or clients.

(22) "Predecessor act" means chapter 131 of this title.

(23) "Price amendment" means the amendment to a registration statement filed under [15 U.S.C. § 77a et seq.](#) or, if an amendment is not filed, the prospectus or prospectus supplement filed under [15 U.S.C. § 77a et seq.](#) that includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price.

(24) "Principal place of business" of a broker-dealer or an investment adviser means the executive office of the broker-dealer or investment adviser from which the officers, partners, or managers of the broker-dealer or investment adviser direct, control, and coordinate the activities of the broker-dealer or investment adviser.

(25) "Record," except in the phrases "of record," "official record," and "public record," means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(26) "Sale" includes every contract of sale, contract to sell, or disposition of a security or interest in a security for value, and "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to purchase, a security or interest in a security for value. Both terms include:

(A) a security given or delivered with, or as a bonus on account of, a purchase of securities or any other thing constituting part of the subject of the purchase and having been offered and sold for value;

(B) a gift of assessable stock involving an offer and sale; and

(C) a sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer and a sale or offer of a security that gives the holder a present or future right or privilege to convert the security into another security of the same or another issuer, including an offer of the other security.

(27) "Securities and Exchange Commission" means the United States Securities and Exchange Commission.

(28) "Security" means a note; stock; treasury stock; security future; bond; debenture; evidence of indebtedness; certificate of interest or participation in a profit-sharing agreement; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting trust certificate; certificate of deposit for a security; fractional undivided interest in oil, gas, or other mineral rights; put, call, straddle, option, or privilege on a security, certificate of deposit, or group or index of securities, including an interest therein or based on the value thereof; put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency; or, in general, an interest or instrument commonly known as a "security"; or a certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. The term:

(A) includes both a certificated and an uncertificated security;

(B) does not include an insurance or endowment policy or annuity contract under which an insurance company promises to pay a fixed sum of money either in a lump sum or periodically for life or other specified period;

(C) does not include an interest in a contributory or noncontributory pension or welfare plan subject to [29 U.S.C. § 1001 et seq.](#);

(D) includes an investment in a common enterprise with the expectation of profits to be derived primarily from the efforts of a person other than the investor and a "common enterprise" means an enterprise in which the fortunes of the investor are interwoven with those of either the person offering the investment, a third party, or other investors; and

(E) includes as an "investment contract" among other contracts, an interest in a limited partnership, a limited liability company, an investment in a viatical settlement, or similar agreement.

(29) "Self-regulatory organization" means any national securities exchange, registered securities association, clearing agency registered under [15 U.S.C. § 78a et seq.](#), or, solely for purposes of [Sections 19\(b\), 19\(c\), and 23\(b\) of 15 U.S.C. § 78a et seq.](#), the Municipal Securities Rulemaking Board established under [15 U.S.C. § 78a et seq.](#)

(30) "Sign" means with present intent to authenticate or adopt a record:

(A) to execute or adopt a tangible symbol; or

(B) to attach or logically associate with the record an electronic symbol, sound, or process.

(31) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

§ 5103. References to federal statutes

15 U.S.C. § 77a et seq. (Securities Act of 1933), 15 U.S.C. § 78a et seq. (Securities Exchange Act of 1934), 15 U.S.C. § 79 et seq. (Public Utility Holding Company Act of 1935), 15 U.S.C. § 80a-1 et seq. (Investment Company Act of 1940), 15 U.S.C. § 80b-1 et seq. (Investment Advisers Act of 1940), 29 U.S.C. § 1001 et seq. (Employee Retirement Income Security Act of 1974), 12 U.S.C. § 1701 et seq. (National Housing Act), 7 U.S.C. § 1 et seq. (Commodity Exchange Act), 26 U.S.C. § 1 et seq. (Internal Revenue Code), 15 U.S.C. § 78aaa et seq. (Securities Investor Protection Act of 1970), 112 Stat. 3227 ("Securities Litigation Uniform Standards Act of 1998"), 15 U.S.C. § 661 et seq. (Small Business Investment Act of 1958), and 15 U.S.C. § 7001 et seq. (Electronic Signatures in Global and National Commerce Act) mean those statutes and the rules and regulations adopted under those statutes, as in effect on the date of enactment of this chapter, or as later amended.

§ 5104. References to federal agencies

A reference in this chapter to an agency or department of the United States is also a reference to a successor agency or department.

§ 5105. Electronic records and signatures

This chapter modifies, limits, and supersedes 15 U.S.C. § 7001 et seq., but does not modify, limit, or supersede 15 U.S.C. § 7001(c) or authorize electronic delivery of any of the notices described in 15 U.S.C. § 7003(b). This chapter authorizes the filing of records and signatures, when specified by provisions of this chapter or by a rule adopted or order issued under this chapter, in a manner consistent with 15 U.S.C. § 7004(a).

Subchapter 2. Exemptions from Registration of Securities (Refs & Annos)

§ 5201. Exempt securities

The following securities are exempt from the requirements of sections 5301 through 5306 and 5504 of this chapter:

- (1) A security, including a revenue obligation or a separate security as defined in 17 C.F.R. § 230.131, issued, insured, or guaranteed by the United States; by a state; by a political subdivision of a state; by a public authority, agency, or instrumentality of one or more states; by a political subdivision of one or more states; by a person controlled or supervised by and acting as an instrumentality of the United States under authority granted by the Congress; or a certificate of deposit for any of the foregoing.
- (2) A security issued, insured, or guaranteed by a foreign government with which the United States maintains diplomatic relations, or any of its political subdivisions, if the security is recognized as a valid obligation by the issuer, insurer, or guarantor.
- (3) A security issued by and representing or that will represent an interest in or a direct obligation of or be

guaranteed by:

(A) An international banking institution.

(B) A banking institution organized under the laws of the United States; a member bank of the Federal Reserve System; or a depository institution a substantial portion of the business of which consists or will consist of receiving deposits or share accounts that are insured to the maximum amount authorized by statute by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, or a successor authorized by federal law or exercising fiduciary powers that are similar to those permitted for national banks under the authority of the Comptroller of Currency pursuant to [12 U.S.C. § 92a](#).

(C) Any other depository institution, unless by rule or order the commissioner proceeds under [section 5204](#) of this chapter.

(4) A security issued by and representing an interest in, or a debt of, or insured or guaranteed by an insurance company authorized to do business in this state.

(5) A security issued or guaranteed by a railroad, other common carrier, public utility, or public utility holding company that is:

(A) Regulated in respect to its rates and charges by the United States or a state.

(B) Regulated in respect to the issuance or guarantee of the security by the United States, a state, Canada, or a Canadian province or territory.

(C) A public utility holding company registered under [15 U.S.C. § 79 et seq.](#) or a subsidiary of such a registered holding company within the meaning of [15 U.S.C. § 79 et seq.](#)

(6) A federal covered security specified in [15 U.S.C. § 77r\(b\)\(1\)](#) or by rule adopted under that provision or a security listed or approved for listing on another securities market specified by rule under this chapter; a put or a call option contract; a warrant; a subscription right on or with respect to such securities; or an option or similar derivative security on a security or an index of securities or foreign currencies issued by a clearing agency registered under [15 U.S.C. § 78a et seq.](#) and listed or designated for trading on a national securities exchange, a facility of a national securities exchange, a facility of a national securities association registered under [15 U.S.C. § 78a et seq.](#), or an offer or sale, of the underlying security in connection with the offer, sale, or exercise of an option or other security that was exempt when the option or other security was written or issued; or an option or a derivative security designated by the Securities and Exchange Commission under [15 U.S.C. § 78i\(b\)](#).

(7) A security issued by a person organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, social, athletic, or reformatory purposes, or as a chamber of commerce, and not for pecuniary profit, no part of the net earnings of which inures to the benefit of a private stockholder or other person, except that with respect to the offer or sale of a note, bond, debenture, or other evidence of indebtedness issued by such a person, a rule may be adopted under this chapter limiting the availability of this exemption by classifying securities, persons, and transactions, imposing different requirements for different classes, specify-

ing with respect to subdivision (B) of this subdivision (7) the scope of the exemption and the grounds for denial or suspension, and requiring an issuer:

(A) To file a notice specifying the material terms of the proposed offer or sale and copies of any proposed sales and advertising literature to be used and provide that the exemption becomes effective if the commissioner does not disallow the exemption within the period established by the rule.

(B) To file a request for exemption authorization for which a rule under this chapter may specify the scope of the exemption, the requirement of an offering statement, the filing of sales and advertising literature, the filing of consent to service of process complying with [section 5611](#) of this chapter, and grounds for denial or suspension of the exemption.

(C) To register under [section 5304](#) of this chapter.

(8) A member's or owner's interest in or a retention certificate or like security given in lieu of a cash patronage dividend issued by a cooperative organized and operated as a nonprofit membership cooperative under the cooperative laws of a state, but not a member's or owner's interest, retention certificate, or like security sold to persons other than bona fide members of the cooperative.

(9) An equipment trust certificate with respect to equipment leased or conditionally sold to a person, if any security issued by the person would be exempt under this section or would be a federal covered security under [15 U.S.C. § 77r\(b\)\(1\)](#).

§ 5202. Exempt transactions

The following transactions are exempt from the requirements of [sections 5301](#) through [5306](#) and [5504](#) of this chapter:

(1) an isolated nonissuer transaction, whether effected by or through a broker-dealer or not;

(2) a nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter and a resale transaction by a sponsor of a unit investment trust registered under [15 U.S.C. § 80a-1 et seq.](#) in a security of a class that has been outstanding in the hands of the public for at least 90 days, if, at the date of the transaction:

(A) the issuer of the security is engaged in business, the issuer is not in the organizational stage or in bankruptcy or receivership, and the issuer is not a blank check, blind pool, or shell company that has no specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with or an acquisition of an unidentified person;

(B) the security is sold at a price reasonably related to its current market price;

(C) the security does not constitute the whole or part of an unsold allotment to or a subscription or participation by the broker-dealer as an underwriter of the security or a redistribution;

(D) a nationally recognized securities manual or its electronic equivalent designated by rule adopted or or-

der issued under this chapter or a record filed with the Securities and Exchange Commission that is publicly available contains:

- (i) a description of the business and operations of the issuer;
- (ii) the names of the issuer's executive officers and the names of the issuer's directors, if any;
- (iii) an audited balance sheet of the issuer as of a date within 18 months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had an audited balance sheet, a pro forma balance sheet for the combined organization; and
- (iv) an audited income statement for each of the issuer's two immediately previous fiscal years or for the period of existence of the issuer, whichever is shorter, or, in the case of a reorganization or merger when each party to the reorganization or merger had audited income statements, a pro forma income statement; and

(E) any one of the following requirements is met:

- (i) the issuer of the security has a class of equity securities listed on a national securities exchange registered under [15 U.S.C. § 78a\(6\)](#) or designated for trading on the National Association of Securities Dealers Automated Quotation System;
- (ii) the issuer of the security is a unit investment trust registered under [15 U.S.C. § 80a-1 et seq.](#);
- (iii) the issuer of the security, including its predecessors, has been engaged in continuous business for at least three years; or
- (iv) the issuer of the security has total assets of at least \$2,000,000.00 based on an audited balance sheet as of a date within 18 months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had such an audited balance sheet, a pro forma balance sheet for the combined organization;

(3) a nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter in a security of a foreign issuer that is a margin security defined in regulations or rules adopted by the Board of Governors of the Federal Reserve System;

(4) a nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter in an outstanding security if the guarantor of the security files reports with the Securities and Exchange Commission under the reporting requirements of [15 U.S.C. § 78m](#) or [78o\(d\)](#);

(5) a nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter in a security that:

(A) is rated at the time of the transaction by a nationally recognized statistical rating organization in one of its four highest debt rating categories; or

- (B) has a fixed maturity or a fixed interest or dividend, if:
- (i) a default has not occurred during the current fiscal year or within the three previous fiscal years or during the existence of the issuer and any predecessor if less than three fiscal years, in the payment of principal, interest, or dividends on the security; and
 - (ii) the issuer is engaged in business, is not in the organizational stage or in bankruptcy or receivership, and is not and has not been within the previous 12 months a blank check, blind pool, or shell company that has no specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with or an acquisition of an unidentified person;
- (6) a nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter effecting an unsolicited order or offer to purchase;
- (7) a nonissuer transaction executed by a bona fide pledgee without the purpose of evading this chapter;
- (8) a nonissuer transaction by a federal covered investment adviser with investments under management in excess of \$100,000,000.00 acting in the exercise of discretionary authority in a signed record for the account of others;
- (9) a transaction in a security, whether or not the security or transaction is otherwise exempt, in exchange for one or more bona fide outstanding securities, claims, or property interests, or partly in such exchange and partly for cash, if the terms and conditions of the issuance and exchange or the delivery and exchange and the fairness of the terms and conditions have been approved by the commissioner after a hearing;
- (10) a transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters;
- (11) a transaction in a note, bond, debenture, or other evidence of indebtedness secured by a mortgage or other security agreement if:
- (A) the note, bond, debenture, or other evidence of indebtedness is offered and sold with the mortgage or other security agreement as a unit;
 - (B) a general solicitation or general advertisement of the transaction is not made; and
 - (C) a commission or other remuneration is not paid or given, directly or indirectly, to a person not registered under this chapter as a broker-dealer or as an agent;
- (12) a transaction by an executor, administrator of an estate, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator;
- (13) a sale or offer to sell to:
- (A) an institutional investor;
 - (B) a federal covered investment adviser; or

- (C) any other person exempted by rule adopted or order issued under this chapter;
- (14) a sale or an offer to sell securities by or on behalf of an issuer, if the transaction is part of a single issue in which:
- (A) not more than 25 purchasers are present in this state during any 12 consecutive months, other than those designated in subdivision (13) of this section;
 - (B) a general solicitation or general advertising is not made in connection with the offer to sell or the sale of the securities;
 - (C) a commission or other remuneration is not paid or given, directly or indirectly, to a person other than a broker-dealer registered under this chapter or an agent registered under this chapter for soliciting a prospective purchaser in this state; and
 - (D) the issuer reasonably believes that all the purchasers in this state, other than those designated in subdivision (13) of this section, are purchasing for investment;
- (15) a transaction under an offer to existing security holders of the issuer, including persons that at the date of the transaction are holders of convertible securities, options, or warrants, if a commission or other remuneration, other than a standby commission, is not paid or given, directly or indirectly, for soliciting a security holder in this state;
- (16) an offer to sell, but not a sale, of a security not exempt from registration under [15 U.S.C. § 77a et seq.](#) if:
- (A) a registration or offering statement or similar record as required under [15 U.S.C. § 77a et seq.](#) has been filed, but is not effective, or the offer is made in compliance with [17 C.F.R. 230.165](#); and
 - (B) a stop order of which the offeror is aware has not been issued against the offeror by the commissioner or the Securities and Exchange Commission, and an audit, inspection, or proceeding that is public and that may culminate in a stop order is not known by the offeror to be pending;
- (17) an offer to sell, but not a sale, of a security exempt from registration under [15 U.S.C. § 77a et seq.](#) if:
- (A) a registration statement has been filed under this chapter, but is not effective;
 - (B) a solicitation of interest is provided in a record to offerees in compliance with a rule adopted by the commissioner under this chapter; and
 - (C) a stop order of which the offeror is aware has not been issued by the commissioner under this chapter and an audit, inspection, or proceeding that may culminate in a stop order is not known by the offeror to be pending;
- (18) a transaction involving the distribution of the securities of an issuer to the security holders of another person in connection with a merger, consolidation, exchange of securities, sale of assets, or other reorganization to which the issuer, or its parent or subsidiary and the other person, or its parent or subsidiary, are parties;

- (19) a rescission offer, sale, or purchase under [section 5510](#) of this chapter;
- (20) an offer or sale of a security to a person not a resident of this state and not present in this state if the offer or sale does not constitute a violation of the laws of the state or foreign jurisdiction in which the offeree or purchaser is present and is not part of an unlawful plan or scheme to evade this chapter;
- (21) employees' stock purchase, savings, option, profit-sharing, pension, or similar employees' benefit plan, including any securities, plan interests, and guarantees issued under a compensatory benefit plan or compensation contract, contained in a record, established by the issuer, its parents, its majority-owned subsidiaries, or the majority-owned subsidiaries of the issuer's parent for the participation of their employees, including offers or sales of such securities to:
- (A) directors; general partners; trustees, if the issuer is a business trust; officers; consultants; and advisors;
 - (B) family members who acquire such securities from those persons through gifts or domestic relations orders;
 - (C) former employees, directors, general partners, trustees, officers, consultants, and advisors if those individuals were employed by or providing services to the issuer when the securities were offered; and
 - (D) insurance agents who are exclusive insurance agents of the issuer, or the issuer's subsidiaries or parents, or who derive more than 50 percent of their annual income from those organizations;
- (22) a transaction involving:
- (A) a stock dividend or equivalent equity distribution, whether the corporation or other business organization distributing the dividend or equivalent equity distribution is the issuer or not, if nothing of value is given by stockholders or other equity holders for the dividend or equivalent equity distribution other than the surrender of a right to a cash or property dividend if each stockholder or other equity holder may elect to take the dividend or equivalent equity distribution in cash, property, or stock;
 - (B) an act incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims, or property interests, or partly in such exchange and partly for cash; or
 - (C) the solicitation of tenders of securities by an offeror in a tender offer in compliance with [17 C.F.R. § 230.162](#); or
- (23) a nonissuer transaction in an outstanding security by or through a broker-dealer registered or exempt from registration under this chapter, if the issuer is a reporting issuer in a foreign jurisdiction designated by this subdivision or by rule adopted or order issued under this chapter; has been subject to continuous reporting requirements in the foreign jurisdiction for not less than 180 days before the transaction; and the security is listed on the foreign jurisdiction's securities exchange that has been designated by this subdivision or by rule adopted or order issued under this chapter, or is a security of the same issuer that is of senior or substantially equal rank to the listed security or is a warrant or right to purchase or subscribe to any of the foregoing. For purposes of this subdivision, Canada, together with its provinces and territories, is a designated foreign juris-

diction and The Toronto Stock Exchange, Inc., is a designated securities exchange. After an administrative hearing in compliance with chapter 25 of Title 3 (Administrative Procedure Act), the commissioner, by rule adopted or order issued under this chapter, may revoke the designation of a securities exchange under this subdivision, if the commissioner finds that revocation is necessary or appropriate in the public interest and for the protection of investors.

§ 5203. Additional exemptions and waivers

A rule adopted or order issued under this chapter may exempt a security, transaction, or offer; a rule under this chapter may exempt a class of securities, transactions, or offers from any or all of the requirements of [sections 5301 through 5306](#) and [5504](#) of this chapter; and an order under this chapter may waive, in whole or in part, any or all of the conditions for an exemption or offer under [sections 5201](#) and [5202](#) of this chapter.

§ 5204. Denial, suspension, revocation, condition, or limitation of exemptions

(a) Except with respect to a federal covered security or a transaction involving a federal covered security, an order under this chapter may deny, suspend application of, condition, limit, or revoke an exemption created under subdivision 5201(3)(C)(7) or (8) or [section 5202](#) of this chapter or an exemption or waiver created under [section 5203](#) of this chapter with respect to a specific security, transaction, or offer. An order under this section may be issued only pursuant to the procedures in subsection 5306(d) or [section 5604](#) of this chapter and only prospectively.

(b) A person does not violate [sections 5301](#), [5303](#) through [5306](#), [5504](#), or [5510](#) of this chapter by an offer to sell, an offer to purchase, a sale, or a purchase effected after the entry of an order issued under this section if the person did not know, and in the exercise of reasonable care could not have known, of the order.

Subchapter 3. Registration of Securities and Notice Filing of Federal Covered Securities

§ 5301. Securities registration requirement

It is unlawful for a person to offer or sell a security in this state unless:

- (1) the security is a federal covered security;
- (2) the security, transaction, or offer is exempted from registration under [sections 5201](#) through [5203](#) of this chapter; or
- (3) the security is registered under this chapter.

§ 5302. Notice filing

(a) With respect to a federal covered security, as defined in [15 U.S.C. § 77r\(b\)\(2\)](#), that is not otherwise exempt under [sections 5201](#) through [5203](#) of this chapter, a rule adopted or an order issued under this chapter may require the filing of any or all of the following records:

- (1) before the initial offer of a federal covered security in this state, all records that are part of a federal regis-

tration statement filed with the Securities and Exchange Commission under [15 U.S.C. § 77a et seq.](#) and a consent to service of process complying with [section 5611](#) of this chapter signed by the issuer and the payment of a registration fee as set forth in subsection (e) of this section;

(2) after the initial offer of the federal covered security in this state, all records that are part of an amendment to a federal registration statement filed with the Securities and Exchange Commission under [15 U.S.C. § 77a et seq.](#); and

(3) to the extent necessary or appropriate to compute fees, a report of the value of the federal covered securities sold or offered to persons present in this state in such form and at such time as the commissioner may prescribe if the state-specific sales data are not included and available in records filed with the Securities and Exchange Commission.

(b) A notice filing under subsection (a) of this section is effective for one year from the date the notice filing is accepted as complete by the office of the commissioner. On or before expiration, the issuer may renew a notice filing by filing a copy of those records filed by the issuer with the Securities and Exchange Commission that are required by rule or order under this chapter to be filed and by paying an annual renewal fee as set forth in subsection (e) of this section. A previously filed consent to service of process complying with [section 5611](#) of this chapter may be incorporated by reference in a renewal. A renewed notice filing becomes effective upon the expiration of the filing being renewed.

(c) With respect to a security that is a federal covered security under [15 U.S.C. § 77r\(b\)\(4\)\(D\)](#), a rule under this chapter may require a notice filing by or on behalf of an issuer to include a copy of Form D, including the Appendix, as promulgated by the Securities and Exchange Commission, and a consent to service of process complying with [section 5611](#) of this chapter signed by the issuer not later than 15 days after the first sale of the federal covered security in this state and the payment of a fee as set forth in subsection (e) of this section.

(d) Subject to the provisions of [15 U.S.C. § 77r\(c\)\(2\)](#) and any rules adopted thereunder, with respect to any security that is a federal covered security under [15 U.S.C. § 77r\(b\)\(3\)](#) or (4)(A)-(C) and that is not otherwise exempt under [sections 5201](#) through [5203](#) of this chapter, a rule adopted or order issued under this chapter may require any or all of the following with respect to such federal covered securities, at such time as the commissioner may deem appropriate:

(1) the filing of documents as deemed appropriate by the commissioner;

(2) the filing of a consent to service of process complying with [section 5611](#) of this chapter; and

(3) the payment of fees as set forth in subsection (e) of this section, including but not limited to fees for renewal of a notice filing, as appropriate. The notice filing shall be effective for one year from the date the notice filing is accepted as complete by the office of the commissioner.

(e) At the time of the filing of the information prescribed in subsections (a), (b), (c), or (d) of this section, the issuer shall pay to the commissioner a fee of \$600.00. If the notice filing is withdrawn or otherwise terminated, the commissioner shall retain the fee paid. Open-end investment companies subject to [15 U.S.C. § 80a-1 et seq.](#) shall pay an initial notice filing fee and annual renewal fee for each portfolio or class of investment company se-

curities for which a notice filing is submitted.

(f) Nothing in this section shall be construed to require the notice filing or payment of notice filing fees with respect to variable annuities or variable life insurance products.

(g) Except with respect to a federal covered security under [15 U.S.C. § 77r\(b\)\(1\)](#), if the commissioner finds that there is a failure to comply with a notice or fee requirement of this section, the commissioner may issue a stop order suspending the offer and sale of a federal covered security in this state. If the deficiency is corrected, the stop order is void as of the time of its issuance and no penalty may be imposed by the commissioner.

§ 5303. Securities registration by coordination

(a) A security for which a registration statement has been filed under [15 U.S.C. § 77a et seq.](#) in connection with the same offering may be registered by coordination under this section.

(b) A registration statement and accompanying records under this section must contain or be accompanied by the following records in addition to the information specified in [section 5305](#) of this chapter and a consent to service of process complying with [section 5611](#) of this chapter:

(1) a copy of the latest form of prospectus filed under [15 U.S.C. § 77a et seq.](#);

(2) a copy of the articles of incorporation and bylaws or their substantial equivalents currently in effect; a copy of any agreement with or among underwriters; a copy of any indenture or other instrument governing the issuance of the security to be registered; and a specimen, copy, or description of the security that is required by rule adopted or order issued under this chapter;

(3) copies of any other information or any other records filed by the issuer under [15 U.S.C. § 77a et seq.](#) requested by the commissioner; and

(4) an undertaking to forward each amendment to the federal prospectus, other than an amendment that delays the effective date of the registration statement, promptly after it is filed with the Securities and Exchange Commission.

(c) A registration statement under this section becomes effective simultaneously with or subsequent to the federal registration statement when both the following conditions are satisfied:

(1) the issuer or applicant and the commissioner or the commissioner's designee have not mutually agreed to delay effectiveness for a specified period of time, or a stop order issued under subsection (d) of this section or [section 5306](#) of this chapter or by the Securities and Exchange Commission is not in effect and a proceeding is not pending against the issuer under [section 5306](#) of this chapter; and

(2) the registration statement has been on file for at least 20 days or a shorter period provided by rule adopted or order issued under this chapter.

(d) The registrant shall promptly notify the commissioner in a record of the date when the federal registration statement becomes effective and the content of any price amendment and shall promptly file a record containing

the price amendment. If the notice is not timely received, the commissioner may issue a stop order, without prior notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with this section. The commissioner shall promptly notify the registrant of an order by telegram, telephone, or electronic means and promptly confirm this notice by a record. If the registrant subsequently complies with the notice requirements of this section, the stop order is void as of the date of its issuance.

(e) If the federal registration statement becomes effective before each of the conditions in this section is satisfied or is waived by the commissioner, the registration statement is automatically effective under this chapter when all the conditions are satisfied or waived. If the registrant notifies the commissioner of the date when the federal registration statement is expected to become effective, the commissioner shall promptly notify the registrant by telegram, telephone, or electronic means and promptly confirm this notice by a record, indicating whether all the conditions are satisfied or waived and whether the commissioner intends the institution of a proceeding under [section 5306](#) of this chapter. The notice by the commissioner does not preclude the institution of such a proceeding.

§ 5304. Securities registration by qualification

(a) A security may be registered by qualification under this section.

(b) A registration statement under this section must contain the information or records specified in [section 5305](#) of this chapter, a consent to service of process complying with [section 5611](#) of this chapter, and, if required by rule adopted under this chapter, the following information or records:

(1) with respect to the issuer and any significant subsidiary, its name, address, and form of organization; the state or foreign jurisdiction and date of its organization; the general character and location of its business; a description of its physical properties and equipment; and a statement of the general competitive conditions in the industry or business in which it is or will be engaged;

(2) with respect to each director and officer of the issuer, and other person having a similar status or performing similar functions, the person's name, address, and principal occupation for the previous five years; the amount of securities of the issuer held by the person as of the 30th day before the filing of the registration statement; the amount of the securities covered by the registration statement to which the person has indicated an intention to subscribe; and a description of any material interest of the person in any material transaction with the issuer or a significant subsidiary effected within the previous three years or proposed to be effected;

(3) with respect to persons covered by subdivision (2) of this subsection, the aggregate sum of the remuneration paid to those persons during the previous 12 months and estimated to be paid during the next 12 months, directly or indirectly, by the issuer, and all predecessors, parents, subsidiaries, and affiliates of the issuer;

(4) with respect to a person owning of record or owning beneficially, if known, 10 percent or more of the outstanding shares of any class of equity security of the issuer, the information specified in subdivision (2) of this subsection other than the person's occupation;

(5) with respect to a promoter, if the issuer was organized within the previous three years, the information or records specified in subdivision (2) of this subsection, any amount paid to the promoter within that period or

intended to be paid to the promoter, and the consideration for the payment;

(6) with respect to a person on whose behalf any part of the offering is to be made in a nonissuer distribution, the person's name and address; the amount of securities of the issuer held by the person as of the date of the filing of the registration statement; a description of any material interest of the person in any material transaction with the issuer or any significant subsidiary effected within the previous three years or proposed to be effected; and a statement of the reasons for making the offering;

(7) the capitalization and long-term debt, on both a current and pro forma basis, of the issuer and any significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration, whether in the form of cash, physical assets, services, patents, goodwill, or anything else of value, for which the issuer or any subsidiary has issued its securities within the previous two years or is obligated to issue its securities;

(8) the kind and amount of securities to be offered; the proposed offering price or the method by which it is to be computed; any variation at which a proportion of the offering is to be made to a person or class of persons other than the underwriters, with a specification of the person or class; the basis on which the offering is to be made if otherwise than for cash; the estimated aggregate underwriting and selling discounts or commissions and finders' fees, including separately cash, securities, contracts, or anything else of value to accrue to the underwriters or finders in connection with the offering or, if the selling discounts or commissions are variable, the basis of determining them and their maximum and minimum amounts; the estimated amounts of other selling expenses, including legal, engineering, and accounting charges; the name and address of each underwriter and each recipient of a finder's fee; a copy of any underwriting or selling group agreement under which the distribution is to be made or the proposed form of any such agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities that are to be offered otherwise than through an underwriter;

(9) the estimated monetary proceeds to be received by the issuer from the offering; the purposes for which the proceeds are to be used by the issuer; the estimated amount to be used for each purpose; the order or priority in which the proceeds will be used for the purposes stated; the amounts of any funds to be raised from other sources to achieve the purposes stated; the sources of the funds; and, if a part of the proceeds is to be used to acquire property, including goodwill, otherwise than in the ordinary course of business, the names and addresses of the vendors, the purchase price, the names of any persons that have received commissions in connection with the acquisition, and the amounts of the commissions and other expenses in connection with the acquisition, including the cost of borrowing money to finance the acquisition;

(10) a description of any stock options or other security options outstanding, or to be created in connection with the offering, and the amount of those options held or to be held by each person required to be named in subdivisions (2), (4), (5), (6), or (8) of this subsection and by any person that holds or will hold 10 percent or more in the aggregate of those options;

(11) the dates of, parties to, and general effect concisely stated of each managerial or other material contract made or to be made otherwise than in the ordinary course of business to be performed in whole or in part at or after the filing of the registration statement or that was made within the previous two years, and a copy of the contract;

- (12) a description of any pending litigation, action, or proceeding to which the issuer is a party and that materially affects its business or assets, and any litigation, action, or proceeding known to be contemplated by governmental authorities;
- (13) a copy of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature intended as of the effective date to be used in connection with the offering and any solicitation of interest used in compliance with subdivision 5202(17)(B) of this chapter;
- (14) a specimen or copy of the security being registered, unless the security is uncertificated; a copy of the issuer's articles of incorporation and bylaws or their substantial equivalents, in effect; and a copy of any indenture or other instrument covering the security to be registered;
- (15) a signed or conformed copy of an opinion of counsel concerning the legality of the security being registered, with an English translation if it is in a language other than English, which states whether the security when sold will be validly issued, fully paid, and nonassessable and, if a debt security, a binding obligation of the issuer;
- (16) a signed or conformed copy of a consent of any accountant, engineer, appraiser, or other person whose profession gives authority for a statement made by the person, if the person is named as having prepared or certified a report or valuation, other than an official record, that is public, which is used in connection with the registration statement;
- (17) a balance sheet of the issuer as of a date within four months before the filing of the registration statement; a statement of income and a statement of cash flows for each of the three fiscal years preceding the date of the balance sheet and for any period between the close of the immediately previous fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessor's existence if less than three years; and, if any part of the proceeds of the offering is to be applied to the purchase of a business, the financial statements that would be required if that business were the registrant; and
- (18) any additional information or records required by rule adopted or order issued under this chapter.
- (c) A registration statement under this section becomes effective 30 days, or any shorter period provided by rule adopted or order issued under this chapter, after the date the registration statement or the last amendment other than a price amendment is filed, if:
- (1) a stop order is not in effect, and a proceeding is not pending under [section 5306](#) of this chapter;
 - (2) the commissioner has not issued an order under [section 5306](#) of this chapter delaying effectiveness;
 - (3) the applicant or registrant and the commissioner or the commissioner's designee have not mutually agreed to delay effectiveness for a specified period of time; or
 - (4) the applicant or registrant has not requested that effectiveness be delayed.
- (d) The commissioner may delay effectiveness once for not more than 90 days if the commissioner determines the registration statement is not complete in all material respects and promptly notifies the applicant or registrant

of that determination. The commissioner may also delay effectiveness for a further period of not more than 30 days if the commissioner determines that the delay is necessary or appropriate.

(e) A rule adopted or order issued under this chapter may require as a condition of registration under this section that a prospectus containing a specified part of the information or record specified in subsection (b) of this section be sent or given to each person to which an offer is made, before or concurrently, with the earliest of:

- (1) the first offer made in a record to the person otherwise than by means of a public advertisement, by or for the account of the issuer or another person on whose behalf the offering is being made or by an underwriter or broker-dealer that is offering part of an unsold allotment or subscription taken by the person as a participant in the distribution;
- (2) the confirmation of a sale made by or for the account of the person;
- (3) payment pursuant to such a sale; or
- (4) delivery of the security pursuant to such a sale.

§ 5305. Securities registration filings

(a) A registration statement may be filed by the issuer, a person on whose behalf the offering is to be made, or a broker-dealer registered under this chapter.

(b) A person filing a registration statement shall pay a filing fee of \$600.00. Open-end investment companies shall pay a registration fee and an annual renewal fee for each portfolio as long as the registration of those securities remains in effect. If a registration statement is withdrawn before the effective date or a preeffective stop order is issued under [section 5306](#) of this chapter, the commissioner shall retain the fee.

(c) A registration statement filed under [section 5303](#) or [5304](#) must specify:

- (1) the amount of securities to be offered in this state;
- (2) the states in which a registration statement or similar record in connection with the offering has been or is to be filed; and
- (3) any adverse order, judgment, or decree issued in connection with the offering by a state securities regulator, the Securities and Exchange Commission, or a court.

(d) A record filed under this chapter or the predecessor act within five years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the record is currently accurate. Notwithstanding the provisions of this subsection, nothing shall prevent the commissioner or the commissioner's designee from requiring the applicant or registrant to refurnish any previously filed records that the applicant or registrant incorporated by reference in the registration statement.

(e) In the case of a nonissuer distribution, information or a record may not be required under subsection (i) of this section or [section 5304](#) of this chapter, unless it is known to the person filing the registration statement or to

the person on whose behalf the distribution is to be made or unless it can be furnished by those persons without unreasonable effort or expense.

(f) A rule adopted or order issued under this chapter may require as a condition of registration that a security issued within the previous five years or to be issued to a promoter for a consideration substantially less than the public offering price or to a person for a consideration other than cash be deposited in escrow; and that the proceeds from the sale of the registered security in this state be impounded until the issuer receives a specified amount from the sale of the security either in this state or elsewhere. The conditions of any escrow or impoundment required under this subsection may be established by rule adopted or order issued under this chapter, but the commissioner may not reject a depository institution solely because of its location in another state.

(g) A rule adopted or order issued under this chapter may require as a condition of registration that a security registered under this chapter be sold only on a specified form of subscription or sale contract and that a signed or conformed copy of each contract be filed under this chapter or preserved for a period specified by the rule or order, which may not be longer than five years.

(h) Except while a stop order is in effect under [section 5306](#) of this chapter, a registration statement is effective for one year after its effective date, or for any longer period designated in an order under this chapter 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 an underwriter or broker-dealer that is still offering part of an unsold allotment or subscription taken as a participant in the distribution. For the purposes of a nonissuer transaction, all outstanding securities of the same class identified in the registration statement as a security registered under this chapter are considered to be registered while the registration statement is effective. If any securities of the same class are outstanding, a registration statement may not be withdrawn until one year after its effective date. A registration statement may be withdrawn only with the approval of the commissioner.

(i) While a registration statement is effective, a rule adopted or order issued under this chapter may require the person that filed the registration statement to file reports, not more often than quarterly, to keep the information or other record in the registration statement reasonably current and to disclose the progress of the offering.

(j) A registration statement may be amended after its effective date. The posteffective amendment becomes effective when the commissioner so orders. If a posteffective amendment is made to increase the number of securities specified to be offered or sold, the person filing the amendment shall pay a registration fee computed in the same manner as the filing fee required pursuant to subsection (b) of this section for any additional securities being offered. A posteffective amendment relates back to the date of the offering of the additional securities being registered if, within one year after the date of the sale, the amendment is filed, and the additional registration fee is paid.

(k) At the time of filing a request for exemption from registration, the applicant shall pay a fee of \$200.00.

§ 5306. Denial, suspension, and revocation of securities registration

(a) The commissioner may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, a registration statement if the commissioner finds that the order is in the public interest and that:

- (1) The registration statement as of its effective date or before the effective date in the case of an order denying effectiveness, an amendment under subsection 5305(j) of this chapter as of its effective date, or a report under subsection 5305(i) of this chapter is incomplete in a material respect or contains a statement that, in the light of the circumstances under which it was made, was false or misleading with respect to a material fact.
- (2) This chapter or a rule adopted or order issued under this chapter or a condition imposed under this chapter has been willfully violated, in connection with the offering, by the person filing the registration statement; by the issuer, a partner, an officer, or a director of the issuer or a person having a similar status or performing a similar function; a promoter of the issuer; or a person directly or indirectly controlling or controlled by the issuer; but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer; or by an underwriter. For purposes of this subdivision, the term "willfully" means purposely or willingly committing the act or making the omission and does not require an intent to violate the law or to injure another or to acquire any advantage.
- (3) The security registered or sought to be registered is the subject of a permanent or temporary injunction of a court of competent jurisdiction or an administrative stop order or similar order issued under any federal, foreign, or state law other than this chapter applicable to the offering, but the commissioner may not institute a proceeding against an effective registration statement under this subsection more than one year after the date of the order or injunction on which it is based, and the commissioner may not issue an order under this subdivision on the basis of an order or injunction issued under the securities act of another state unless the order or injunction was based on conduct that would constitute, as of the date of the order, a ground for a stop order under this section.
- (4) The issuer's enterprise or method of business includes or would include activities that are unlawful where performed.
- (5) With respect to a security sought to be registered under [section 5303](#) of this chapter, there has been a failure to comply with the undertaking required by subdivision 5303(b)(4) of this chapter.
- (6) The applicant or registrant has not paid the filing fee, but the commissioner shall void the order if the deficiency is corrected.
- (7) The offering:
 - (A) will work or tend to work a fraud upon purchasers or would so operate;
 - (B) has been or would be made with unreasonable amounts of underwriters' and sellers' discounts, commissions, or other compensation, or promoters' profits or participations, or unreasonable amounts or kinds of options; or
 - (C) is being made on terms that are unfair, unjust, or inequitable.
- (b) To the extent practicable, the commissioner by rule adopted or order issued under this chapter shall publish standards that provide notice of conduct that violates subdivision (a)(7) of this section.
- (c) The commissioner may not institute a stop order proceeding against an effective registration statement on the

basis of conduct or a transaction known to the commissioner when the registration statement became effective unless the proceeding is instituted within 30 days after the registration statement became effective.

(d) The commissioner may summarily revoke, deny, postpone, or suspend the effectiveness of a registration statement pending final determination of an administrative proceeding. Upon the issuance of the order, the commissioner shall promptly notify each person specified in subsection (e) of this section that the order has been issued; the reasons for the revocation, denial, postponement, or suspension; and that within 15 days after the receipt of a request in a record from the person the matter will be scheduled for a hearing. If a hearing is not requested and none is ordered by the commissioner, within 30 days after the date of service of the order, the order becomes final. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing for each person subject to the order, may modify or vacate the order or extend the order until final determination.

(e) A stop order may not be issued under this section without:

- (1) appropriate notice to the applicant or registrant, the issuer, and the person on whose behalf the securities are to be or have been offered;
- (2) an opportunity for hearing; and
- (3) findings of fact and conclusions of law in a record in accordance with the procedures set forth in chapter 25 of Title 3 (Administrative Procedure Act).

(f) Subject to notice and opportunity for hearing and in accordance with the procedures set forth in chapter 25 of Title 3 (Administrative Procedure Act), the commissioner may modify or vacate a stop order issued under this section if the commissioner finds that the conditions that caused its issuance have changed or that it is necessary or appropriate in the public interest or for the protection of investors.

§ 5307. Waiver and modification

The commissioner may waive or modify, in whole or in part, any or all of the requirements of [sections 5302 and 5303](#) and subsection [5304\(b\)](#) of this chapter or the requirement of any information or record in a registration statement or in a periodic report filed pursuant to subsection [5305\(i\)](#) of this chapter.

Subchapter 4. Broker-Dealers, Agents, Investment Advisers, Investment Adviser Representatives, and Federal Covered Investment Advisers

§ 5401. Broker-dealer registration requirement and exemptions

(a) It is unlawful for a person to transact business in this state as a broker-dealer unless the person is registered under this chapter as a broker-dealer or is exempt from registration as a broker-dealer under subsection (b) or (d) of this section.

(b) The following persons are exempt from the registration requirement of subsection (a) of this section:

- (1) a broker-dealer without a place of business in this state if its only transactions effected in this state are with:
- (A) the issuer of the securities involved in the transactions;
 - (B) a broker-dealer registered as a broker-dealer under this chapter or not required to be registered as a broker-dealer under this chapter;
 - (C) an institutional investor;
 - (D) a nonaffiliated federal covered investment adviser with investments under management in excess of \$100,000,000.00 acting for the account of others pursuant to discretionary authority in a signed record;
 - (E) a bona fide preexisting customer whose principal place of residence is not in this state, and the person is registered as a broker-dealer under [15 U.S.C. § 78a et seq.](#) or not required to be registered under [15 U.S.C. § 78a et seq.](#) and is registered under the securities act of the state in which the customer maintains a principal place of residence;
 - (F) a bona fide preexisting customer whose principal place of residence is in this state but was not present in this state when the customer relationship was established, if:
 - (i) the broker-dealer is registered under [15 U.S.C. § 78a et seq.](#) or not required to be registered under [15 U.S.C. § 78a et seq.](#) and is registered under the securities laws of the state in which the customer relationship was established and where the customer had maintained a principal place of residence; and
 - (ii) within 45 days after the customer's first transaction in this state, the person files an application for registration as a broker-dealer in this state and a further transaction is not effected more than 75 days after the date on which the application is filed, or, if earlier, the date on which the commissioner notifies the person that the commissioner has denied the application for registration or has stayed the pendency of the application for good cause;
 - (G) not more than three customers in this state during the previous 12 months, in addition to those customers specified in subdivisions (A) through (F) and under subdivision (H) of this subdivision, if the broker-dealer is registered under [15 U.S.C. § 78a et seq.](#) or not required to be registered under [15 U.S.C. § 78a et seq.](#) and is registered under the securities act of the state in which the broker-dealer has its principal place of business; and
 - (H) any other person exempted by rule adopted or order issued under this chapter;
- (2) a person that deals solely in United States government securities and is supervised as a dealer in government securities by the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, or the Office of Thrift Supervision; and
- (3) any other person exempted by rule adopted or order issued under this chapter.
- (c) It is unlawful for a broker-dealer, or for an issuer engaged in offering, offering to purchase, purchasing, or

selling securities in this state, directly or indirectly, to employ or associate with an individual to engage in an activity related to securities transactions in this state if the registration of the individual is suspended or revoked or the individual is barred from employment or association with a broker-dealer, an issuer, an investment adviser, or a federal covered investment adviser by an order of the commissioner under this chapter, the Securities and Exchange Commission, or a self-regulatory organization. A broker-dealer or issuer does not violate this subsection if the broker-dealer or issuer did not know, and in the exercise of reasonable care could not have known, of the suspension, revocation, or bar. Upon request from a broker-dealer or issuer and for good cause, an order under this chapter may modify or waive, in whole or in part, the application of the prohibitions of this subsection to the broker-dealer.

(d) A rule adopted or order issued under this chapter may permit:

(1) a broker-dealer that is registered in Canada or other foreign jurisdiction and that does not have a place of business in this state to effect transactions in securities with or for, or attempt to effect the purchase or sale of any securities by:

(A) an individual from Canada or other foreign jurisdiction who is temporarily present in this state and with whom the broker-dealer had a bona fide customer relationship before the individual entered the United States ;

(B) an individual from Canada or other foreign jurisdiction who is present in this state and whose transactions are in a self-directed tax advantaged retirement plan of which the individual is the holder or contributor in that foreign jurisdiction; or

(C) an individual who is present in this state, with whom the broker-dealer customer relationship arose while the individual was temporarily or permanently resident in Canada or the other foreign jurisdiction; and

(2) an agent who represents a broker-dealer that is exempt under this subsection to effect transactions in securities or attempt to effect the purchase or sale of securities in this state as permitted for a broker-dealer described in subdivision (1) of this subsection.

§ 5402. Agent registration requirement and exemptions

(a) It is unlawful for an individual to transact business in this state as an agent unless the individual is registered under this chapter as an agent or is exempt from registration as an agent under subsection (b) of this section.

(b) The following individuals are exempt from the registration requirement of subsection (a) of this section:

(1) an individual who represents a broker-dealer in effecting transactions in this state limited to those described in 15 U.S.C. § 78(o)(2);

(2) an individual who represents a broker-dealer that is exempt under subsection 5401(b) or (d) of this chapter;

(3) an individual who represents an issuer with respect to an offer or sale of the issuer's own securities or those of the issuer's parent or any of the issuer's subsidiaries, and who is not compensated in connection with

the individual's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities;

(4) an individual who represents an issuer and who effects transactions in the issuer's securities exempted by [section 5202](#) of this chapter, other than subdivisions 5202(11) and (14);

(5) an individual who represents an issuer that effects transactions solely in federal covered securities of the issuer, but an individual who effects transactions in a federal covered security under [15 U.S.C. § 77r\(b\)\(3\)](#) or (4)(D) is not exempt if the individual is compensated in connection with the agent's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities;

(6) an individual who represents a broker-dealer registered in this state under subsection 5401(a) of this chapter or exempt from registration under subsection 5401(b) of this chapter in the offer and sale of securities for an account of a nonaffiliated federal covered investment adviser with investments under management in excess of \$100,000,000.00 acting for the account of others pursuant to discretionary authority in a signed record;

(7) an individual who represents an issuer in connection with the purchase of the issuer's own securities;

(8) an individual who represents an issuer and who restricts participation to performing clerical or ministerial acts; or

(9) any other individual exempted by rule adopted or order issued under this chapter.

(c) The registration of an agent is effective only while the agent is employed by or associated with a broker-dealer registered under this chapter or an issuer that is offering, selling, or purchasing its securities in this state.

(d) It is unlawful for a broker-dealer, or an issuer engaged in offering, selling, or purchasing securities in this state, to employ or associate with an agent who transacts business in this state on behalf of broker-dealers or issuers unless the agent is registered under subsection (a) of this section or exempt from registration under subsection (b) of this section.

(e) An individual may not act as an agent for more than one broker-dealer or one issuer at a time, unless the broker-dealer or the issuer for which the agent acts is affiliated by direct or indirect common control or is authorized by rule or order under this chapter.

§ 5403. Investment adviser registration requirement and exemptions

(a) It is unlawful for a person to transact business in this state as an investment adviser unless the person is registered under this chapter as an investment adviser or is exempt from registration as an investment adviser under subsection (b) of this section.

(b) The following persons are exempt from the registration requirement of subsection (a) of this section:

(1) a person without a place of business in this state that is registered under the securities act of the state in which the person has its principal place of business if its only clients in this state are:

(A) federal covered investment advisers, investment advisers registered under this chapter, or broker-dealers registered under this chapter;

(B) institutional investors;

(C) bona fide preexisting clients whose principal places of residence are not in this state if the investment adviser is registered under the securities act of the state in which the clients maintain principal places of residence; or

(D) any other client exempted by rule adopted or order issued under this chapter;

(2) a person without a place of business in this state if the person has had, during the preceding 12 months, not more than five clients that are resident in this state in addition to those specified under subdivision (1) of this subsection; or

(3) any other person exempted by rule adopted or order issued under this chapter.

(c) It is unlawful for an investment adviser, directly or indirectly, to employ or associate with an individual to engage in an activity related to investment advice in this state if the registration of the individual is suspended or revoked or the individual is barred from employment or association with an investment adviser, federal covered investment adviser, or broker-dealer by an order under this chapter, the Securities and Exchange Commission, or a self-regulatory organization, unless the investment adviser did not know, and in the exercise of reasonable care could not have known, of the suspension, revocation, or bar. Upon request from the investment adviser and for good cause, the commissioner, by order, may waive, in whole or in part, the application of the prohibitions of this subsection to the investment adviser.

(d) It is unlawful for an investment adviser to employ or associate with an individual required to be registered under this chapter as an investment adviser representative who transacts business in this state on behalf of the investment adviser unless the individual is registered under subsection 5404(a) of this chapter or is exempt from registration under subsection 5404(b).

§ 5404. Investment adviser representative registration requirement and exemptions

(a) It is unlawful for an individual to transact business in this state as an investment adviser representative unless the individual is registered under this chapter as an investment adviser representative or is exempt from registration as an investment adviser representative under subsection (b) of this section.

(b) The following individuals are exempt from the registration requirement of subsection (a) of this section:

(1) an individual who is employed by or associated with an investment adviser that is exempt from registration under subsection 5403(b) of this chapter or a federal covered investment adviser that is excluded from the notice filing requirements of [section 5405](#) of this chapter; and

(2) any other individual exempted by rule adopted or order issued under this chapter.

(c) The registration of an investment adviser representative is not effective while the investment adviser repres-

entative is not employed by or associated with an investment adviser registered under this chapter or a federal covered investment adviser that has made or is required to make a notice filing under [section 5405](#) of this chapter.

(d) An individual may transact business as an investment adviser representative for more than one investment adviser or federal covered investment adviser unless a rule adopted or order issued under this chapter prohibits or limits an individual from acting as an investment adviser representative for more than one investment adviser or federal covered investment adviser.

(e) It is unlawful for an individual acting as an investment adviser representative, directly or indirectly, to conduct business in this state on behalf of an investment adviser or a federal covered investment adviser if the registration of the individual as an investment adviser representative is suspended or revoked or the individual is barred from employment or association with an investment adviser or a federal covered investment adviser by an order under this chapter, the Securities and Exchange Commission, or a self-regulatory organization. Upon request from a federal covered investment adviser and for good cause, the commissioner, by order issued, may waive, in whole or in part, the application of the requirements of this subsection to the federal covered investment adviser.

(f) An investment adviser registered under this chapter, a federal covered investment adviser that has filed a notice under [section 5405](#) of this chapter, or a broker-dealer registered under this chapter is not required to employ or associate with an individual as an investment adviser representative if the only compensation paid to the individual for a referral of investment advisory clients is paid to an investment adviser registered under this chapter, a federal covered investment adviser who has filed a notice under [section 5405](#), or a broker-dealer registered under this chapter with which the individual is employed or associated as an investment adviser representative.

§ 5405. Federal covered investment adviser notice filing requirement

(a) Except with respect to a federal covered investment adviser described in subsection (b) of this section, it is unlawful for a federal covered investment adviser to transact business in this state as a federal covered investment adviser unless the federal covered investment adviser complies with subsection (c) of this section.

(b) The following federal covered investment advisers are not required to comply with subsection (c) of this section:

(1) a federal covered investment adviser without a place of business in this state if its only clients in this state are:

(A) federal covered investment advisers, investment advisers registered under this chapter, and broker-dealers registered under this chapter;

(B) institutional investors;

(C) bona fide preexisting clients whose principal places of residence are not in this state; or

(D) other clients specified by rule adopted or order issued under this chapter;

(2) a federal covered investment adviser without a place of business in this state if the person has had, during the preceding 12 months, not more than five clients that are resident in this state in addition to those specified under subdivision (1) of this subsection; and

(3) any other person excluded by rule adopted or order issued under this chapter.

(c) A person acting as a federal covered investment adviser, not excluded under subsection (b) of this section, shall file a notice, a consent to service of process complying with [section 5611](#) of this chapter, and such records as have been filed with the Securities and Exchange Commission under [15 U.S.C. § 80b-1 et seq.](#) required by rule adopted or order issued under this chapter and pay the fees specified in subsection 5410(e) of this chapter.

(d) The notice under subsection (c) of this section becomes effective upon its filing.

§ 5406. Registration by broker-dealer, agent, investment adviser, and investment adviser representative

(a) A person shall register as a broker-dealer, agent, investment adviser, or investment adviser representative by filing an application and a consent to service of process complying with [section 5611](#) of this chapter, and paying the fee specified in [section 5410](#) of this chapter and any reasonable fees charged by the designee of the commissioner for processing the filing. The application must contain:

(1) the information or record required for the filing of a uniform application; and

(2) upon request by the commissioner, any other financial or other information or record that the commissioner determines is appropriate.

(b) If the information or record contained in an application filed under subsection (a) of this section is or becomes inaccurate or incomplete in a material respect, the registrant shall promptly file a correcting amendment.

(c) If an order is not in effect and a proceeding is not pending under [section 5412](#) of this chapter or if the applicant and the commissioner or the commissioner's designee have not mutually agreed to delay effectiveness for a specified period of time, registration becomes effective at noon on the 45th day after a completed application is filed, unless registration is denied. A rule adopted or order issued under this chapter may set an earlier effective date or may defer the effective date until noon on the 45th day after the filing of any amendment completing the application.

(d) A registration is effective until midnight on December 31 of the year for which the application for registration is filed. Unless an order is in effect under [section 5412](#) of this chapter, a registration may be automatically renewed each year by filing such records as are required by rule adopted or order issued under this chapter, by paying the fee specified in [section 5410](#) of this chapter, and by paying costs charged by the designee of the commissioner for processing the filings.

(e) A rule adopted or order issued under this chapter may impose such other conditions not inconsistent with the National Securities Markets Improvement Act of 1996. [FN1] An order issued under this chapter may waive, in whole or in part, specific requirements in connection with registration as are in the public interest and for the protection of investors.

[FN1] 15 U.S.C.A. § 77z-3 et seq.

§ 5407. Succession and change in registration of broker-dealer or investment adviser

(a) A broker-dealer or investment adviser may succeed to the current registration of another broker-dealer or investment adviser or a notice filing of a federal covered investment adviser, and a federal covered investment adviser may succeed to the current registration of an investment adviser or notice filing of another federal covered investment adviser, by filing as a successor an application for registration pursuant to [section 5401](#) or [5403](#) of this chapter or a notice pursuant to [section 5405](#) of this chapter for the unexpired portion of the current registration or notice filing.

(b) A broker-dealer or investment adviser that changes its form of organization or state of incorporation or organization may continue its registration by filing an amendment to its registration if the change does not involve a material change in its financial condition or management. The amendment becomes effective when filed or on a date designated by the registrant in its filing. The new organization is a successor to the original registrant for the purposes of this chapter. If there is a material change in financial condition or management, the broker-dealer or investment adviser shall file a new application for registration. A predecessor registered under this chapter shall stop conducting its securities business other than winding down transactions and shall file for withdrawal of broker-dealer or investment adviser registration within 45 days after filing its amendment to effect succession.

(c) A broker-dealer or investment adviser that changes its name may continue its registration by filing an amendment to its registration. The amendment becomes effective when filed or on a date designated by the registrant.

(d) A change of control of a broker-dealer or investment adviser may be made in accordance with a rule adopted or order issued under this chapter.

§ 5408. Termination of employment or association of agent and investment adviser representative and transfer of employment or association

(a) If an agent registered under this chapter terminates employment by or association with a broker-dealer or issuer, or if an investment adviser representative registered under this chapter terminates employment by or association with an investment adviser or federal covered investment adviser, or if either registrant terminates activities that require registration as an agent or investment adviser representative, the broker-dealer, issuer, investment adviser, or federal covered investment adviser shall promptly file a notice of termination. If the registrant learns that the broker-dealer, issuer, investment adviser, or federal covered investment adviser has not filed the notice, the registrant may do so.

(b) If an agent registered under this chapter terminates employment by or association with a broker-dealer registered under this chapter and begins employment by or association with another broker-dealer registered under this chapter; or if an investment adviser representative registered under this chapter terminates employment by or association with an investment adviser registered under this chapter or a federal covered investment adviser that has filed a notice under [section 5405](#) of this chapter and begins employment by or association with another investment adviser registered under this chapter or a federal covered investment adviser that has filed a notice under [section 5405](#) of this chapter; then upon the filing by or on behalf of the registrant, within 30 days after the

termination, of an application for registration that complies with the requirement of subsection 5406(a) of this chapter and payment of the filing fee required under [section 5410](#) of this chapter, the registration of the agent or investment adviser representative is:

- (1) immediately effective as of the date of the completed filing, if the agent's Central Registration Depository record or successor record or the investment adviser representative's Central Registration Depository record or successor record does not contain a new or amended disciplinary disclosure within the previous 12 months; or
 - (2) temporarily effective as of the date of the completed filing, if the agent's Central Registration Depository record or successor record or the investment adviser representative's Central Registration Depository record or successor record contains a new or amended disciplinary disclosure within the preceding 12 months.
- (c) The commissioner may withdraw a temporary registration if there are or were grounds for discipline as specified in [section 5412](#) of this chapter and the commissioner does so within 30 days after the filing of the application. If the commissioner does not withdraw the temporary registration within the 30-day period, registration becomes automatically effective on the 31st day after filing.
- (d) The commissioner may prevent the effectiveness of a transfer of an agent or investment adviser representative under subdivision (b)(1) or (2) of this section based on the public interest and the protection of investors.
- (e) If the commissioner determines that a registrant or applicant for registration is no longer in existence or has ceased to act as a broker-dealer, agent, investment adviser, or investment adviser representative, or is the subject of an adjudication of incapacity or is subject to the control of a committee, conservator, or guardian, or cannot reasonably be located, a rule adopted or order issued under this chapter may require that the registration be canceled or terminated or the application denied. The commissioner may reinstate a canceled or terminated registration, with or without hearing, and may make the registration retroactive.

§ 5409. Withdrawal of registration of broker-dealer, agent, investment adviser, and investment representative

Withdrawal of registration by a broker-dealer, agent, investment adviser, or investment adviser representative becomes effective 60 days after the filing of the application to withdraw or within any shorter period as provided by rule adopted or order issued under this chapter unless a revocation or suspension proceeding is pending when the application is filed. If a proceeding is pending, withdrawal becomes effective when and upon such conditions as required by rule adopted or order issued under this chapter. The commissioner may institute a revocation or suspension proceeding under [section 5412](#) of this chapter within one year after the withdrawal became effective automatically and issue a revocation or suspension order as of the last date on which registration was effective if a proceeding is not pending.

§ 5410. Filing fees

(a) A person shall pay a fee of \$250.00 when initially filing an application for registration as a broker-dealer and a fee of \$250.00 when filing a renewal of registration as a broker-dealer. A separate application in writing for branch office registration or renewal, accompanied by a filing fee of \$100.00 per branch office, shall be filed in the office of the commissioner in such form as the commissioner may prescribe by any broker-dealer who trans-

acts business in this state from any place of business located within this state. If the filing results in a denial or withdrawal, the commissioner shall retain the fee.

(b) The fee for an individual is \$60.00 when filing an application for registration as an agent, \$60.00 when filing a renewal of registration as an agent, and \$60.00 when filing for a change of registration as an agent. If the filing results in a denial or withdrawal, the commissioner shall retain the fee.

(c) A person shall pay a fee of \$250.00 when filing an application for registration as an investment adviser and a fee of \$250.00 when filing a renewal of registration as an investment adviser. A separate application in writing for branch office registration or renewal, accompanied by a filing fee of \$100.00 per branch office, shall be filed in the office of the commissioner in such form as the commissioner may prescribe by any investment adviser who transacts business in this state from any place of business located within the state. If the filing results in a denial or withdrawal, the commissioner shall retain the fee.

(d) The fee for an individual is \$55.00 when filing an application for registration as an investment adviser representative, \$55.00 when filing a renewal of registration as an investment adviser representative, and \$55.00 when filing a change of registration as an investment adviser representative. If the filing results in a denial or withdrawal, the commissioner shall retain the fee.

(e) A federal covered investment adviser required to file a notice under [section 5405](#) of this chapter shall pay an initial fee of \$250.00 and an annual notice fee of \$250.00. To the extent required to be included in documents filed with the Securities and Exchange Commission, such notice filing shall include information on the branch offices of a federal covered investment adviser who transacts business in this state from any place of business located within this state, accompanied by a notice filing fee of \$100.00 per branch office in Vermont. A notice filing may be terminated by filing notice of such termination with the commissioner.

(f) A person required to pay a filing or notice fee under this section may transmit the fee through or to a designee as a rule or order provides under this chapter.

(g) The commissioner may, as an alternative means of registering branch offices as set forth in subsections (a) and (c) of this section, register branch offices by means of or through the facilities of a national organization which facilitates branch office registration on a nationwide basis, and comply with the terms of any agreement or contract entered into with such national organization. The initial and annual renewal filing fees per branch office specified in subsections (a) and (c) of this section shall apply to any such centralized filing and shall be paid at the time of filing. In the event of conflict between this provision and other pertinent provisions of this chapter, the commissioner may elect that this provision prevail.

(h) Notwithstanding the provisions of this section, the commissioner may, upon written request, waive or issue a refund of fees due or paid pursuant to this chapter to military personnel who comply with all the following:

(1) The applicant has been called or recalled to active duty status or to a status similar to active duty.

(2) The applicant's active duty status is expected to remain unchanged for six months or more during the calendar year for which the refund is requested.

(3) The active duty status will prevent the applicant from acting as an agent, investment adviser representative, or investment adviser during the relevant time period.

§ 5411. Postregistration requirements

(a) Subject to [15 U.S.C. § 78o\(h\)](#) or [15 U.S.C. § 80b-22](#), a rule adopted or order issued under this chapter may establish minimum financial requirements for broker-dealers registered or required to be registered under this chapter and investment advisers registered or required to be registered under this chapter.

(b) Subject to [15 U.S.C. § 78o\(h\)](#) or [15 U.S.C. § 80b-22](#), a broker-dealer registered or required to be registered under this chapter and an investment adviser registered or required to be registered under this chapter shall file such financial reports as are required by a rule adopted or order issued under this chapter. If the information contained in a record filed under this subsection is or becomes inaccurate or incomplete in a material respect, the registrant shall promptly file a correcting amendment.

(c) Subject to [15 U.S.C. § 78o\(h\)](#) or [15 U.S.C. § 80b-22](#):

(1) a broker-dealer registered or required to be registered under this chapter and an investment adviser registered or required to be registered under this chapter shall make and maintain the accounts, correspondence, memoranda, papers, books, and other records required by rule adopted or order issued under this chapter;

(2) broker-dealer records required to be maintained under subdivision (1) of this subsection may be maintained in any form of data storage acceptable under [15 U.S.C. § 78q\(a\)](#) if they are readily accessible to the commissioner; and

(3) investment adviser records required to be maintained under subdivision (1) of this subsection may be maintained in any form of data storage required by rule adopted or order issued under this chapter.

(d) The records of a broker-dealer registered or required to be registered under this chapter and of an investment adviser registered or required to be registered under this chapter are subject to such reasonable periodic, special, or other audits or inspections by a representative of the commissioner, within or without this state, as the commissioner considers necessary or appropriate in the public interest and for the protection of investors. An audit or inspection may be made at any time and without prior notice. The commissioner may copy, and remove for audit or inspection copies of, all records the commissioner reasonably considers necessary or appropriate to conduct the audit or inspection. The commissioner may assess a reasonable charge for conducting an audit or inspection under this subsection.

(e) Subject to [15 U.S.C. § 78o\(h\)](#) or [15 U.S.C. § 80b-22](#), a rule adopted or order issued under this chapter may require a broker-dealer or investment adviser that has custody of or discretionary authority over funds or securities of a customer or client to obtain insurance or post a bond or other satisfactory form of security in an amount to be established by rule or order. The commissioner may determine the requirements of the insurance, bond, or other satisfactory form of security. Insurance or a bond or other satisfactory form of security may not be required of a broker-dealer registered under this chapter whose net capital exceeds, or of an investment adviser registered under this chapter whose minimum financial requirements exceed, the amounts required by rule or order under this chapter. The insurance, bond, or other satisfactory form of security must permit an action by a person

to enforce any liability on the insurance, bond, or other satisfactory form of security if instituted within the time limitations in subdivision 5509(j)(2) of this chapter.

(f) Subject to [15 U.S.C. § 78o\(h\)](#) or 15 U.S.C. § 80b-22, an agent may not have custody of funds or securities of a customer except under the supervision of a broker-dealer, and an investment adviser representative may not have custody of funds or securities of a client except under the supervision of an investment adviser or a federal covered investment adviser. A rule adopted or order issued under this chapter may prohibit, limit, or impose conditions on a broker-dealer regarding custody of funds or securities of a customer and on an investment adviser regarding custody of securities or funds of a client.

(g) With respect to an investment adviser registered or required to be registered under this chapter, a rule adopted or order issued under this chapter may require that information or other record be furnished or disseminated to clients or prospective clients in this state as necessary or appropriate in the public interest and for the protection of investors and advisory clients.

(h) A rule adopted or order issued under this chapter may require an individual registered under [section 5402](#) or [5404](#) of this chapter to participate in a continuing education program approved by the Securities and Exchange Commission and administered by a self-regulatory organization or, in the absence of such a program, a rule adopted or order issued under this chapter may require continuing education for an individual registered under [section 5404](#).

§ 5412. Denial, revocation, suspension, withdrawal, restriction, condition, or limitation of registration

(a) If the commissioner finds that the order is in the public interest and subsection (d) of this section authorizes the action, an order issued under this chapter may deny an application, or may condition or limit registration of an applicant to be a broker-dealer, agent, investment adviser, or investment adviser representative, and, if the applicant is a broker-dealer or investment adviser, of a partner, officer, director, or person having a similar status or performing similar functions, or a person directly or indirectly in control, of the broker-dealer or investment adviser.

(b) If the commissioner finds that the order is in the public interest and subsection (d) of this section authorizes the action, an order issued under this chapter may revoke, suspend, condition, or limit the registration of a registrant and, if the registrant is a broker-dealer or investment adviser, of a partner, officer, director, or person having a similar status or performing similar functions, or a person directly or indirectly in control, of the broker-dealer or investment adviser. However, the commissioner may not:

(1) institute a revocation or suspension proceeding under this subsection based on an order issued under a law of another state that is reported to the commissioner or a designee of the commissioner more than one year after the date of the order on which it is based; or

(2) under subdivision (d)(5)(A) or (B) of this section, issue an order on the basis of an order issued under the securities act of another state unless the other order was based on conduct for which subsection (d) of this section would authorize the action had the conduct occurred in this state.

(c) If the commissioner finds that the order is in the public interest and subdivisions (d)(1) through (6), (8), (9),

(10), (12), or (13) of this section authorize the action, an order under this chapter may censure, impose a bar on, or impose a civil penalty on a registrant in an amount not more than \$15,000.00 for each violation and not more than \$1,000,000.00 for more than one violation, and recover the costs of the investigation from the registrant, and, if the registrant is a broker-dealer or investment adviser, a partner, officer, director, or person having a similar status or performing similar functions, or a person directly or indirectly in control of the broker-dealer or investment adviser. The limitations on civil penalties contained in this subsection shall not apply to settlement agreements.

(d) A person may be disciplined under subsections (a) through (c) of this section if the person:

(1) has filed an application for registration in this state under this chapter or the predecessor act within the previous 10 years, which, as of the effective date of registration or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained a statement that, in light of the circumstances under which it was made, was false or misleading with respect to a material fact;

(2) willfully violated or willfully failed to comply with this chapter or the predecessor act or a rule adopted or order issued under this chapter or the predecessor act within the previous 10 years. As used in this subdivision, the term "willfully" means purposely or willingly committing the act or making the omission and does not require an intent to violate the law or to injure another or to acquire any advantage;

(3) has been convicted of a felony or within the previous 10 years has been convicted of a misdemeanor involving a security, a commodity future or option contract, or an aspect of a business involving securities, commodities, investments, franchises, insurance, banking, or finance;

(4) is enjoined or restrained by a court of competent jurisdiction in an action instituted by the commissioner under this chapter or the predecessor act, a state, the Securities and Exchange Commission, or the United States from engaging in or continuing an act, practice, or course of business involving an aspect of a business involving securities, commodities, investments, franchises, insurance, banking, or finance;

(5) is the subject of an order, issued after notice and opportunity for hearing by:

(A) the securities or other financial services regulator of a state or the Securities and Exchange Commission or other federal agency denying, revoking, barring, or suspending registration as a broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative;

(B) the securities regulator of a state or the Securities and Exchange Commission against a broker-dealer, agent, investment adviser, investment adviser representative, or federal covered investment adviser;

(C) the Securities and Exchange Commission or a self-regulatory organization suspending or expelling the registrant from membership in the self-regulatory organization;

(D) a court adjudicating a United States Postal Service fraud order;

(E) the insurance regulator of a state denying, suspending, or revoking registration as an insurance agent; or

(F) a depository institution or financial services regulator suspending or barring the person from the deposit-

ory institution or other financial services business;

(6) is the subject of an adjudication or determination, after notice and opportunity for hearing, by the Securities and Exchange Commission, the Commodity Futures Trading Commission, the Federal Trade Commission, a federal depository institution regulator, or a depository institution, insurance, or other financial services regulator of a state that the person willfully violated the Securities Act of 1933, [FN1] the Securities Exchange Act of 1934, [FN2] the Investment Advisers Act of 1940, [FN3] the Investment Company Act of 1940, [FN4] or the Commodity Exchange Act, [FN5] the securities or commodities law of a state, or a federal or state law under which a business involving investments, franchises, insurance, banking, or finance is regulated;

(7) is insolvent, either because the person's liabilities exceed the person's assets or because the person cannot meet the person's obligations as they mature, but the commissioner may not enter an order against an applicant or registrant under this subdivision without a finding of insolvency as to the applicant or registrant;

(8) refuses to allow or otherwise impedes the commissioner from conducting an audit or inspection under subsection 5411(d) of this chapter or refuses access to a registrant's office to conduct an audit or inspection under subsection 5411(d);

(9) has failed to supervise reasonably an agent, investment adviser representative, or other individual, if the agent, investment adviser representative, or other individual was subject to the person's supervision and committed a violation of this chapter or the predecessor act or a rule adopted or order issued under this chapter or the predecessor act within the previous 10 years;

(10) has not paid the proper filing fee within 30 days after having been notified by the commissioner of a deficiency, but the commissioner shall vacate an order under this subdivision when the deficiency is corrected;

(11) after notice and opportunity for a hearing, has been found within the previous 10 years:

(A) by a court of competent jurisdiction to have willfully violated the laws of a foreign jurisdiction under which the business of securities, commodities, investment, franchises, insurance, banking, or finance is regulated;

(B) to have been the subject of an order of a securities regulator of a foreign jurisdiction denying, revoking, or suspending the right to engage in the business of securities as a broker-dealer, agent, investment adviser, investment adviser representative, or similar person; or

(C) to have been suspended or expelled from membership by or participation in a securities exchange or securities association operating under the securities laws of a foreign jurisdiction;

(12) is the subject of a cease and desist order issued by the Securities and Exchange Commission or issued under the securities, commodities, investment, franchise, banking, finance, or insurance laws of a state;

(13) has engaged in dishonest or unethical practices in the securities, commodities, investment, franchise, banking, finance, or insurance business within the previous 10 years; or

(14) is not qualified on the basis of factors such as training, experience, and knowledge of the securities busi-

ness. However, in the case of an application by an agent for a broker-dealer that is a member of a self-regulatory organization or by an individual for registration as an investment adviser representative, a denial order may not be based on this subdivision if the individual has successfully completed all examinations required by subsection (e) of this section. The commissioner may require an applicant for registration under [section 5402](#) or [5404](#) of this chapter who has not been registered in a state within the two years preceding the filing of an application in this state to complete successfully an examination.

(e) A rule adopted or order issued under this chapter may require that an examination, including an examination developed or approved by an organization of securities regulators, be completed successfully by a class of individuals or all individuals. An order issued under this chapter may waive, in whole or in part, an examination as to an individual, and a rule adopted under this chapter may waive, in whole or in part, an examination as to a class of individuals if the commissioner determines that the examination is not necessary or appropriate in the public interest and for the protection of investors.

(f) If the commissioner finds it necessary to preserve the public welfare, the commissioner may suspend or deny an application summarily; restrict, condition, limit, or suspend a registration; or censure, bar, or impose a civil penalty on a registrant before final determination of an administrative proceeding. Upon the issuance of an order, the commissioner shall promptly notify each person subject to the order that the order has been issued, the reasons for the action, and that, within 15 days after the receipt of a request in a record from the person, the matter will be scheduled for a hearing. If a hearing is not requested and none is ordered by the commissioner within 30 days after the date of service of the order, the order becomes final by operation of law. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend the order until final determination.

(g) An order issued may not be issued under this section, except under subsection (f) of this section, without:

- (1) appropriate notice to the applicant or registrant;
- (2) opportunity for hearing; and
- (3) findings of fact and conclusions of law in a record in accordance with the procedures set forth in chapter 25 of Title 3 (Administrative Procedure Act).

(h) A person that controls, directly or indirectly, a person not in compliance with this section may be disciplined by order of the commissioner under subsections (a) through (c) of this section to the same extent as the noncomplying person, unless the controlling person did not know, and in the exercise of reasonable care could not have known, of the existence of conduct that is a ground for discipline under this section.

(i) The commissioner may not institute a proceeding under subsection (a), (b), or (c) of this section based solely on material facts actually known by the commissioner unless an investigation or the proceeding is instituted within one year after the commissioner actually acquires knowledge of the material facts.

[FN1] [15 U.S.C.A. § 77a et seq.](#)

[FN2] [15 U.S.C.A. § 78a et seq.](#)

[FN3] 15 U.S.C.A. § 80b-1 et seq.

[FN4] 15 U.S.C.A. § 80a-1 et seq.

[FN5] 7 U.S.C.A. § 1 et seq.

Subchapter 5. Fraud and Liabilities

§ 5501. General fraud

It is unlawful for a person, in connection with the offer to sell, the offer to purchase, the sale, or the purchase of a security, directly or indirectly:

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

§ 5502. Prohibited conduct in providing investment advice

(a) 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 adopts analyses or reports relating to securities:

- (1) to employ a device, scheme, or artifice to defraud another person;
- (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; or
- (3) to engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

(b) 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 engaging in acts, practices, and courses of business defined as fraudulent, deceptive, or manipulative.

(c) A rule adopted under this chapter may specify the contents of an investment advisory contract entered into, extended, or renewed by an investment adviser.

§ 5503. Evidentiary burden

- (a) In a civil action or administrative proceeding under this chapter, a person claiming an exemption, exception, preemption, or exclusion has the burden to prove the applicability of the claim.
- (b) In a criminal proceeding under this chapter, a person claiming an exemption, exception, preemption, or exclusion has the burden of going forward with evidence of the claim.

§ 5504. Filing of sales and advertising literature

- (a) Except as otherwise provided in subsection (b) of this section, a rule adopted or order issued under this chapter may require the filing of a prospectus, pamphlet, circular, form letter, advertisement, sales literature, or other advertising record relating to a security or investment advice, addressed or intended for distribution to prospective investors, including clients or prospective clients of a person registered or required to be registered as an investment adviser under this chapter.
- (b) This section does not apply to sales and advertising literature specified in subsection (a) of this section which relates to a federal covered security, a federal covered investment adviser, or a security or transaction exempted by [section 5201](#), [5202](#), or [5203](#) of this chapter except as required pursuant to subdivision 5201(7) of this chapter.

§ 5505. Misleading filings

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

§ 5506. Misrepresentations concerning registration or exemption

The filing of an application for registration, a registration statement, a notice filing under this chapter, the registration of a person, the notice filing by a person, or the registration of a security under this chapter does not constitute a finding by the commissioner that a record filed under this chapter is true, complete, and not misleading. The filing or registration or the availability of an exemption, exception, preemption, or exclusion for a security or a transaction does not mean that the commissioner has passed upon the merits or qualifications of, or recommended or given approval to, a person, security, or transaction. It is unlawful to make, or cause to be made, to a purchaser, customer, client, or prospective customer or client a representation inconsistent with this section.

§ 5507. Qualified immunity

A broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative is not liable to another broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative for defamation relating to a statement that is contained in a record required by the commissioner, or designee of the commissioner, the Securities and Exchange Commission, or a self-regulatory organization, unless the person knew, or should have known at the time that the statement was made, that it was false in a material respect or the person acted in reckless disregard of the statement's truth or falsity.

§ 5508. Criminal penalties

(a)(1) Upon conviction, any person shall be fined not more than \$100,000.00 or imprisoned not more than five years, or both who:

(A) willfully violates this chapter, or a rule adopted or order issued under this chapter, except [section 5504](#) of this chapter or the notice filing requirements of [section 5302](#) or [5405](#) of this chapter; or

(B) willfully violates [section 5505](#) of this chapter knowing the statement made to be false or misleading in a material respect.

(2) An individual convicted of violating a rule or order under this chapter may be fined, but may not be imprisoned, if the individual did not have knowledge of the rule or order.

(3) For purposes of subdivision (a)(1) of this subsection, the term "willfully" means purposely or willingly committing the act or making the omission and does not require an intent to violate the law or to injure another or to acquire any advantage.

(b) The attorney general with or without a reference from the commissioner may institute criminal proceedings under this chapter.

(c) This chapter does not limit the power of this state to punish a person for conduct that constitutes a crime under other laws of this state.

§ 5509. Civil liability

(a) Enforcement of civil liability under this section is subject to the Securities Litigation Uniform Standards Act of 1998.

(b) A person is liable to the purchaser if the person sells a security in violation of [sections 5301](#), [5501](#), or [5502](#) of this chapter, the purchaser not knowing the untruth or omission or deceptive nature of the conduct and the seller not sustaining the burden of proof that the seller did not know and, in the exercise of reasonable care, could not have known of the untruth or omission or deceptive nature of the conduct. An action under this subsection is governed by the following:

(1) The purchaser may maintain an action to recover the consideration paid for the security, less the amount of any income received on the security, and interest at the legal rate of interest from the date of the purchase, costs, and reasonable attorneys' fees determined by the court, upon the tender of the security, or for actual damages as provided in subdivision (3) of this subsection.

(2) The tender referred to in subdivision (1) of this subsection may be made any time before entry of judgment. Tender requires only notice in a record of ownership of the security and willingness to exchange the security for the amount specified. A purchaser that no longer owns the security may recover actual damages as provided in subdivision (3) of this subsection.

(3) Actual damages in an action arising under this subsection 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 of interest from the date of the purchase, costs, and reasonable attorneys' fees determined by the court.

(c) A person is liable to the seller if the person buys a security in violation of [section 5501](#) or [5502](#) of this chapter, the seller not knowing of the untruth or omission or deceptive nature of the conduct, and the purchaser not sustaining the burden of proof that the purchaser did not know, and in the exercise of reasonable care could not have known, of the untruth or omission or deceptive nature of the conduct. An action under this subsection is governed by the following:

(1) The seller may maintain an action to recover the security, and any income received on the security, costs, and reasonable attorneys' fees determined by the court, upon the tender of the purchase price, or for actual damages as provided in subdivision (3) of this subsection.

(2) The tender referred to in subdivision (1) of this subsection may be made any time before entry of judgment. Tender requires only notice in a record of the present ability to pay the amount tendered and willingness to take delivery of the security for the amount specified. If the purchaser no longer owns the security, the seller may recover actual damages as provided in subdivision (3) of this subsection.

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

(d) A person acting as a broker-dealer or agent that sells or buys a security in violation of subsection 5401(a) or 5402(a) or [section 5506](#) of this chapter is liable to the customer. The customer, if a purchaser, may maintain an action for recovery of actual damages as specified in subdivisions (b)(1) through (3) of this section, or, if a seller, for a remedy as specified in subdivisions (c)(1) through (3) of this section.

(e) A person acting as an investment adviser or investment adviser representative that provides investment advice for compensation in violation of subsection 5403(a) or 5404(a) or [section 5506](#) of this chapter is liable to the client. The client may maintain an action to recover the consideration paid for the advice, interest at the legal rate of interest from the date of payment, costs, and reasonable attorneys' fees determined by the court.

(f) A person that receives directly or indirectly any consideration for providing investment advice to another person and that employs a device, scheme, or artifice to defraud the other person or engages in an act, practice, or course of business that operates or would operate as a fraud or deceit on the other person or otherwise violates [section 5502](#) of this chapter is liable to the other person. An action under this subsection is governed by the following:

(1) The person wronged may maintain an action to recover the consideration paid for the advice and the amount of any actual damages caused by the fraudulent conduct, interest at the legal rate of interest from the date of the fraudulent conduct, costs, and reasonable attorneys' fees determined by the court, less the amount of any income received as a result of the fraudulent conduct.

(2) This subsection does not apply to a broker-dealer or its agents if the investment advice provided is solely

incidental to transacting business as a broker-dealer, and no special compensation is received for the investment advice.

(g) The following persons are liable jointly and severally with and to the same extent as persons liable under subsections (b) through (f) of this section:

(1) a person that directly or indirectly controls a person liable under subsections (b) through (f) of this section, unless the controlling person sustains the burden of proof that the person did not know, and in the exercise of reasonable care could not have known, of the existence of conduct by reason of which the liability is alleged to exist;

(2) an individual who is a managing partner, executive officer, or director of a person liable under subsections (b) through (f) of this section, including an individual having a similar status or performing similar functions, unless the individual sustains the burden of proof that the individual did not know and, in the exercise of reasonable care could not have known, of the existence of conduct by reason of which the liability is alleged to exist;

(3) an individual who is an employee of or associated with a person liable under subsections (b) through (f) of this section and who materially aids the conduct giving rise to the liability, unless the individual sustains the burden of proof that the individual did not know and, in the exercise of reasonable care could not have known, of the existence of conduct by reason of which the liability is alleged to exist; and

(4) a person that is a broker-dealer, agent, investment adviser, or investment adviser representative that materially aids the conduct giving rise to the liability under subsections (b) through (f) of this section, unless the person sustains the burden of proof that the person did not know and, in the exercise of reasonable care could not have known, of the existence of conduct by reason of which liability is alleged to exist.

(h) A person liable under this section has a right of contribution as in cases of contract against any other person liable under this section for the same conduct.

(i) A cause of action under this section survives the death of an individual who might have been a plaintiff or defendant.

(j) A person may not obtain relief:

(1) under subsection (b) of this section for violation of [section 5301](#) of this chapter, or under subsection (d) or (e) of this section, unless the action is instituted within one year after the violation occurred; or

(2) under subsection (b) of this section, other than for violation of [section 5301](#) of this chapter, or under subsection (c) or (f) of this section, unless the action is instituted within the earlier of two years after discovery of the facts constituting the violation or five years after the violation.

(k) A person that has made, or has engaged in the performance of, a contract in violation of this chapter or a rule adopted or order issued under this chapter, or that has acquired a purported right under the contract with knowledge of conduct by reason of which its making or performance was in violation of this chapter, may not base an action on the contract.

(l) A condition, stipulation, or provision binding a person purchasing or selling a security or receiving investment advice to waive compliance with this chapter or a rule adopted or order issued under this chapter is void.

(m) The rights and remedies provided by this chapter are in addition to any other rights or remedies that may exist, but this chapter does not create a cause of action not specified in this section or subsection 5411(e) of this chapter.

§ 5510. Rescission offers

(a) Unless a purchaser, seller, or recipient of investment advice provides written notice of a dispute to the seller, purchaser, or provider of investment advice in conformity to subsection (b) of this section, such purchaser, seller, or recipient of investment advice may not maintain an action under [section 5509](#) of this chapter if:

(1) The purchaser, seller, or recipient of investment advice receives in a record, before the action is instituted:

(A) an offer stating the respect in which liability under [section 5509](#) of this chapter may have arisen and fairly advising the purchaser, seller, or recipient of investment advice of that person's rights in connection with the offer, and any financial or other information necessary to correct all material misrepresentations or omissions in the information that was required by this chapter to be furnished to that person at the time of the purchase, sale, or investment advice;

(B) if the basis for relief under this section may have been a violation of subsection 5509(b) of this chapter, an offer to repurchase the security for cash, payable on delivery of the security, equal to the consideration paid, and interest at the legal rate of interest from the date of the purchase, less the amount of any income received on the security, or, if the purchaser no longer owns the security, an offer to pay the purchaser upon acceptance of the offer damages in an 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 of interest from the date of the purchase in cash equal to the damages computed in the manner provided in this subsection;

(C) if the basis for relief under this section may have been a violation of subsection 5509(c) of this chapter, an offer to tender the security, on payment by the seller of an amount equal to the purchase price paid, less income received on the security by the purchaser and interest at the legal rate of interest from the date of the sale; or if the purchaser no longer owns the security, an offer to pay the seller upon acceptance of the offer, in cash, damages in the amount of the difference between the price at which the security was purchased and the value the security would have had at the time of the purchase in the absence of the purchaser's conduct that may have caused liability and interest at the legal rate of interest from the date of the sale;

(D) if the basis for relief under this section may have been a violation of subsection 5509(d) of this chapter; and if the customer is a purchaser, an offer to pay as specified in subdivision (B) of this subdivision (1); or, if the customer is a seller, an offer to tender or to pay as specified in subdivision (C) of this subdivision (1);

(E) if the basis for relief under this section may have been a violation of subsection 5509(e) of this chapter, an offer to reimburse in cash the consideration paid for the advice and interest at the legal rate of interest from the date of payment; or

(F) if the basis for relief under this section may have been a violation of subsection 5509(f) of this chapter, an offer to reimburse in cash the consideration paid for the advice, the amount of any actual damages that may have been caused by the conduct, and interest at the legal rate of interest from the date of the violation causing the loss;

(2) the offer under subdivision (1) of this subsection states that it must be accepted by the purchaser, seller, or recipient of investment advice within 30 days after the date of its receipt by the purchaser, seller, or recipient of investment advice or any shorter period, of not less than three days, that the commissioner, by order, specifies;

(3) the offeror has the present ability to pay the amount offered or to tender the security under subdivision (1) of this subsection;

(4) the offer under subdivision (1) of this subsection is delivered to the purchaser, seller, or recipient of investment advice, or sent in a manner that ensures receipt by the purchaser, seller, or recipient of investment advice; and

(5) the purchaser, seller, or recipient of investment advice that accepts the offer under subdivision (1) of this subsection in a record within the period specified under subdivision (2) of this subsection is paid in accordance with the terms of the offer.

(b) When a purchaser, seller, or recipient of investment advice provides written notice of a dispute containing a description of the nature of the dispute, the dates on which it occurred, a listing of the persons or entities involved to the seller, purchaser, or provider of investment advice, the person receiving such notice shall have 90 days to resolve the dispute within the terms of subsection (a) of this section. After the expiration of 90 days from the receipt of such notice, the terms of subsection (a) shall not apply to prohibit the pursuit of relief by such purchaser, seller, or recipient of investment advice under [section 5509](#) unless the terms of subsection (a) have been satisfied. Such notice shall be sent via certified mail, return receipt requested, or via a national courier service to the principal office and contact person of the purchaser, seller, or provider of investment advice, which:

(1) in the case of a broker-dealer firm or its agent, shall be the principal office and contact person for the firm as set forth in such firm's form B-D registration on file with the commissioner (or any similar registration form adopted by the commissioner hereafter); and

(2) in the case of an investment adviser firm or its representative, shall be the principal office and contact person for the firm as set forth in such firm's form ADV registration or notice filing on file with the commissioner (or any similar registration or notification form adopted by the commissioner hereafter).

Subchapter 6. Administration and Judicial Review

§ 5601. Administration

(a) The commissioner shall administer this chapter.

(b) It is unlawful for the commissioner or an officer, employee, or designee of the commissioner to use for per-

sonal benefit or the benefit of others records or other information obtained by or filed with the commissioner that are not public under subsection 5607(b) of this chapter. This chapter does not authorize the commissioner or an officer, employee, or designee of the commissioner to disclose the record or information, except in accordance with [section 5602](#), subsection 5607(c), or [section 5608](#) of this chapter.

(c) This chapter does not create or diminish a privilege or exemption that exists at common law, by statute or rule, or otherwise.

(d) The commissioner may develop and implement investor education initiatives to inform the public about investing in securities, with particular emphasis on the prevention and detection of securities fraud. In developing and implementing these initiatives, the commissioner may collaborate with public and nonprofit organizations with an interest in investor education. The commissioner may accept a grant or donation from a person that is not affiliated with the securities industry or from a nonprofit organization, regardless of whether the organization is affiliated with the securities industry, to develop and implement investor education initiatives. This subsection does not authorize the commissioner to require participation or monetary contributions of a registrant in an investor education program.

(e) The securities investor education and training special fund, pursuant to subchapter 5 of chapter 7 of Title 32 is created to provide funds for the purposes specified in subsection (d) of this section. All monies received by the state by reason of grant or donation for investor education initiatives pursuant to subsection (d) of this section shall be deposited into the securities investor education special fund. Interest earned on the fund shall be retained in the fund.

§ 5602. Investigations and subpoenas

(a) The commissioner may:

(1) conduct public or private investigations within or outside this state which the commissioner considers necessary or appropriate to determine whether a person has violated, is violating, or is about to violate this chapter or a rule adopted or an order issued under this chapter, or to aid in the enforcement of this chapter or in the adoption of rules and forms under this chapter;

(2) require or permit a person to testify, file a statement, or produce a record, under oath or otherwise as the commissioner determines, as to all the facts and circumstances concerning a matter to be investigated or about which an action or proceeding is to be instituted; and

(3) publish a record concerning an action, a proceeding, or an investigation under, or a violation of, this chapter or a rule adopted or an order issued under this chapter if the commissioner determines it is necessary or appropriate in the public interest and for the protection of investors.

(b) For the purpose of an investigation under this chapter, the commissioner or his or her designated officer may administer oaths and affirmations, subpoena witnesses, seek compulsion of attendance, take evidence, require the filing of statements, and require the production of any records that the commissioner considers relevant or material to the investigation. Each witness who appears before the commissioner under subpoena shall receive a fee and mileage as provided for witnesses in civil cases in superior courts; provided, however, any person sub-

ject to regulation under this title shall not be eligible to receive fees or mileage under this section.

(c) If a person does not appear or refuses to testify, file a statement, produce records, or otherwise does not obey a subpoena as required by the commissioner under this chapter, the commissioner may, at the commissioner's discretion, assess a penalty pursuant to the provisions of [8 V.S.A. § 13\(b\)](#), or may apply to the superior court of Washington County or a court of another state to enforce compliance. The court may:

- (1) hold the person in contempt;
- (2) order the person to appear before the commissioner;
- (3) order the person to testify about the matter under investigation or in question;
- (4) order the production of records;
- (5) grant injunctive relief, including restricting or prohibiting the offer or sale of securities or the providing of investment advice;
- (6) impose a civil penalty of not less than \$5,000.00 and not greater than \$25,000.00 for each violation; and
- (7) grant any other necessary or appropriate relief.

(d) This section does not preclude a person from applying to the superior court of Washington County or a court of another state for relief from a request to appear, testify, file a statement, produce records, or obey a subpoena.

(e) An individual is not excused from attending, testifying, filing a statement, producing a record or other evidence, or obeying a subpoena of the commissioner under this chapter or in an action or proceeding instituted by the commissioner under this chapter on the ground that the required testimony, statement, record, or other evidence, directly or indirectly, may tend to incriminate the individual or subject the individual to a criminal fine, penalty, or forfeiture. If the individual refuses to testify, file a statement, or produce a record or other evidence on the basis of the individual's privilege against self-incrimination, the commissioner may apply to the superior court of Washington County to compel the testimony, the filing of the statement, the production of the record, or the giving of other evidence. The testimony, record, or other evidence compelled under such an order may not be used, directly or indirectly, against the individual in a criminal case, except in a prosecution for perjury or contempt or otherwise failing to comply with the order.

(f) At the request of the securities regulator of another state or a foreign jurisdiction, the commissioner may provide assistance if the requesting regulator states that it is conducting an investigation to determine whether a person has violated, is violating, or is about to violate a law or rule of the other state or foreign jurisdiction relating to securities matters that the requesting regulator administers or enforces. The commissioner may provide the assistance by using the authority to investigate and the powers conferred by this section as the commissioner determines is necessary or appropriate. The assistance may be provided without regard to whether the conduct described in the request would also constitute a violation of this chapter or other law of this state if occurring in this state. In deciding whether to provide the assistance, the commissioner may consider whether the requesting regulator is permitted and has agreed to provide assistance reciprocally within its state or foreign jurisdiction to the commissioner when requested, whether compliance with the request would violate or prejudice the public

policy of this state, and the availability of resources and employees of the commissioner to carry out the request for assistance.

§ 5603. Civil enforcement

(a) If the commissioner believes that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this chapter or a rule adopted or order issued under this chapter or that a person has, is, or is about to engage in an act, practice, or course of business that materially aids a violation of this chapter or a rule adopted or order issued under this chapter, the commissioner may maintain an action in the superior court of Washington County to enjoin the act, practice, or course of business and to enforce compliance with this chapter or a rule adopted or order issued under this chapter.

(b) In an action under this section and on a proper showing, the court may:

(1) issue a permanent or temporary injunction, restraining order, or declaratory judgment;

(2) order other appropriate or ancillary relief, which may include:

(A) an asset freeze, accounting, writ of attachment, writ of general or specific execution, and appointment of a receiver or conservator, that may be the commissioner, for the defendant or the defendant's assets;

(B) ordering the commissioner to take charge and control of a defendant's property, including investment accounts and accounts in a depository institution, rents, and profits; to collect debts; and to acquire and dispose of property;

(C) imposing a civil penalty up to \$15,000.00 for each violation and not more than \$1,000,000.00 for more than one violation; an order of rescission, restitution, or disgorgement directed to a person that has engaged in an act, practice, or course of business constituting a violation of this chapter or the predecessor act or a rule adopted or an order issued under this chapter or the predecessor act. The limitations on civil penalties contained in this subdivision shall not apply to settlement agreements; and

(D) ordering the payment of prejudgment and postjudgment interest; or

(3) order such other relief as the court considers appropriate.

(c) The commissioner may not be required to post a bond in an action or proceeding under this chapter.

§ 5604. Administrative enforcement

(a) If the commissioner determines that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this chapter or a rule adopted or order issued under this chapter or that a person has materially aided, is materially aiding, or is about to materially aid an act, practice, or course of business constituting a violation of this chapter or a rule adopted or order issued under this chapter, the commissioner may:

(1) issue an order directing the person to cease and desist from engaging in the act, practice, or course of busi-

ness or to take other action necessary or appropriate to comply with this chapter;

(2) issue an order denying, suspending, revoking, or conditioning the exemptions for a broker-dealer under subdivision 5401(b)(1)(D) or (F) of this chapter or an investment adviser under subdivision 5403(b)(1)(C) of this chapter; or

(3) issue an order under [section 5204](#) of this chapter.

(b) An order under subsection (a) of this section is effective on the date of issuance. Upon issuance of the order, the commissioner shall promptly serve each person subject to the order with a copy of the order and a notice that the order has been entered. The order must include a statement of any civil penalty or costs of investigation the commissioner will seek, a statement of the reasons for the order, and notice that, within 15 days after receipt of a request in a record from the person, the matter will be scheduled for a hearing. If a person subject to the order does not request a hearing and none is ordered by the commissioner within 30 days after the date of service of the order, the order, including the imposition of a civil penalty or requirement for payment of the costs of investigation sought in a statement in the order, becomes final as to that person by operation of law. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend it until final determination.

(c) If a hearing is requested or ordered pursuant to subsection (b) of this section, a hearing must be held in accordance with the provisions of chapter 25 of Title 3 (Administrative Procedure Act). A final order may not be issued unless the commissioner makes findings of fact and conclusions of law in a record in accordance with the requirements of [section 812 of Title 3](#). The final order may make final, vacate, or modify the order issued under subsection (a) of this section.

(d) In a final order under subsection (c) of this section, the commissioner may impose a civil penalty of not more than \$15,000.00 for each violation and not more than \$1,000,000.00 for more than one violation. The commissioner may also require a person to make restitution or provide disgorgement of any sums shown to have been obtained in violation of this chapter, plus interest at the legal rate. The limitations on civil penalties contained in this subsection shall not apply to settlement agreements.

(e) For purposes of determining any sanction to be imposed under subsections (a) through (d) of this section, the commissioner shall consider among other factors, the frequency and persistence of the conduct constituting a violation of this chapter or a rule or order of the commissioner under this chapter and the number of persons adversely affected by the conduct, and the resources of the person committing the violation.

(f) In a final order, the commissioner may charge the actual cost of an investigation or proceeding for a violation of this chapter or a rule adopted or order issued under this chapter.

(g) If a petition for judicial review of a final order is not filed in accordance with [section 5609](#) of this chapter, the commissioner may file a certified copy of the final order with the clerk of a court of competent jurisdiction. The order so filed has the same effect as a judgment of the court and may be recorded, enforced, or satisfied in the same manner as a judgment of the court.

(h) If a person does not comply with an order under this section, the commissioner may petition a court of com-

petent jurisdiction to enforce the order. The court may not require the commissioner to post a bond in an action or proceeding under this section. If the court finds, after service and opportunity for hearing, that the person was not in compliance with the order, the court may adjudge the person in civil contempt of the order. The court may impose a further civil penalty against the person for contempt in an amount not less than \$5,000.00 but not greater than \$25,000.00 for each violation and may grant any other relief the court determines is just and proper in the circumstances.

§ 5605. Rules, forms, orders, interpretative opinions, and hearings

(a) The commissioner may:

(1) issue forms and orders and, after notice and comment and in accordance with the provisions of chapter 25 of Title 3 (Administrative Procedure Act), may adopt and amend rules necessary or appropriate to carry out this chapter and may repeal rules, including rules and forms governing registration statements, applications, notice filings, reports, and other records;

(2) by rule, define terms, whether or not used in this chapter, but those definitions may not be inconsistent with this chapter; and

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

(b) Under this chapter, a rule or form may not be adopted or amended, or an order issued or amended, unless the commissioner finds that the rule, form, order, or amendment is necessary or appropriate in the public interest or for the protection of investors and is consistent with the purposes intended by this chapter. In adopting, amending, and repealing rules and forms, [section 5608](#) of this chapter applies in order to achieve uniformity among the states and coordination with federal laws in the form and content of registration statements, applications, reports, and other records, including the adoption of uniform rules, forms, and procedures.

(c) Subject to [15 U.S.C. § 80b-15\(h\)](#) and [15 U.S.C. § 80b-222](#), the commissioner may require that a financial statement filed under this chapter be prepared in accordance with generally accepted accounting principles in the United States and comply with other requirements specified by rule adopted or order issued under this chapter. A rule adopted or order issued under this chapter may establish:

(1) subject to [15 U.S.C. § 80b-15\(h\)](#), the form and content of financial statements required under this chapter;

(2) whether unconsolidated financial statements must be filed; and

(3) whether required financial statements must be audited by an independent certified public accountant.

(d) The commissioner may in the commissioner's sole discretion provide interpretative opinions or issue determinations that the commissioner will not institute a proceeding or an action under this chapter against a specified person for engaging in a specified act, practice, or course of business if the determination is consistent with this chapter. A rule adopted or order issued under this chapter may establish a reasonable charge for interpretative opinions or determinations that the commissioner will not institute an action or a proceeding under this chapter.

(e) A penalty under this chapter may not be imposed for and liability does not arise from conduct that is engaged

in or omitted in good faith believing it conforms to a rule, form, or order of the commissioner under this chapter.

(f) A hearing in an administrative proceeding under this chapter must be conducted in public unless the commissioner for good cause consistent with this chapter determines that the hearing will not be so conducted.

§ 5606. Administrative files and opinions

(a) The commissioner shall maintain, or designate a person to maintain, a register of applications for registration of securities; registration statements; notice filings; applications for registration of broker-dealers, agents, investment advisers, and investment adviser representatives; notice filings by federal covered investment advisers that are or have been effective under this chapter or the predecessor act; notices of claims of exemption from registration or notice filing requirements contained in a record; orders issued under this chapter or the predecessor act; and interpretative opinions or no action determinations issued under this chapter.

(b) The commissioner shall make all rules, forms, interpretative opinions, and orders available to the public.

(c) The commissioner shall furnish a copy of a record that is a public record or a certification that the public record does not exist to a person that so requests. A rule adopted under this chapter may establish a reasonable charge for furnishing the record or certification. A copy of the record certified or a certificate by the commissioner of a record's nonexistence is prima facie evidence of a record or its nonexistence.

§ 5607. Public records; confidentiality

(a) Except as otherwise provided in subsection (b) of this section, records obtained by the commissioner or filed under this chapter, including a record contained in or filed with a registration statement, application, notice filing, or report, are public records and are available for public examination.

(b) The following records are not public records and are not available for public examination under subsection (a) of this section:

(1) a record obtained by the commissioner in connection with an audit or inspection under subsection 5411(d) of this chapter or an investigation under [section 5602](#) of this chapter;

(2) a part of a record filed in connection with a registration statement under [sections 5301](#) and [5303](#) through [5305](#) of this chapter or a record under subsection 5411(d) of this chapter that contains trade secrets or confidential information if the person filing the registration statement or report has asserted a claim of confidentiality or privilege that is authorized by law;

(3) a record that is not required to be provided to the commissioner or filed under this chapter and is provided to the commissioner only on the condition that the record will not be subject to public examination or disclosure;

(4) a nonpublic record received from a person specified in subsection 5608(a) of this chapter;

(5) any Social Security number, residential address unless used as a business address, and residential telephone number unless used as a business telephone number, contained in a record that is filed;

(6) a record obtained by the commissioner through a designee of the commissioner that a rule or order under this chapter determines has been:

(A) expunged from the commissioner's records by the designee; or

(B) determined to be nonpublic or nondisclosable by that designee if the commissioner finds the determination to be in the public interest and for the protection of investors; and

(7) records otherwise exempt from public disclosure pursuant to [1 V.S.A. § 317\(c\)](#).

(c) If disclosure is for the purpose of a civil, administrative, or criminal investigation, action, or proceeding or to a person specified in subsection 5608(a) of this chapter, the commissioner may disclose a record obtained in connection with an audit or inspection under subsection 5411(d) of this chapter or a record obtained in connection with an investigation under [section 5602](#) of this chapter.

§ 5608. Uniformity and cooperation with other agencies

(a) The commissioner shall, in his or her discretion, cooperate, coordinate, consult, and, subject to [section 5607](#) of this chapter, share records and information with the securities regulator of another state, Canada, a Canadian province or territory, a foreign jurisdiction, the Securities and Exchange Commission, the United States Department of Justice, the Commodity Futures Trading Commission, the Federal Trade Commission, the Securities Investor Protection Corporation, a self-regulatory organization, a national or international organization of securities regulators, a federal or state banking and insurance regulator, and a governmental law enforcement agency to effectuate greater uniformity in securities matters among the federal government, self-regulatory organizations, states, and foreign governments.

(b) In cooperating, coordinating, consulting, and sharing records and information under this section and in acting by rule, order, or waiver under this chapter, the commissioner shall, in his or her discretion, take into consideration in carrying out the public interest the following general policies:

(1) maximizing effectiveness of regulation for the protection of investors;

(2) maximizing uniformity in federal and state regulatory standards; and

(3) minimizing burdens on the business of capital formation, without adversely affecting essentials of investor protection.

(c) The cooperation, coordination, consultation, and sharing of records and information authorized by this section includes:

(1) establishing or employing one or more designees as a central depository for registration and notice filings under this chapter and for records required or allowed to be maintained under this chapter;

(2) developing and maintaining uniform forms;

(3) conducting a joint examination or investigation;

- (4) holding a joint administrative hearing;
- (5) instituting and prosecuting a joint civil or administrative proceeding;
- (6) sharing and exchanging personnel;
- (7) coordinating registrations under [sections 5301](#) and [5401](#) through [5404](#) of this chapter and exemptions under [section 5203](#) of this chapter;
- (8) sharing and exchanging records, subject to [section 5607](#) of this chapter;
- (9) formulating rules, statements of policy, guidelines, forms, and interpretative opinions and releases;
- (10) formulating common systems and procedures;
- (11) notifying the public of proposed rules, forms, statements of policy, and guidelines;
- (12) attending conferences and other meetings among securities regulators, which may include representatives of governmental and private sector organizations involved in capital formation, deemed necessary or appropriate to promote or achieve uniformity; and
- (13) developing and maintaining a uniform exemption from registration for small issuers, and taking other steps to reduce the burden of raising investment capital by small businesses.

§ 5609. Judicial review

Any person aggrieved and directly affected by a final order issued by the commissioner under this chapter may appeal to the superior court of Washington County. The appeal shall be heard by the court de novo. The filing of an appeal shall not stay enforcement of the order, but the court may order a stay on such terms as it deems proper.

§ 5610. Jurisdiction

- (a) [Sections 5301](#) and [5302](#), subsections [5401\(a\)](#), [5402\(a\)](#), [5403 \(a\)](#), and [5404\(a\)](#) and [sections 5501](#), [5506](#), [5509](#), and [5510](#) of this chapter do not apply to a person that sells or offers to sell a security unless the offer to sell or the sale is made in this state or the offer to purchase or the purchase is made and accepted in this state.
- (b) Subsections [5401\(a\)](#), [5402\(a\)](#), [5403\(a\)](#), [5404\(a\)](#), and [sections 5501](#), [5506](#), [5509](#), and [5510](#) of this chapter do not apply to a person that purchases or offers to purchase a security unless the offer to purchase or the purchase is made in this state or the offer to sell or the sale is made and accepted in this state.
- (c) For the purpose of this section, an offer to sell or to purchase a security is made in this state, whether or not either party is then present in this state, if the offer:
 - (1) originates from within this state; or
 - (2) is directed by the offeror to a place in this state and received at the place to which it is directed.

(d) For the purpose of this section, an offer to purchase or to sell is accepted in this state, whether or not either party is then present in this state, if the acceptance:

(1) is communicated to the offeror in this state and the offeree reasonably believes the offeror to be present in this state and the acceptance is received at the place in this state to which it is directed; and

(2) has not previously been communicated to the offeror, orally or in a record, outside this state.

(e) An offer to sell or to purchase is not made in this state when a publisher circulates or there is circulated on the publisher's behalf in this state a bona fide newspaper or other publication of general, regular, and paid circulation that is not published in this state, or that is published in this state but has had more than two-thirds of its circulation outside this state during the previous 12 months or when a radio or television program or other electronic communication originating outside this state is received in this state. A radio or television program or other electronic communication is considered as having originated in this state if either the broadcast studio or the originating source of transmission is located in this state, unless:

(1) the program or communication is syndicated and distributed from outside this state for redistribution to the general public in this state;

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

(3) the program or communication is an electronic communication that originates outside this state and is captured for redistribution to the general public in this state by a community antenna or cable, radio, cable television, or other electronic system; or

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

(f) Subsections 5403(a), 5404(a), and 5405(a) and [sections 5502, 5505, and 5506](#) of this chapter apply to a person if the person engages in an act, practice, or course of business instrumental in effecting prohibited or actionable conduct in this state, whether or not either party is then present in this state.

(g) This section does not limit the scope of personal jurisdiction to the extent such jurisdiction may be established pursuant to [12 V.S.A. § 913](#) (the Vermont "long arm" statute).

§ 5611. Service of process

(a) A consent to service of process complying with this section required by this chapter must be signed and filed in the form required by a rule or order under this chapter. A consent appointing the commissioner the person's agent for service of process in a noncriminal action or proceeding against the person, or the person's successor or personal representative under this chapter or a rule adopted or order issued under this chapter after the consent is filed, has the same force and validity as if the service were made personally on the person filing the consent. A person that has filed a consent complying with this subsection in connection with a previous application for registration or notice filing need not file an additional consent.

(b) If a person, including a nonresident of this state, engages in an act, practice, or course of business prohibited or made actionable by this chapter or a rule adopted or order issued under this chapter and the person has not filed a consent to service of process under subsection (a) of this section, the act, practice, or course of business constitutes the appointment of the commissioner as the person's agent for service of process in a noncriminal action or proceeding against the person or the person's successor or personal representative.

(c) Service under subsection (a) or (b) of this section may be made by providing a copy of the process to the office of the commissioner, but it is not effective unless:

(1) the plaintiff, which may be the commissioner, promptly sends notice of the service and a copy of the process, return receipt requested, to the defendant or respondent at the address set forth in the consent to service of process or, if a consent to service of process has not been filed, at the last known address or takes other reasonable steps to give notice; and

(2) the plaintiff files an affidavit of compliance with this subsection in the action or proceeding on or before the return day of the process, if any, or within the time that the court or the commissioner in a proceeding before the commissioner allows.

(d) Service pursuant to subsection (c) of this section may be used in a proceeding before the commissioner or by the commissioner in a civil action in which the commissioner is the moving party.

(e) If process is served under subsection (c) of this section, the court or the commissioner in a proceeding before the commissioner shall order continuances as are necessary or appropriate to afford the defendant or respondent reasonable opportunity to defend.

§ 5612. Severability clause

If any provision of this chapter or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this chapter that can be given effect without the invalid provision or application, and to this end, the provisions of this chapter are severable.

§ 5613. Collection and disposition of fees

(a) The fees provided for in this chapter shall be collected by the commissioner and covered into the state treasury except as provided in subsections (b) and (e) of this section.

(b) There is hereby created a fund to be known as the securities regulation and supervision fund. The fund shall be used for the purpose of providing the commissioner the means to administer the provisions of this chapter, and for the support of the corporate records division and other corporate regulatory activities of the office of the secretary of state. All agent and investment adviser representative fees received pursuant to subsections 5410(b) and (d) of this title, and all examination fees and investigation expenses received pursuant to [section 5614](#) of this title shall be transmitted to the state treasurer and credited to this fund. All payments from the securities regulatory and supervision fund for the maintenance of staff and associated expenses, including contractual services as necessary, shall be disbursed from the state treasury only upon warrants issued by the commissioner of finance and management, after receipt of proper documentation regarding services rendered and expenses incurred. The

fund shall be administered pursuant to subchapter 5 of chapter 7 of Title 32.

(c) At the end of each fiscal year, the balance in the securities regulatory and supervision fund shall be transferred to the general fund.

(d) The commissioner of finance and management may anticipate receipts to the securities regulatory and supervision fund and issue warrants based thereon.

(e) In any fiscal year in which revenues deposited in the banking supervision fund established by subsection 19(f) of Title 8 are insufficient to support the annual appropriation to the banking division, the commissioner may transfer no more than a sum necessary to meet the shortfall from the fund established by this section to the banking supervision fund.

§ 5614. Recovery of expenses

(a) Whenever it is necessary for the commissioner to incur any expense in connection with any application, notification, registration, license, investigation, or administrative proceeding, the commissioner may require that any person who is the subject of such application, notification, registration, license, investigation, or administrative proceeding pay the reasonable costs incurred by the department.

(b) The commissioner may impose a reasonable fee for the expense of conducting an examination, audit, or inspection under this chapter, including, but not limited to reimbursement to the commissioner for actual traveling and lodging expenses of the commissioner or employee in connection with such examination, audit, or inspection.

(c) The provisions of this section are in addition to, and not in limitation of, any other provision of this chapter regarding fees and recovery of expenses.

§ 5615. Philanthropy protection act of 1995

The state of Vermont is hereby declared to be exempt from the provisions of the Philanthropy Protection Act of 1995 (P.L. 104-62, Section 6(c)).

Current through the laws of the Adjourned Session of the 2007-2008
(2008), including Act Nos. 83-212.

Vermont General Assembly

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