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2001



HOUSE BILL 01-1031

BY REPRESENTATIVE(S) Miller, Young, Coleman, Scott, and Tochtrop;
also SENATOR(S) Lamborn, Anderson, Linkhart, Reeves, Taylor, Windels,
and Tate.

CONCERNING A GRANT OF CEASE-AND-DESIST AUTHORITY TO THE
COMMISSIONER OF SECURITIES, AND MAKING AN APPROPRIATION
THEREFOR.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 11-51-606 (1), Colorado Revised Statutes, is amended, and the said 11-51-606 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

11-51-606. Conduct of proceedings - cease-and-desist orders - consent orders - summary orders - issued by securities commissioner.

(1) Any administrative proceeding under this article shall be conducted pursuant to the provisions of sections 24-4-104 and 24-4-105, C.R.S.; except that section 24-4-104 (3), C.R.S., shall not apply to any proceeding conducted pursuant to this article. Except as specified in PARAGRAPH (d) OF SUBSECTION (1.5) OR paragraph (e) of subsection (3) of this section, the securities commissioner shall refer the conduct of all hearings to an administrative law judge appointed pursuant to part 10 of article 30 of title

Capital letters indicate new material added to existing statute; dashes through the words indicate deletions from existing statutes and such material not part of act.

24, C.R.S. Every hearing in an administrative proceeding shall be public unless the securities commissioner, in the securities commissioner's discretion, grants a request joined in by all the respondents that the hearing be conducted privately.

(1.5) (a) WHENEVER IT APPEARS TO THE SECURITIES COMMISSIONER, BASED UPON SUFFICIENT EVIDENCE AS PRESENTED IN A PETITION BY AN OFFICER OR EMPLOYEE OF THE DIVISION OF SECURITIES, THAT A PERSON HAS COMMITTED OR MAY COMMIT ANY OF THE ACTS OR PRACTICES LISTED IN PARAGRAPH (b) OF THIS SUBSECTION (1.5), THEN, IN ADDITION TO ANY SPECIFIC POWERS GRANTED UNDER THIS ARTICLE, THE SECURITIES COMMISSIONER, IN HIS OR HER DISCRETION, MAY ISSUE TO SUCH PERSON AN ORDER TO SHOW CAUSE WHY THE SECURITIES COMMISSIONER SHOULD NOT ENTER A FINAL ORDER DIRECTING SUCH PERSON TO CEASE AND DESIST FROM THE UNLAWFUL ACT OR PRACTICE, OR IMPOSE SUCH OTHER SANCTIONS AS PROVIDED IN SUBPARAGRAPH (IV) OF PARAGRAPH (d) OF THIS SUBSECTION (1.5). THE SECURITIES COMMISSIONER SHALL PROMPTLY NOTIFY THE CHAIRPERSON OF THE SECURITIES BOARD THAT AN ORDER TO SHOW CAUSE HAS BEEN ISSUED, AND THE CHAIRPERSON SHALL SET A DATE FOR HEARING ON SUCH ORDER BEFORE THE SECURITIES BOARD AS PROVIDED IN PARAGRAPH (d) OF THIS SUBSECTION (1.5).

(b) THE SECURITIES COMMISSIONER MAY TAKE ACTION PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (1.5) WITH REGARD TO ANY OF THE FOLLOWING ACTS OR PRACTICES:

(I) THE SALE OF A SECURITY IS SUBJECT TO REGISTRATION UNDER THIS ARTICLE AND THE SECURITY IS BEING OFFERED OR HAS BEEN OFFERED OR SOLD IN VIOLATION OF SECTION 11-51-301, OR ANY RULE OR ORDER UNDER SAID SECTION;

(II) ANY PERSON HAS ENGAGED OR IS ABOUT TO ENGAGE IN THE OFFER OR SALE OF A SECURITY OR ANY OTHER ACT OR PRACTICE IN VIOLATION OF SECTION 11-51-401 OR ANY RULE OR ORDER UNDER SAID SECTION;

(III) ANY PERSON HAS ENGAGED OR IS ABOUT TO ENGAGE IN THE OFFER OR SALE OF A SECURITY OR ANY OTHER ACT OR PRACTICE IN VIOLATION OF SECTION 11-51-501 OR ANY RULE OR ORDER UNDER SAID SECTION;

(IV) ANY PERSON HAS ENGAGED OR IS ABOUT TO ENGAGE IN ANY ACT OR PRACTICE IN VIOLATION OF ANY PROVISION OF ARTICLE 53 OF THIS TITLE; OR

(V) ANY PERSON HAS VIOLATED OR IS ABOUT TO VIOLATE ANY ORDER PREVIOUSLY ENTERED BY THE SECURITIES COMMISSIONER.

(c) ANY PERSON AGAINST WHOM AN ORDER TO SHOW CAUSE HAS BEEN ENTERED PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (1.5) SHALL BE PROMPTLY NOTIFIED BY THE SECURITIES DIVISION OF THE ENTRY OF THE ORDER, ALONG WITH A COPY OF THE ORDER, THE FACTUAL AND LEGAL BASIS FOR THE ORDER, AND THE DATE SET BY THE CHAIRPERSON OF THE SECURITIES BOARD FOR HEARING ON SUCH ORDER. SUCH NOTICE MAY BE SERVED BY UNITED STATES MAIL, POSTAGE PREPAID, TO THE LAST-KNOWN ADDRESS OF SUCH PERSON, BY PERSONAL SERVICE, FACSIMILE TRANSMISSION, OR AS MAY BE PRACTICABLE UPON ANY PERSON AGAINST WHOM SUCH ORDER IS ENTERED. MAILING OR FACSIMILE TRANSMISSION OF AN ORDER OR OTHER DOCUMENTS UNDER THIS SUBSECTION (1.5), OR PERSONAL SERVICE OF SUCH ORDERS OR DOCUMENTS, SHALL CONSTITUTE NOTICE THEREOF TO THE PERSON.

(d) (I) THE HEARING ON AN ORDER TO SHOW CAUSE SHALL BE COMMENCED NO SOONER THAN TEN NOR LATER THAN TWENTY-ONE CALENDAR DAYS FOLLOWING THE DATE OF TRANSMISSION OR SERVICE OF THE NOTIFICATION BY THE SECURITIES DIVISION AS PROVIDED IN PARAGRAPH (c) OF THIS SUBSECTION (1.5). THE HEARING MAY BE CONTINUED BY AGREEMENT OF THE PARTIES, BUT IN NO EVENT SHALL THE HEARING COMMENCE LATER THAN THIRTY-FIVE CALENDAR DAYS FOLLOWING THE DATE OF TRANSMISSION OR SERVICE OF THE NOTIFICATION.

(II) IF A PERSON AGAINST WHOM AN ORDER TO SHOW CAUSE ENTERED PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (1.5) DOES NOT APPEAR AT THE HEARING, THE SECURITIES DIVISION MAY PRESENT EVIDENCE THAT NOTIFICATION WAS PROPERLY SENT OR SERVED UPON SUCH PERSON PURSUANT TO PARAGRAPH (c) OF THIS SUBSECTION (1.5) AND SUCH OTHER EVIDENCE RELATED TO THE MATTER AS THE SECURITIES BOARD DEEMS APPROPRIATE. IN THE CASE WHERE SUCH PERSON DOES NOT APPEAR, THE SECURITIES COMMISSIONER MAY NOT ISSUE AN ORDER UNLESS THERE IS A FINDING BY THE SECURITIES BOARD THAT THERE IS A REASONABLE BASIS TO BELIEVE SUCH NOTIFICATION WAS ACTUALLY RECEIVED OR SERVED, OR, AFTER REASONABLE SEARCH BY THE SECURITIES DIVISION, THE PERSON

AGAINST WHOM THE ORDER WAS ENTERED CANNOT BE LOCATED.

(III) AT ANY HEARING PURSUANT TO THIS PARAGRAPH (d), THE SECURITIES BOARD SHALL TAKE EVIDENCE AND HEAR ARGUMENTS FROM THE SECURITIES DIVISION AND THE PERSON AGAINST WHOM THE ORDER TO SHOW CAUSE HAS BEEN ENTERED, PURSUANT TO SUCH RULES AND PROCEDURES AS MAY BE ADOPTED BY THE SECURITIES COMMISSIONER. BASED ON THE EVIDENCE ENTERED AND ARGUMENTS HEARD AT THE HEARING, THE SECURITIES BOARD SHALL ENTER FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ITS INITIAL DECISION RECOMMENDING TO THE SECURITIES COMMISSIONER THAT A FINAL ORDER BE ENTERED AFFIRMING, DENYING, VACATING, OR OTHERWISE MODIFYING THE ORDER TO SHOW CAUSE.

(IV) IF THE SECURITIES COMMISSIONER REASONABLY FINDS THAT THE PERSON AGAINST WHOM THE ORDER TO SHOW CAUSE WAS ENTERED HAS ENGAGED, OR IS ABOUT TO ENGAGE, IN ACTS OR PRACTICES CONSTITUTING VIOLATIONS AS SET FORTH IN PARAGRAPH (b) OF THIS SUBSECTION (1.5) AND MAKES THE FINDINGS REQUIRED BY SECTION 11-51-704 (2), HE OR SHE MAY ISSUE A FINAL CEASE AND DESIST ORDER IMPOSING ONE OR MORE OF THE FOLLOWING SANCTIONS:

(A) DIRECTING SUCH PERSON TO CEASE AND DESIST FROM FURTHER UNLAWFUL ACTS OR PRACTICES;

(B) CENSURING THE PERSON, IF THE PERSON IS A LICENSED BROKER-DEALER, SALES REPRESENTATIVE, INVESTMENT ADVISER, OR INVESTMENT ADVISER REPRESENTATIVE; OR

(C) REQUIRING SUCH PERSON TO UNDERTAKE OR COMPLY WITH CONDITIONS OR LIMITATIONS PLACED UPON THE ACTIVITIES, FUNCTIONS, OR OPERATIONS OF SUCH PERSON, WITHIN SUCH REASONABLE TIME PERIOD AS MAY BE IMPOSED BY THE SECURITIES COMMISSIONER.

(V) THE SECURITIES COMMISSIONER SHALL PROMPTLY PROVIDE NOTICE OF THE FINAL ORDER, IN THE MANNER SET FORTH IN PARAGRAPH (c) OF THIS SUBSECTION (1.5), TO EACH PERSON AGAINST WHOM SUCH ORDER HAS BEEN ENTERED. THE FINAL ORDER ENTERED PURSUANT TO SUBPARAGRAPH (IV) OF THIS PARAGRAPH (d) SHALL BE EFFECTIVE WHEN ISSUED, AND SHALL BE A FINAL ORDER FOR PURPOSES OF JUDICIAL REVIEW PURSUANT TO SECTION 11-51-607.

SECTION 2. 11-51-702.5 (6) (c), Colorado Revised Statutes, is amended to read:

11-51-702.5. Securities board - creation - duties - repeal.

(6) (c) The securities board shall hear the matters described in section ~~11-51-606 (3) (e) and (4) (d)~~ 11-51-606 (1.5) (d), (3) (e), AND (4) (d) and issue the initial decisions as provided therein. The chairperson of the securities board shall determine the date and place for such hearings and may appoint a panel of the securities board consisting of no less than three board members to conduct such hearings. Any hearing held regarding an order issued by the securities commissioner under section 11-51-606 (3) or (4) shall be heard by the securities board.

SECTION 3. 11-53-202, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

11-53-202. Enforcement - cease-and-desist orders.

(2) WHENEVER IT APPEARS TO THE COMMISSIONER THAT ANY PERSON HAS ENGAGED IN ANY ACT OR PRACTICE CONSTITUTING A VIOLATION OF ANY PROVISION OF THIS ARTICLE OR ANY RULE OR ORDER UNDER THIS ARTICLE, THEN, IN ADDITION TO THE POWERS GRANTED IN SUBSECTION (1) OF THIS SECTION, THE COMMISSIONER MAY ENTER AN ORDER TO SHOW CAUSE DIRECTED TO SUCH PERSON AND SHALL FOLLOW SUBSTANTIALLY THE PROCEDURE SET FORTH IN SECTION 11-51-606 (1.5).

SECTION 4. Appropriation. In addition to any other appropriation, there is hereby appropriated, out of any moneys in the division of securities cash fund not otherwise appropriated, to the department of regulatory agencies, for allocation to the division of securities, for the fiscal year beginning July 1, 2001, the sum of six thousand thirty-six dollars (\$6,036), or so much thereof as may be necessary, for the implementation of this act.

SECTION 5. Effective date - applicability. This act shall take effect July 1, 2001, and shall apply to acts occurring on or after said date.

SECTION 6. Safety clause. The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Doug Dean
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Stan Matsunaka
PRESIDENT OF
THE SENATE

Judith Rodrigue
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Karen Goldman
SECRETARY OF
THE SENATE

APPROVED _____

Bill Owens
GOVERNOR OF THE STATE OF COLORADO