



State of Tennessee

PUBLIC CHAPTER NO. 424

SENATE BILL NO. 1192

By Norris, Gardenhire, Crowe, Bowling, Niceley, Roberts, Stevens

Substituted for: House Bill No. 304

By Hawk, Casada, Curcio, Matheny

AN ACT to amend Tennessee Code Annotated, Title 48, Chapter 1, Part 1, relative to the regulation of securities.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 48-1-102, is amended by deleting the section in its entirety and substituting instead the following:

As used in this part, unless the context otherwise requires:

(1) "Accredited investor" means accredited investor, as that term is defined in Rule 501 of Regulation D under the Securities Act of 1933, codified in 17 CFR 230.501, as amended;

(2) "Affiliate" means a person who directly, or indirectly through one (1) or more intermediaries, controls, or is controlled by, or is under common control with, another person;

(3) "Agent" means any individual, other than a broker-dealer, who represents a broker-dealer in effecting or attempting to effect purchases or sales of securities from, in, or into this state. A partner, officer, director, or manager of a broker-dealer, or a person occupying similar status or performing similar functions, is an agent only if such person otherwise comes within this definition or receives compensation specifically related to purchases or sales of securities from, in, or into this state. "Agent" does not include such other persons not within the intent of this subdivision (3) as the commissioner may, by rule, exempt from this definition as not in the public interest and necessary for the protection of investors;

(4) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others, or any person engaged in the business of buying or selling securities issued by one (1) or more other persons for such person's own account and as part of a regular business rather than in connection with such person's investment activities. "Broker-dealer" does not include:

(A) Issuers, except to the extent provided in § 48-1-110(f);

(B) An agent;

(C) An institutional investor;

(D) A person who has no place of business in this state and who is registered as a broker-dealer with the securities and exchange commission or the Financial Industry Regulatory Authority (FINRA) or any successor regulatory entity if:

(i) The person effects transactions in this state exclusively with or through:

(a) The issuers of the securities involved in the transactions;

(b) Other broker-dealers; or

(c) Institutional investors; or

(ii) During any period of twelve (12) consecutive months, the person does not effect more than fifteen (15) transactions in securities from, in, or into this state (other than to persons specified in subdivision (4)(D)(i)); or

(E) Such other persons not within the intent of this subdivision (4) as the commissioner may by rule exempt from this definition as not in the public interest and necessary for the protection of investors;

(5) "Canadian retirement account" means a trust or other arrangement, including, but not limited to, a "registered retirement savings plan" or "registered retirement income fund" administered under Canadian law, that is managed by the natural person who contributes to, or is or will be entitled to receive the income and assets from such account;

(6) "Commissioner" means the commissioner of commerce and insurance;

(7) "Control," including "controlling," "controlled by," and "under common control with," means the possession, directly or indirectly, of the power to direct or compel the direction of the management or policies of a person, whether through the ownership of voting securities, by contract, or otherwise;

(8) "Covered security" means a security that is, or upon completion of a transaction will be, a covered security under § 18(b) of the Securities Act of 1933, codified in 15 U.S.C. § 77r(b), as amended, or rules or regulations adopted pursuant to that provision;

(9) "Designated adult" means:

(A) An individual sixty-five (65) years of age or older; or

(B) An individual who is eighteen (18) years of age or older and who, because of mental or physical dysfunction, is unable to manage such person's own resources, carry out activities of daily living, or protect against neglect or hazardous or abusive situations, without assistance from others;

(10) "Financial exploitation" means:

(A) The wrongful or unauthorized taking, withholding, appropriation, or use of money, assets, or property of a designated adult; or

(B) Any act or omission by a person, including through the use of a power of attorney, guardianship, or conservatorship of a designated adult, to:

(i) Obtain control, through deception, intimidation, or undue influence, over the designated adult's money, assets, or property to deprive the designated adult of the ownership, use, benefit, or possession of his or her money, assets, or property; or

(ii) Convert money, assets, or property of the designated adult to deprive such designated adult of the ownership, use, benefit, or possession of his or her money, assets, or property;

(11) "Institutional investor" means a bank (unless the bank is acting as a broker-dealer as such term is defined in § 48-1-109(a)), trust company, insurance company, investment company registered under the Investment Company Act of 1940, compiled in 15 U.S.C. § 80a-1 et seq., as amended, a holding company which controls any of the foregoing, a trust or fund over which any of the foregoing has or shares investment discretion, a pension or profit-sharing plan, an institutional buyer (as the commissioner may further define by rule), or any other person engaged as a substantial part of its business in investing in securities unless such other person is within the definition of a broker-dealer in the first sentence of subdivision (4) (in which

case such other person is not an institutional investor), in each case having a net worth in excess of one million dollars (\$1,000,000);

(12) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, buying, or selling securities, or who for compensation and as a part of a regular business issues or promulgates analyses or reports concerning securities. "Investment adviser" does not include:

(A) A bank (unless it is acting as an investment adviser for a registered investment company), savings institution, or trust company;

(B) A lawyer, accountant, engineer, or teacher whose performance of investment advisory services is solely incidental to the practice of such lawyer's, accountant's, engineer's, or teacher's profession;

(C) A broker-dealer whose performance of investment advisory services is solely incidental to the conduct of such person's business as a broker-dealer and who receives no special compensation for such services;

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

(E) A person who has no place of business in this state if:

(i) The person's only clients in this state are other investment advisers, broker-dealers, or institutional investors; or

(ii) During any period of twelve (12) consecutive months, the person does not direct business communications into this state in any manner to more than five (5) clients (other than those specified in subdivision (12)(E)(i)), whether or not such person or any of the persons to whom the communications are directed are then present in this state; or

(F) Such other persons not within the intent of this subdivision (12) as the commissioner may by rule exempt from this definition as not in the public interest and necessary for the protection of investors;

(13)(A) "Investment adviser representative" means any partner, officer, or director of (or person occupying a similar status or performing similar functions) an investment adviser, or other individual, except clerical or ministerial personnel, who is employed by or associated with an investment adviser and does any of the following:

(i) Makes any recommendation or otherwise renders advice regarding securities;

(ii) Manages accounts or portfolios of clients;

(iii) Determines which recommendation or advice regarding securities should be given;

(iv) Solicits, offers, or negotiates for sale of or sells investment advisory services; or

(v) Supervises employees who perform any such actions;

(B) "Investment adviser representative" does not include such other persons not within the intent of this subdivision (13) as the commissioner may, by rule, exempt from this definition as not in the public interest and necessary for the protection of investors;

(14) "Investment-related" means any activities connected to any of the following business areas:

(A) Securities;

(B) Commodities;

- (C) Banking;
- (D) Insurance; or
- (E) Real estate;

(15)(A) "Issuer" means every person who issues any security, except that:

(i) With respect to certificates of deposit, voting-trust certificates, collateral-trust certificates, certificates of interest or shares in an unincorporated investment trust which is of the fixed, restricted management or unit type or which does not have either a board of directors or persons performing similar functions, "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement under which such securities are issued;

(ii) With respect to equipment-trust certificates or like securities, "issuer" means the person by whom the property is or is to be used; and

(iii) With respect to a fractional undivided interest in oil, gas, or other mineral rights, "issuer" means the owner of such right or of an interest in such right (whether whole or fractional) who creates fractional interests therein for the purpose of sale;

(B) Any person who acts as a promoter for or on behalf of a corporation, trust, or unincorporated association or partnership of any kind to be formed shall be deemed to be an issuer of preincorporation subscriptions or certificates;

(16) "Person" means a natural person, a sole proprietorship, a corporation, a partnership, an association, a limited liability company, a joint-stock company, a trust, a governmental entity or agency, or any other unincorporated organization;

(17) "Promoter" means:

(A) Any person who, acting alone or in conjunction with one (1) or more persons, directly or indirectly takes the initiative in founding and organizing the business or enterprise of an issuer; or

(B) Any person who, in connection with the founding or organizing of the business or enterprise of an issuer, directly or indirectly receives in consideration of services or property, or both services and property, ten percent (10%) or more of any class of securities of the issuer or ten percent (10%) or more of the proceeds from the sale of any class of securities; provided, that a person who receives such securities or proceeds either solely as underwriting commissions or solely in consideration of property shall not be deemed a promoter within the meaning of this subdivision (17) if such person does not otherwise take part in founding and organizing the enterprise;

(18) "Qualified individual" means any agent, investment adviser representative, or person who serves in a supervisory, compliance, or legal capacity for a broker-dealer or investment adviser;

(19)(A) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of, a security or interest in a security for value;

(B) "Offer" or "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value;

(C) Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other property is considered to constitute part of the subject of the purchase and to have been offered and sold for value;

(D) A purported gift of an assessable security is considered to involve an offer and sale;

(E) Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert such security into another security of the same or another issuer, is considered to include an offer of the other security;

(F) The terms defined in this subdivision (19) do not include any bona fide:

(i) Gift other than as set forth in subdivision (19)(D);

(ii) Transfer by death;

(iii) Transfer by termination of a trust;

(iv) Pledge or security loan;

(v) Stock split or reverse stock split;

(vi) Security dividend, whether the security is issued by the same or another company, if nothing of value is surrendered by security holders for the security dividend other than the right to a cash or property dividend where each security holder may elect to take the dividend in cash or property or in stock;

(vii) Act incident to a class vote by stockholders, pursuant to the charter or the applicable corporation statute, on a merger, consolidation, recapitalization, or sale of assets in exchange for securities of another corporation; or

(viii) Act incident to a judicially approved transaction in which a security is issued in exchange for one (1) or more outstanding securities, claims, or property interests, or part in such exchange and partly for cash;

(20)(A) "Security" means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, a life settlement investment or any fractional or pooled interest in a life insurance policy or life settlement investment, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; or, in general, any interest or instrument commonly known as a "security," or any 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;

(B) For the purposes of this subdivision (20), "life settlement investment" means the contractual right to receive any portion of the death benefit or ownership of a life insurance policy or certificate, for consideration that is less than the expected death benefit of the life insurance policy or certificate. "Life settlement investment" also includes written agreements commonly referred to as viatical settlement investments. "Life settlement investment" does not include:

(i) A viatical settlement contract, between a viator and a viatical settlement provider, as such terms are defined in § 56-50-102;

(ii) Any transfer of ownership or beneficial interest in a life insurance policy from a viatical settlement provider to another viatical settlement provider, as defined in § 56-50-102, or to any legal entity formed solely for the purpose of holding ownership or beneficial interest in a life insurance policy or policies;

(iii) Any agreement for the original issuance of an insurance policy or certificate of insurance from the insured or policy owner to any provider of a life insurance policy;

(iv) An assignment, transfer, sale, devise, or bequest of a death benefit under or ownership of either an insurance policy or certificate of insurance by the original owner or a person who has an insurable interest in the insured;

(v) An assignment of an insurance policy or certificate of insurance to any bank, savings bank, savings and loan association, credit union, or other licensed lending institution as collateral for a loan; or

(vi) The exercise of accelerated benefits pursuant to a life insurance policy; and

(C) "Security" does not include:

(i) Currency;

(ii) A check, whether or not certified; draft; bill of exchange; or bank letter of credit;

(iii) A note or other evidence of indebtedness issued in a mercantile or consumer, rather than an investment, transaction;

(iv) An interest in a deposit account with a bank or a savings and loan association; or

(v) An insurance or endowment policy or annuity contract under which an insurance company promises to pay money either in a lump sum or periodically for life or for some other specified period;

(21) "Senior security" means any bond, debenture, note, or similar obligation or instrument constituting a security and evidencing indebtedness, and any stock of a class having priority over any other class as to distribution of assets or payment of dividends; and

(22) "Underwriter" means any person who has purchased from an issuer or an affiliate of an issuer with a view to, or who sells for an issuer or an affiliate of an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking; provided, that a person shall be presumed not to be an underwriter of a security which such person has owned beneficially for two (2) years or more; and provided further, that a broker-dealer shall be presumed not to be an underwriter with respect to any security which does not represent part of an unsold allotment to or subscription by the broker-dealer as a participant in the distribution of such security; and provided further, that in the case of any security acquired on the conversion of another security without payment of additional consideration, the length of time such convertible security has been beneficially owned by such person shall include the period during which such convertible security was beneficially owned and the period during which the security acquired on conversion was beneficially owned.

SECTION 2. Tennessee Code Annotated, Section 48-1-103(a), is amended by deleting the language "(a) The following securities are exempted from §§ 48-1-104, 48-1-113 and, except as the commissioner may otherwise require by rule or regulation, § 48-1-124(e):" and substituting instead the language "(a) The following securities are exempted from § 48-1-104 and, except as the commissioner may otherwise require by rule, §§ 48-1-113 and 48-1-124(e):".

SECTION 3. Tennessee Code Annotated, Section 48-1-103(a)(7), is amended by deleting the subdivision in its entirety and substituting instead the following:

(7) Any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes, or as a chamber of commerce or trade or professional association; provided, that at least ten (10) days prior to any sale of a security pursuant to an exemption under this subdivision (a)(7), such person has filed with the commissioner all information as the commissioner may by rule require and paid a fee of one hundred dollars (\$100), and that the commissioner does not by order disallow the exemption under this subdivision (a)(7) and no sales are made until expiration of that ten (10) days; provided further, that the commissioner may restrict the availability of this exemption to any class or subclass of securities of such issuer;

SECTION 4. Tennessee Code Annotated, Section 48-1-103(a)(9)(A)(i), is amended by deleting the subdivision in its entirety and substituting instead the following:

(i) Any class of securities currently listed or approved for listing upon notice of issuance on the New York Stock Exchange, the American Stock Exchange, or any other exchange which the commissioner may by order designate;

SECTION 5. Tennessee Code Annotated, Section 48-1-103(a)(9)(B), is amended by deleting the subdivision in its entirety.

SECTION 6. Tennessee Code Annotated, Section 48-1-103(a)(12), is amended by deleting the subdivision in its entirety and substituting instead the following:

(12) Any security issued by a bank holding company or a savings and loan holding company if:

(A) Such bank holding company or savings and loan holding company is registered with the federal reserve board; and

(B) At least ten (10) days prior to any sale of a security in this state pursuant to an exemption under this subdivision (a)(12), such bank holding company or savings and loan holding company has filed with the commissioner all information as the commissioner may by rule require and paid a fee of one hundred dollars (\$100), and the commissioner does not by order disallow the exemption under this subdivision (a)(12) and no sales are made until expiration of that ten (10) days. The commissioner may restrict the availability of the exemption under this subdivision (a)(12) to any class or subclass of securities of such issuer; and

SECTION 7. Tennessee Code Annotated, Section 48-1-103(b), is amended by deleting the language "(b) The following transactions are exempted from §§ 48-1-104, 48-1-113 and, except as the commissioner may otherwise require by rule or regulation, § 48-1-124(e):" and substituting instead the language "(b) The following transactions are exempted from § 48-1-104 and, except as the commissioner may otherwise require by rule, §§ 48-1-113 and 48-1-124(e):".

SECTION 8. Tennessee Code Annotated, Section 48-1-103(b)(9), is amended by deleting the subdivision in its entirety and substituting instead the following:

(A) Any transaction involving the issuance of a security:

(i) In connection with a stock bonus plan requiring payment of no consideration other than services;

(ii) In connection with a stock bonus, pension, profit sharing, savings, thrift, or retirement plan for employees or self-employed individuals qualified under § 401 of the Internal Revenue Code of 1954, codified in 26 U.S.C. § 401, as amended, or individual retirement accounts qualified under § 408 of the Internal Revenue Code of 1954, codified in 26 U.S.C. § 408, as amended; or

(iii) In connection with a transaction that meets the following requirements:

(a) The offering meets the requirements of Rule 701 of the regulations under the Securities Act of 1933, codified in 17 CFR 230.701, as amended;

(b) The offering is exempt from § 5 of the Securities Act of 1933, codified in 15 U.S.C. § 77e, as amended; and

(c) The issuer files with the commissioner no later than fifteen (15) days after the first sale in this state a notice of transaction, on a form adopted by the commissioner, accompanied by a consent to service of process, and a nonrefundable filing fee of five hundred dollars (\$500);

(B) No commission, discount, or other remuneration is paid or given in connection with any transaction in this state under this subdivision (b)(9) unless paid or given to a broker-dealer or agent registered under this part; and

(C) The issuance of any security representing an interest in a collective investment fund is exempt only if such security is issued pursuant to a plan established and administered by a bank organized under the laws of the United States or any bank or trust company organized and supervised under the laws of any state of the United States or sponsored by any investment company registered under the Investment Company Act of

1940, compiled in 15 U.S.C. § 80a-1 et seq., as amended, or sponsored by any insurance company licensed to do business in this state;

SECTION 9. Tennessee Code Annotated, Section 48-1-103(b)(13), is amended by deleting the subdivision in its entirety.

SECTION 10. Tennessee Code Annotated, Section 48-1-103(b)(18)(C)(ii), is amended by deleting the subdivision in its entirety and substituting instead the following:

(ii) Is published in a securities manual designated by the commissioner through rule promulgated in accordance with § 48-1-116;

SECTION 11. Tennessee Code Annotated, Section 48-1-104(b), is amended by deleting the subsection in its entirety and substituting instead the following:

(b) The commissioner may, after notice and opportunity for a hearing under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, impose a civil penalty against any person found to be in violation of this section, or any rule or order adopted or issued under this section, in an amount not to exceed ten thousand dollars (\$10,000) per violation, or in an amount not to exceed twenty thousand dollars (\$20,000) per violation if an individual who is a designated adult is a victim.

SECTION 12. Tennessee Code Annotated, Section 48-1-105(a), is amended by deleting the subsection in its entirety and substituting instead the following:

(a) Any security for which a registration statement under the Securities Act of 1933, compiled in 15 U.S.C. § 77a et seq., as amended, or a notification under Tier 1 of Regulation A of the Securities Act of 1933, codified in 17 CFR 230.251 et seq., as amended, has been filed in connection with the same offering may be registered by coordination as provided in this section.

SECTION 13. Tennessee Code Annotated, Section 48-1-105(b)(1), is amended by deleting the subdivision in its entirety and substituting instead the following:

(1) If not included in the registration statement, one (1) copy of the latest form of prospectus or offering circular filed under the Securities Act of 1933, compiled in 15 U.S.C. § 77a et seq., as amended, or Regulation A thereunder, codified in 17 CFR 230.251 et seq., as amended, in a format approved by the commissioner;

SECTION 14. Tennessee Code Annotated, Section 48-1-105(b)(3), is amended by deleting the subdivision in its entirety and substituting instead the following:

(3) If the commissioner by rule requires, copies of any other documents filed under the Securities Act of 1933, as amended, or Regulation A, as amended, thereof;

SECTION 15. Tennessee Code Annotated, Section 48-1-105(b)(5), is amended by deleting the subdivision in its entirety and substituting instead the following:

(5) If the commissioner by rule or order requires, such other information as is necessary to determine that the registration statement does not include any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

SECTION 16. Tennessee Code Annotated, Section 48-1-105(c)(1)(B), is amended by deleting the subdivision in its entirety and substituting instead the following:

(B) The registration statement has been on file with the commissioner for at least twenty (20) days; and

SECTION 17. Tennessee Code Annotated, Section 48-1-105(c)(2), is amended by deleting the subdivision in its entirety and substituting instead the following:

(2) The registrant shall promptly notify the commissioner, by telephone or other electronic means, of the date and time when the registration statement or notification filed with the SEC is declared effective by the SEC and the contents of the price amendment, if any, and shall promptly file a post-effective amendment containing the information and documents in the price amendment. "Price amendment" means the final amendment filed with the SEC, which 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.

SECTION 18. Tennessee Code Annotated, Section 48-1-105(c)(4), is amended by deleting the subdivision in its entirety and substituting instead the following:

(4) If the registrant advises the commissioner of the date when the registration statement or notification filed with the SEC is expected to be declared effective, the commissioner shall promptly advise the registrant, by telephone or other electronic means, at the registrant's expense, whether or not all the conditions are satisfied and whether or not the commissioner then contemplates the institution of a proceeding under § 48-1-108. This notice by the commissioner does not preclude the institution of such a proceeding at any time.

SECTION 19. Tennessee Code Annotated, Section 48-1-106(b)(1), is amended by deleting the subdivision in its entirety and substituting instead the following:

(1) If not included in the registration statement, one (1) copy of an offering circular or prospectus in a format approved by the commissioner, containing such financial statements and such information, including information concerning the securities offered, the offering, the issuer, the issuer's promoters, directors, officers, security holders and personnel, material contracts, litigation, transactions, and remuneration, as the commissioner shall specify by rule;

SECTION 20. Tennessee Code Annotated, Section 48-1-107(b), is amended by deleting the subsection in its entirety and substituting instead the following:

(b) Every person filing a registration statement under §§ 48-1-105 and 48-1-106 shall pay a filing fee of one tenth of one percent (0.1%) of the maximum aggregate offering price at which the registered securities are to be offered in this state, but the fee shall in no case be more than one thousand dollars (\$1,000) nor less than an amount which the commissioner shall by rule establish. When a registration statement is withdrawn before the effective date or before a preeffective stop order is entered under § 48-1-108, the commissioner shall retain the minimum filing fee established pursuant to this subsection (b) and return the remainder of the fee, if any, to the applicant.

SECTION 21. Tennessee Code Annotated, Section 48-1-107(d), is amended by deleting the subsection in its entirety.

SECTION 22. Tennessee Code Annotated, Section 48-1-107, is amended by adding the following language as a new subsection after the current subsection (g) and appropriately redesignating the existing subsections:

() Renewal registration for the succeeding one-year period may be issued upon written application and upon payment of fees as provided by this section for original registration, even though the maximum fee was paid in the preceding period, without the filing of further statements or furnishing of any further information except as the commissioner by rule requires. All applications for renewal received after the expiration of the previous registration shall be treated as original applications.

SECTION 23. Tennessee Code Annotated, Section 48-1-108(b), is amended by deleting the subsection in its entirety and substituting instead the following:

(b) No order may be entered under any part of this section without full compliance with § 48-1-116. Upon issuance of an order under this section, the commissioner shall give notice of the issuance of such order and of the reasons therefor and opportunity for hearing by personal service or by certified mail, return receipt requested, to the addressee's last known business mailing address. The commissioner shall vacate or modify the order at any time for good cause or if such registration statement or prospectus has been filed or amended in accordance with such order.

SECTION 24. The headings to sections, chapters, and parts in this act are for reference purposes only and do not constitute a part of the law enacted by this act. However, the Tennessee Code Commission is requested to include the headings in any compilation or publication containing this act. The Tennessee Code Commission is further requested to amend the heading to Tennessee Code Annotated, Section 48-1-109, by deleting the language of the heading in its entirety and substituting instead the following:

48-1-109. Registration as broker-dealers, agents, investment advisers, and investment adviser representatives.

SECTION 25. Tennessee Code Annotated, Section 48-1-109(a), is amended by deleting the language "from or in" and substituting instead the language "from, in, or into".

SECTION 26. Tennessee Code Annotated, Section 48-1-109(c), is amended by deleting the subsection in its entirety and substituting instead the following:

(c) It is unlawful for any person to transact business from, in, or into this state as an investment adviser or investment adviser representative unless:

(1) The person is registered as an investment adviser or investment adviser representative under this part;

(2) The person is required to register as an investment adviser pursuant to § 203 of the Investment Advisers Act of 1940, codified in 15 U.S.C. § 80b-3; provided, however, that an initial notice filing, consisting of any documents filed with the securities and exchange commission, a consent to service of process, and a nonrefundable fee of one hundred dollars (\$100) shall be filed with the commissioner or the commissioner's designee, with payment of any reasonable costs charged by the designee for processing such filings, ten (10) days prior to the person acting as an investment adviser; and a renewal notice filing containing such information as the commissioner by rule requires and a nonrefundable fee of one hundred dollars (\$100) shall be filed with the commissioner or the commissioner's designee, with payment of any reasonable costs charged by the designee for processing such filing for each successive year in which such person acts as such investment adviser; every notice filing of an investment adviser expires annually, unless timely renewed, on December 31 of each year; or

(3) The person's only clients in this state are insurance companies.

SECTION 27. Tennessee Code Annotated, Section 48-1-109(d)(4), is amended by deleting the subdivision in its entirety and substituting instead the following:

(4) A registration or notice filing is timely renewed if the renewal application, all required exhibits, and fees are on file with the commissioner by December 31 of each year.

SECTION 28. Tennessee Code Annotated, Section 48-1-109(e), is amended by deleting the subsection in its entirety and substituting instead the following:

(e) The commissioner may, after notice and an opportunity for a hearing under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, impose a civil penalty against any person found to be in violation of this section, or any rule or order adopted or issued under this section, in an amount not to exceed ten thousand dollars (\$10,000) per violation, or in an amount not to exceed twenty thousand dollars (\$20,000) per violation if an individual who is a designated adult is a victim.

SECTION 29. Tennessee Code Annotated, Section 48-1-109(f), is amended by deleting the language "makes" and substituting instead the language "make".

SECTION 30. Tennessee Code Annotated, Section 48-1-110(a)(4), is amended by deleting the subdivision in its entirety and substituting instead the following:

(4) If no denial order is in effect and no proceeding is pending under § 48-1-112, such registration becomes effective at twelve o'clock (12:00) noon, central time, of the thirtieth day after a completed application is filed. The commissioner may by rule or order specify an earlier effective date, and may by order defer the effective date until twelve o'clock (12:00) noon, central time, of the thirtieth day after the filing of any amendment.

SECTION 31. Tennessee Code Annotated, Section 48-1-110(f)(1), is amended by deleting the subdivision in its entirety and substituting instead the following:

(1) Any person who is included in the definition of "issuer" by virtue of § 48-1-102(15)(A)(iii) shall register as an issuer-dealer unless either:

(A) Such person sells less than one hundred thousand dollars (\$100,000) per year in undivided fractional interests in oil, gas, or other mineral interests in any twelve-month period; or

(B) Such person contributes money or services for lease acquisition and drilling or mining activities on property covered by the undivided fractional interests in proportion to the person's interest in the proceeds from such activities on the same

basis as all purchasers of undivided fractional interests. For purposes of this subdivision (f)(1)(B), services shall be valued at the fair market value of similar services and at competitive rates, and such value shall be established prior to the sale of any interests.

SECTION 32. Tennessee Code Annotated, Section 48-1-110(g), is amended by deleting the subsection in its entirety.

SECTION 33. Tennessee Code Annotated, Section 48-1-111(d)(1), is amended by deleting the subdivision in its entirety and substituting instead the following:

(1) All the records referred to in subsection (a) are subject at any time and from time to time to such reasonable periodic, special, or other examinations, within or outside of this state, by representatives of the commissioner, as the commissioner deems necessary or appropriate in the public interest or for the protection of investors.

SECTION 34. Tennessee Code Annotated, Section 48-1-111(d)(2), is amended by deleting the subdivision in its entirety and substituting instead the following:

(2) The cost of such examination shall be borne by the person examined and shall include the expenses of the commissioner or the commissioner's deputy and the expenses and compensation of the commissioner's assistants employed in the examination; provided, that not more than two (2) such examinations shall be charged to such person in any twelve-month period.

SECTION 35. Tennessee Code Annotated, Section 48-1-112(d), is amended by deleting the subsection in its entirety and substituting instead the following:

(d) In any case in which the commissioner is authorized to deny, revoke, or suspend the registration of a broker-dealer, agent, investment adviser, investment adviser representative, or applicant for broker-dealer, agent, investment adviser, or investment adviser representative registration, the commissioner may, in lieu of or in addition to such disciplinary action, impose a civil penalty in an amount not to exceed five thousand dollars (\$5,000) for all violations for any single transaction, or in an amount not to exceed ten thousand dollars (\$10,000) per violation if an individual who is a designated adult is a victim.

SECTION 36. Tennessee Code Annotated, Section 48-1-112(f)(2), is amended by deleting the subdivision in its entirety and substituting instead the following:

(2) Withdrawal from registration as a broker-dealer, agent, investment adviser, or investment adviser representative becomes effective thirty (30) days after receipt of an application to withdraw or within such shorter period of time as the commissioner by rule or order may permit.

SECTION 37. Tennessee Code Annotated, Section 48-1-113, is amended by deleting the section in its entirety and substituting instead the following:

The commissioner may by rule require the filing of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature or advertising communication addressed or intended for distribution to prospective investors, including clients or prospective clients of an investment adviser.

SECTION 38. Tennessee Code Annotated, Section 48-1-114(a), is amended by deleting the subsection in its entirety and substituting instead the following:

(a) Neither the fact that an application for registration or notice filing under §§ 48-1-109 - 48-1-112 or a registration statement or notice filing under §§ 48-1-104 - 48-1-108 or 48-1-125 has been filed, nor the fact that a person or security is effectively registered, constitutes a finding by the commissioner that any document filed under this part is true, complete, and not misleading.

SECTION 39. Tennessee Code Annotated, Section 48-1-115(a), is amended by deleting the subsection in its entirety and substituting instead the following:

(a) The administration of this part shall be vested in the commissioner. The commissioner, as authorized by the governor, shall appoint a director or assistant commissioner of securities and may delegate to such director or assistant commissioner of securities, by rule, such of the commissioner's powers and duties hereunder as are appropriate for the protection of investors and the efficient administration of this part.

SECTION 40. Tennessee Code Annotated, Section 48-1-116(a), is amended by deleting the subsection in its entirety and substituting instead the following:

(a) The commissioner may from time to time make, promulgate, amend, and rescind such rules, forms, and orders as are necessary to carry out this part, including rules, forms, and orders governing registration statements, applications, reports, and filing fees, and defining any terms, whether or not used in this part, insofar as the definitions are not inconsistent with this part. For the purpose of rules and forms, the commissioner may classify securities, persons, and matters within the commissioner's jurisdiction, and prescribe different requirements for different classes.

SECTION 41. Tennessee Code Annotated, Section 48-1-117(d), is amended by deleting the subsection in its entirety and substituting instead the following:

(d) Upon request and upon payment of such reasonable charges as the commissioner by rule prescribes, the commissioner shall furnish to any person copies (certified under the commissioner's seal of office if requested) of any entry in the register or any document which is a matter of public record. In any proceeding or prosecution under this part, any copy so certified is prima facie evidence of the contents of the entry or document certified.

SECTION 42. Tennessee Code Annotated, Section 48-1-121(d), is amended by deleting the subsection in its entirety and substituting instead the following:

(d) The commissioner may, after notice and opportunity for a hearing under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, impose a civil penalty against any person found to be in violation of this section, or any rule or order adopted or issued under this section, in an amount not to exceed ten thousand dollars (\$10,000) per violation, or in an amount not to exceed twenty thousand dollars (\$20,000) per violation if an individual who is a designated adult is a victim.

SECTION 43. Tennessee Code Annotated, Section 48-1-124(b), is amended by deleting the subsection in its entirety and substituting instead the following:

(b) For the purpose of this section, a purchase or sale is made in this state, whether or not either party is then present in this state, when:

- (1) An offer that results in a sale originates from this state;
- (2) An offer to purchase or sell a security is accepted in this state; or
- (3) An offer that results in a sale is directed by the offeror to this state and received at the place to which it is directed or at any post office in this state in the case of a mailed offer.

SECTION 44. Tennessee Code Annotated, Section 48-1-124(d), is amended by deleting the subsection in its entirety and substituting instead the following:

(d) Sections 48-1-109(a) and (c) and 48-1-121 apply when any act instrumental in effecting prohibited conduct is done in this state, whether or not either party is then present in this state.

SECTION 45. Tennessee Code Annotated, Section 48-1-124(e), is amended by deleting the subsection in its entirety and substituting instead the following:

(e) Every applicant for registration and renewal under this part, every person making a notice filing, and every issuer for whom a registration, exemption from registration, or notice filing or renewal is required under this part, shall file with the commissioner, in such form as the commissioner by rule prescribes, an irrevocable consent appointing the commissioner or the commissioner's successor in office to be the applicant's or issuer's attorney-in-fact to receive service of any lawful process in any noncriminal suit, action, or proceeding against the applicant or issuer or the applicant's or issuer's successor, executor, or administrator, which arises under this part or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. Service may be made by leaving a copy of the process in the office of the commissioner, but it is not effective unless:

- (1) The plaintiff, who may be the commissioner in a suit, action, or proceeding instituted by the commissioner, forthwith sends notice of the service and a copy of the

process by registered mail to the defendant or respondent at the defendant's or respondent's last address on file with the commissioner; and

(2) The plaintiff's affidavit of compliance with this subsection (e) is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

SECTION 46. Tennessee Code Annotated, Section 48-1-125, is amended by deleting the section in its entirety and substituting instead the following:

(a)(1)(A) Any issuer, except an issuer of any security that is a covered security under subdivisions (a)(1)(B)–(D), which proposes to sell any security which is a covered security shall file with the commissioner, prior to a sale of such security in this state, a notice consisting of all documents filed with the securities and exchange commission, together with:

(i) A consent to service of process as required under § 48-1-124(e), unless built into the notice filing form; and

(ii) A nonrefundable filing fee of five hundred dollars (\$500).

(B) An issuer planning to offer and sell securities in this state in an offering pursuant to Tier 2 of Regulation A shall submit the following at least twenty-one (21) days prior to the initial sale in this state:

(i) A completed Regulation A-Tier 2 notice filing form or copies of all documents filed with the securities and exchange commission;

(ii) A consent to service of process as required under § 48-1-124(e), if not filing on the Regulation A-Tier 2 notice filing form; and

(iii) A nonrefundable filing fee of five hundred dollars (\$500).

(C)(i) With respect to any security that is a covered security under § 18(b)(4)(C) of the Securities Act of 1933, the issuer shall file with the commissioner a notice consisting of:

(a) A completed Uniform Notice of Federal Crowdfunding Offering form or copies of all documents filed with the securities and exchange commission;

(b) A consent to service of process as required under § 48-1-124(e), if not filing on the Uniform Notice of Federal Crowdfunding Offering form; and

(c) A nonrefundable filing fee of five hundred dollars (\$500).

(ii) If the issuer has its principal place of business in this state, the filing required under subdivision (a)(1)(C)(i) shall be filed with the commissioner concurrently when the issuer files its initial Form C with the securities and exchange commission.

(iii) If the issuer does not have its principal place of business in this state but residents of this state have purchased fifty percent (50%) or greater of the aggregate amount of the offering, the filing required under subdivision (a)(1)(C)(i) shall be filed when the issuer becomes aware that such purchases have met that threshold and, in any event, no later than thirty (30) days from the date of completion of the offering.

(D) With respect to any security that is a covered security under § 18(b)(4)(E) of the Securities Act of 1933, the issuer shall file with the commissioner, no later than fifteen (15) days after the first sale of such covered security in this state, a notice consisting of:

(i) Form D signed by the issuer; and

(ii) A nonrefundable filing fee of five hundred dollars (\$500).

(2) After the initial offer of a covered security in this state, all documents that are part of an amendment to a federal registration statement or Form D filed with the securities and exchange commission under the Securities Act of 1933, compiled in 15 U.S.C. § 77a et seq., shall be filed concurrently with the commissioner.

(3) All documents referred to in subdivisions (a)(1) and (a)(2) that have been filed and recorded on the Electronic Data Gathering Access and Retrieval (EDGAR) system, the Interactive Data Electronic Applications (IDEA) system, the Electronic Filing Depository (EFD), or any other electronic data gathering system either maintained by the securities and exchange commission or approved by the commissioner, may be utilized in lieu of filing such documents in paper form with the commissioner or the commissioner's designee; provided, that the person making the notice filing provides an accurate filing number or other identifying designation issued by the securities and exchange commission, and that a printed or electronically stored copy is immediately accessible to the commissioner or the commissioner's designee.

(b)(1) Notice filings made pursuant to subdivision (a)(1)(A) are effective for one (1) year commencing on the later of the notice filing date or the securities and exchange commission effective date. Notice filings may be renewed by making a filing and paying a fee as provided under subdivision (a)(1)(A) no later than the close of business on the tenth business day prior to the date of expiration.

(2) Notice filings made pursuant to subdivision (a)(1)(B) are effective for one (1) year from the date of filing and may be renewed by making a filing as required by subdivision (a)(1)(B) and paying a nonrefundable renewal fee of one hundred dollars (\$100).

(3) Notice filings made pursuant to subdivision (a)(1)(C) are effective for one (1) year from the date of filing and may be renewed by making a filing as required by subdivision (a)(1)(C) and paying a nonrefundable renewal fee of one hundred dollars (\$100).

(4) Notice filings made pursuant to subdivision (a)(1)(D) are effective for one (1) year from the date of filing unless the issuer conducts a continuous offering and files concurrent amendments as required by subdivision (a)(2) and pays a nonrefundable renewal fee of one hundred dollars (\$100).

(c)(1) The commissioner may issue a stop order suspending the offer and sale of a covered security, except a covered security under § 18(b)(1) of the Securities Act of 1933, codified in 15 U.S.C. § 77r(b)(1), upon a finding that:

(A) The order is in the public interest; and

(B) There is a failure to comply with any filing or fee required under this part.

(2) Any issuer of a covered security that does not promptly remedy a delay in payment of any fee or promptly remedy a delay in making any filing required under this part shall be deemed not to have complied with such filing or fee requirements. For purposes of this subdivision (c)(2), an issuer will have promptly remedied a delay in payment or filing if the issuer remits the required fee or filing within ten (10) business days of receipt of notification of the delay or underpayment.

(d) When any amendment to a notice filing filed under this section changes the name of the offering of securities, the issuer shall pay a processing fee of fifty dollars (\$50.00), payable upon filing the amendment with the commissioner.

SECTION 47. Tennessee Code Annotated, Section 48-1-126, is amended by adding the following language as a new, appropriately designated subdivision:

() Any security that is defined to be a covered security pursuant to § 18(b)(1) of the Securities Act of 1933, or will be such a covered security upon completion of the transaction.

SECTION 48. Tennessee Code Annotated, Title 48, Chapter 1, Part 1, is amended by adding the following as a new, appropriately designated section:

48-1-127. Senior Exploitation Reporting and Records.

(a)(1) If a qualified individual reasonably believes that financial exploitation of a designated adult has occurred, has been attempted or may have been attempted, or is being attempted, the qualified individual, in cooperation with the qualified individual's broker-dealer or investment adviser, may notify the commissioner.

(2) Subsequent to notifying the commissioner, a qualified individual may, to the extent permitted under federal law, notify any of the following concerning the qualified individual's belief that financial exploitation may have occurred:

(A) A relative of the designated adult as defined in § 71-6-102(12);

(B) A legal guardian of the designated adult;

(C) A trustee, co-trustee, or successor trustee of the account of the designated adult;

(D) An agent under a power of attorney of the designated adult;
or

(E) Any other person permitted under existing laws, rules, regulations, or customer agreement.

(b)(1) A broker-dealer or investment adviser may delay a disbursement from an account of a designated adult or an account on which a designated adult is a beneficiary if:

(A) The broker-dealer, investment adviser, or qualified individual reasonably believes, after initiating an internal review of the requested disbursement and the suspected financial exploitation, that the requested disbursement may result in financial exploitation of a designated adult; and

(B) The broker-dealer or investment adviser:

(i) Immediately, but in no event more than two (2) business days after the requested disbursement, provides written notification of the delay and the reason for the delay to all parties authorized to transact business on the account, unless any such party is reasonably believed to have engaged in or attempted financial exploitation of the designated adult;

(ii) Immediately, but in no event more than two (2) business days after the requested disbursement, notifies the commissioner; and

(iii) Continues its internal review of the suspected or attempted financial exploitation of the designated adult, as necessary, and reports any additional results to the commissioner within seven (7) business days after the requested disbursement.

(2) The commissioner is authorized to establish additional disbursement-delay guidelines by rules promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(3) Any delay of a disbursement as authorized by this section shall expire upon the sooner of:

(A) A determination by the broker-dealer or investment adviser that the disbursement will not result in financial exploitation of the designated adult; or

(B) Fifteen (15) business days after the date on which the broker-dealer or investment adviser first delayed disbursement of the funds, unless the commissioner requests that the broker-dealer or investment adviser extends the delay, in which case the delay shall expire no more than twenty-five (25) business days after the date on

which the broker-dealer or investment adviser first delayed disbursement of the funds unless otherwise terminated or extended by the commissioner or an order of a court of competent jurisdiction.

(4) A court of competent jurisdiction may enter an order extending the delay of the disbursement of funds or an order granting other protective relief based on the petition of the commissioner, the broker-dealer or investment adviser that initiated the delay under this section, or any other interested party.

(c) A broker-dealer, investment adviser, or qualified individual that, in good faith and exercising reasonable care, complies with subsections (a) and (b) is immune from liability for such conduct.

(d) A broker-dealer or investment adviser shall provide access to or copies of records that are relevant to the suspected financial exploitation of a designated adult to the commissioner. The records may include historical records or records relating to the most recent disbursement as well as disbursements that comprise the suspected financial exploitation of a designated adult. All records made available to the commissioner under this section shall not be open to inspection by members of the public under § 10-7-503.

SECTION 49. This act shall become effective upon becoming a law, the public welfare requiring it.

SENATE BILL NO. 1192

PASSED: May 4, 2017


RANDY McNALLY
SPEAKER OF THE SENATE


BETH HARWELL, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 18th day of May 2017


BILL HASLAM, GOVERNOR