Bill as Introduced

HB 816 – AS INTRODUCED

2003 SESSION

03-0896
05/01

HOUSE BILL ***816***

AN ACT making technical corrections to the securities laws.

SPONSORS: Rep. Spiess, Hills 47; Rep. Welch, Rock 79; Sen. Peterson, Dist 11

COMMITTEE: Commerce

ANALYSIS

This bill:

I. Narrows the definition of agent to exclude certain individuals who provide the secretary of state with securities notice filings.

II. Defines broker-dealer and agent responsibility with respect to the suitability of recommended securities.

III. Inserts authorization to charge $100 per diem and other expenses related to a securities broker examination.

IV. Shortens the time period in which the secretary of state may consider a license application withdrawn for lack of information.

V. Clarifies and makes technical corrections to the filing requirements for the registration of securities.

VI. Authorizes the secretary of state, rather than the attorney general, to perform certain investigatory and enforcement functions relative to securities regulation.

VII. Increases the fine for violation of a cease and desist order.

This bill is a request of the department of state.

Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears ~~[in brackets and struckthrough.]~~
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

03-0896
05/01

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Three

AN ACT making technical corrections to the securities laws.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Securities; Definition of Agent. Amend RSA 421-B:2, II(d) and (e) to read as follows:

(d) Effecting transactions in securities registered by notification under RSA 421-B:12 if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state; [~~or~~]

(e) Effecting other transactions, if such individual is an officer or director of the issuer, no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state, and upon application, such individual is specifically authorized by name in an order issued by the secretary of state[~~.~~]***; or***

(f) Effecting transactions under RSA 421-B:11, I-a(e), if such individual is an officer or director of the issuer to whom no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state.

2 New Section; Securities; Suitability of Recommendation; Reasonable Grounds Required. Amend RSA 421-B by inserting after section 3 the following new section:

421-B:3-a Suitability of Recommendation; Reasonable Grounds Required.

I. In recommending to a customer the purchase, sale, or exchange of a security, a broker-dealer or broker-dealer agent must have reasonable grounds for believing that the recommendation is suitable for the customer upon the basis of the facts, if any, disclosed by the customer after reasonable inquiry as to his or her other security holdings and as to his or her financial situation and needs.

II. Before the execution of a transaction recommended to a noninstitutional customer, other than transactions with customers where investments are limited to money market mutual funds, a broker-dealer, salesperson, investment adviser, or investment adviser representative shall make reasonable efforts to obtain information concerning:

(a) The customer's financial status.

(b) The customer's tax status.

(c) The customer's investment objectives.

(d) Such other information used or considered to be reasonable by the broker-dealer, salesperson, investment adviser, or investment adviser representative in making recommendations to the customer.

3 New Paragraphs; Post-Licensing Provisions; Confidentiality; Examination Expenses. Amend RSA 421-B:9 by inserting after paragraph V the following new paragraphs:

VI. All reports pursuant to this section shall be absolutely privileged and although filed in the department as provided in paragraph V shall nevertheless not be for public inspection. The comments and recommendations of the examiner shall also be deemed confidential information and shall not be available for public inspection, except as the secretary of state in his or her discretion may deem advisable.

VI-a. The broker-dealer or other person examined pursuant to this section shall bear the expense of the examination. Such expenses shall be limited to a reasonable per diem allowance for compensation and expenses as determined by the secretary of state. The per diem allowance shall not exceed $100. Notwithstanding any other provision of law, domestic issuer-dealers shall be exempt from bearing the expense of examinations conducted pursuant to this section, except for the mileage expenses to and from the examination incurred by the department.

4 Securities; Denial, Revocation, and Withdrawal of License. Amend RSA 421-B:10, IV to read as follows:

IV. If the secretary of state finds that any licensee or applicant for license is no longer in existence or has ceased to do business as a broker-dealer, issuer-dealer, agent, or investment adviser, or is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian, or cannot be located after reasonable search, the secretary of state may by order revoke the license or deny the application. The secretary of state may deem abandoned and withdrawn any application for licensure made pursuant to this chapter, if any applicant fails to respond in writing within [~~180~~] ***90*** days to a written request from the secretary of state requesting a response. [~~Such request shall be sent via certified mail to the last known address of the applicant.~~]

5 Registration of Securities; Filing Requirements. Amend RSA 421-B:11, I-a (e)(4) and (5) to read as follows:

(4) The name of any registered broker-dealer who will effect transactions in this state; [~~and~~]

(5) The fee pursuant to RSA 421-B:31, I(h)[~~.~~] ***; and***

(6) A statement indicating the date on which the first sale in this state of covered securities under section 18(b)(4)(D) of the Securities Act of 1933 occurred.

6 Regulation of Securities; Provisions Applicable to Registration Generally. Amend RSA 421-B:15, II-a to read as follows:

II-a. [~~Every corporation and partnership having securities registered in this state shall, within 120 days after the close of its fiscal year, file with the secretary of state annually a financial statement audited and certified by an independent certified public accountant. The audited statement shall be prepared in accordance with generally accepted accounting principles and such other standards as the secretary of state shall adopt by rule.~~] Issuers of securities registered under this chapter shall [~~also~~] provide quarterly financial reports within 60 days of the end of each quarter

to their shareholders, partners, and members. Such quarterly reports need not be independently audited. [~~Filings may be made through the Securities and Exchange Commission's EDGAR system. The secretary of state may extend the time for filing such statement for good cause shown.~~]

7 New Paragraph; Securities; Provisions Applicable to Registration Generally; Criteria for Withdrawal of Registration Statement. Amend RSA 421-B:15 by inserting after paragraph XIV the following new paragraph:

XV. The secretary of state may deem abandoned and withdrawn any registration statement submitted pursuant to this chapter if any registrant fails to respond in writing within 90 days to a written request from the secretary of state requesting a response.

8 Securities Regulation; Exemption from Registration; Withdrawal of Registration. Amend RSA 421-B:17, III to read as follows:

III. The secretary of state may issue an order requiring any person who claims the benefit of an exemption with respect to a specific security or transaction, to show cause why the exemption should not be revoked. The order shall be calculated to give reasonable notice of the time and place for the revocation hearing, and shall state the reasons for the entry of the order. The secretary of state may by order summarily suspend, deny or revoke an exemption pending final determination of any order to show cause, provided the secretary of state finds the public interest will be irreparably harmed by delay in issuing such an order. If an exemption is denied, revoked or suspended pending final determination of an order to show cause, a hearing on the merits shall be held within 10 days of the issuance. The secretary of state may deem abandoned and withdraw any filing made pursuant to this section, if any person fails to respond in writing within [~~180~~] ***90*** days, to a written request from the secretary of state requesting a response[~~, such request having been sent via certified mail to the last known address of the person making the filing~~].

9 Securities; Investigations and Subpoenas; Application by Secretary of State. Amend RSA 421-B:22, III to read as follows:

III. In the event that a person refuses to obey a subpoena issued to him ***or her*** or any order or determination the secretary of state is authorized to make, the superior court, upon application by the [~~attorney-general~~] ***secretary of state or any officer designated by the secretary of state***, may issue to the person an order directing him ***or her*** to appear before the [~~attorney-general~~] ***secretary of state***, or the officer designated by him ***or her***, [~~thereto~~] to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

10 Securities; Cease and Desist Orders; Injunctions; Receivers. Amend RSA 421-B:23 to read as follows:

421-B:23 Cease and Desist Orders; Injunctions; Receivers.

I. Whenever it appears to the secretary of state that any person has engaged or is about to engage in any act or practice constituting a violation of this chapter or any rule or order under this chapter:

(a) The secretary of state shall have the power to issue and cause to be served upon such person an order requiring the person to cease and desist from violations of this chapter. The order shall be calculated to give reasonable notice of the rights of the person to request a hearing on the order and shall state the reasons for the entry of the order. ***The order shall be served at the last known address of such person. Service of the order and publication of the order in a newspaper of general circulation in the area of the last known address of such person shall serve to duly notify the person of the order and of the right to a hearing on the order.*** A hearing shall be held not later than 10 days after the request for such hearing is received by the secretary of state after which and within 20 days of the date of the hearing the secretary of state shall issue a further order vacating the cease and desist order or making it permanent as the facts require. All hearings shall be conducted in accordance with the rules adopted pursuant to this chapter. If the person to whom a cease and desist order is issued fails to appear at the hearing after being duly notified, such person shall be deemed in default, and the proceeding may be determined against him ***or her*** upon consideration of the cease and desist order, the allegations of which may be deemed to be true. If the person to whom a cease and desist order is issued fails to request a hearing within 30 calendar days of receipt of such order, ***but in any case no later than 60 calendar days from the issuance of the order,*** then such person shall likewise be deemed in default, and the order shall, on the thirty-first day ***from the receipt of the order and no later than the sixty-first day from the issuance of the order***, become permanent, and shall remain in full force and effect until and unless later modified or vacated by the secretary of state, for good cause shown. The secretary of state may adopt rules of procedure concerning all proceedings conducted pursuant to this section;

(b) The [~~attorney general~~] ***secretary of state or his or her designee*** may [~~, with or without prior administrative action by the secretary of state,~~] bring an action in the superior court to enjoin the acts or practices and to enforce compliance with this chapter or any rule or order under this chapter. Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted [~~and a receiver may be appointed for the defendant or the defendant's assets~~]. ***In addition, the court may issue an order for other appropriate or ancillary relief, to include an asset freeze, accounting, writ of attachment, writ of general or specific execution, and an appointment of a receiver or conservator, that may be the administrator, for the defendant or the defendant's assets.*** The court shall not require the [~~attorney general~~] ***secretary of state*** to post a bond; and

(c) The [~~attorney general~~] ***secretary of state or his or her designee*** may bring an action in the name of the state for injunctive relief and civil penalties for violations of any provision

of this chapter. In any action brought by the [~~attorney general~~] ***secretary of state or his or her designee***, the civil penalties shall not exceed $5,000 for each violation in the case of knowing violations, or $2,500 for each violation in the case of negligent violations, and each of the acts specified shall constitute a separate violation. The action may be brought in the superior court of the county in which the defendant resides or has his ***or her*** principal place of business, or, with the consent of the parties or if the defendant is a nonresident and has no place of business within the state, in the superior court of Merrimack county.

II. In a proceeding in superior court under this section where the state prevails, the secretary of state [~~and the attorney general~~] shall be entitled to recover all costs and expenses of investigation, and the court shall include the costs in its final judgment.

11 New Paragraph; Administrative Penalty; Investor Education; Fine for Violation of Cease And Desist Order. Amend RSA 421-B:26 by inserting after paragraph III-a the following new paragraph:

III-b. Notwithstanding any provision to the contrary, violation of a cease and desist order may result in an administrative fine not to exceed $2500 per day for as long as such violation continues. This fine shall be in addition to any other penalties provided.

12 Securities; Fees; Reference Change. Amend RSA 421-B:31, I(f) to read as follows:

(f) Registration fee prior to offers or sales of securities in this state	2/10 of one percent of the offering value of the [~~issue~~] ***securities offered in the registration statement*** provided said fee shall not be more than $1,050, plus a $200 non-refundable examination fee.

13 Securities; Fees; Reference Change. Amend RSA 421-B:31, I(k) to read as follows:

(k) Initial notice filing fee prior to offers or sales of covered securities under sections 18(b)(4)(C) and 18(b)(3) of the Securities Act of 1933.	2/10 of one percent of the offering value of the [~~issue~~] ***securities offered in the registration statement***, provided said fee shall not be more than $1,050, plus a $200 non-refundable initial notice fee.

14 Securities; Fees; Reference Change. Amend RSA 421-B:31, II(f) to read as follows:

(f) Annual notice filing fee for offers or sales of covered securities under sections 18(b)(4)(C) and 18(b)(3) of the Securities Act of 1933.	2/10 of one percent of the offering value of the [~~issue~~] ***securities offered in the registration statement***, provided said fee shall not be more than $1,050

15 Securities; Fees; Reference Change. Amend RSA 421-B:31, II(i) to read as follows:

(i) Annual registration fee for securities offered in this state, due one year from the effective date of registration, and each year thereafter:	2/10 of one percent of the offering value of the [~~issue~~] ***securities offered in the registration statement***, provided said fee shall not be more than $1,050.

16 Securities; Fees; Reference Change. Amend the introductory paragraph of RSA 421-B:31, III to read as follows:

III. In addition to any other penalties, provisions, or fees prescribed under this chapter, a late filing fee of 1/10 of one percent of the offering value of (1) [~~a registered securities issue~~] ***securities offered in the registration statement***, or (2) an offering of federal covered securities, provided said fee shall not be more than $525, shall be imposed if:

17 Disclosure of Security Takeovers; Requirement of Financial Disclosure; Clarification of Material Terms. Amend RSA 421-A:3 to read as follows:

421-A:3 Requirement of Financial Disclosure. No offeror shall make a takeover bid unless as soon as practicable on the date of commencement of the takeover bid [~~he~~] ***the offerer*** files with the secretary of state and the target company a registration statement containing the information required by RSA 421-A:4 and publicly discloses the material terms of the offer***, including the total number and class of securities sought in the offer and the type and amount of consideration offered to security holders***. The registration statement filed with the secretary of state shall be accompanied by such fees as may be prescribed under RSA 421-A:9.

18 Registration Statements for Takeovers; Contents of Registration Statement. Amend RSA 421-A:4 to read as follows:

421-A:4 Contents of Registration Statement. The registration statement required to be filed pursuant to RSA 421-A:3 shall include:

I. Copies of all prospectuses, brochures, advertisements, circulars, letters or other matter by means of which the offeror proposes to disclose to offerees all information material to a decision to accept or reject the offer[~~;~~].

II. The identity and material background information of all persons on whose behalf the acquisition of any equity security of the target company has been or is to be effected, including, but not limited to:

(a) If the offeror is a corporation, complete information on the organization and operations of offeror, including without limitation the year of organization, form of organization, jurisdiction in which it is organized, a description of each class of the offeror's capital stock and of its long term debt, audited balance sheets and income statements for each of the 3 most recent fiscal years and, if the most recent balance sheet and income statement are for a period ending more than 90 days prior to the date of filing, an interim balance sheet and income statement covering the

period from the date of the last audited balance sheet and income statement filed hereunder to a date within 90 days of the date of filing, ***an explanation of losses reflected in the required income statements,*** a brief description of the location and general character of the principal physical properties of the offeror and its subsidiaries, ***prior acquisitions,*** a description of ***threatened legal action, threatened legal proceedings, or*** pending legal proceedings, [~~other than routine litigation,~~] to which the offeror or any of its subsidiaries, ***officers, directors, or key personnel*** is ***or may be*** a party or of which any of their property is the subject, a brief description of the business done and projected by the offeror and its subsidiaries and the general development of such business over the past 5 years, ***a listing of all properties leased by the offeror, a listing of all intellectual property rights owned by the offeror, the number of employees of the offeror, the wages, salaries and other remuneration of the management of the offeror,*** the names of all directors [~~and~~], executive officers ***and key personnel, including principal and beneficial owners of greater than 10 percent of the offeror's stock,*** together with biographical summaries of each for the preceding 5 years, to date, and the approximate amount of any material interest, direct or indirect, of any of the directors or officers in any material transaction during the past 3-years, or in any proposed material transactions to which the offeror or any of its subsidiaries was or is to be a party[~~;~~].

(b) If the offeror is not a corporation, information concerning the background of the person, including:

(1) His or her current principal occupation and employment and the name, principal business and address of any corporation or other organization in which the employment or occupation is conducted.

(2) Material business activities and affiliations during the past 3 years, ***giving the starting and ending dates of each and the name, principal business, and address of any corporation or other organization in which the occupation, position, office, employment, or affiliation was conducted.***

(3) [~~and~~] A description of any material pending legal or administrative proceeding in which he ***or she*** is a party [~~;~~].

III. The source and amount of ***all*** funds or other consideration, ***whether direct or indirect*** used or to be used in acquiring any equity security, including a statement describing any securities, other than the existing capital stock or long term debt of the offeror, which are being offered in exchange for the equity securities of the target company, and if any part of the acquisition price is or will be represented by borrowed funds or other consideration, a description of the material terms of any financing arrangements, [~~and~~] ***including*** the names of the parties from whom the funds were borrowed, ***the term, the collateral, the stated and effective interest rates, and any other material terms or conditions of the loan. Any plans or arrangements to finance or repay the loan, or if no such plans or arrangements exist, shall be disclosed. Any***

alternative financing arrangements or alternative financing plans in the event the primary financing plans fall through, or the fact that no such arrangements or plans exist, shall be disclosed.

IV. A statement of any plans or proposals which the offeror, upon gaining control, may have to liquidate the target company, sell its assets, effect a merger or consolidation of it, or make any other major change in its business, corporate structure, management personnel, or policies of employment[;].

V. The number of shares of any equity security of the target company of which each offeror is beneficial or record owner or has a right to acquire, directly or indirectly, together with the name and address of each person defined in this chapter as an offeror[;].

VI. Particulars as to any contracts, arrangements or understandings to which an offeror is party with respect to any equity security of the target company, including, without limitation, transfers of any equity security, joint ventures, loans or option arrangements, puts and calls, guarantees of loan, guarantees against loss, guarantees of profits, division of losses or profits, or the giving or withholding of proxies, naming the persons with whom such contracts, arrangements, or understandings have been entered into[;].

VII. A description of any court or governmental proceeding in which the offer has been disapproved or enjoined and of any pending court or governmental proceeding in which it is alleged that the offer does not comply with the provisions of the applicable laws or regulations[;].

VIII. A statement of which other tender offers, subject to section 13, clause (d) or proxy contests subject to section 14 of the Securities Exchange Act of 1934 (15 U.S.C. Sec. 78a et seq.), as amended, the offeror has engaged in within 5 years prior to the offer[;].

IX. A statement of whether any officer or director of the offeror or the offeror has:

(a) Been convicted within the prior 10 years of a felony ***or within the prior 5 years in any other criminal proceeding, excluding traffic violations or similar misdemeanors. If the person was convicted, describe the criminal proceeding, including the dates, nature of conviction, name and location of the court, and the penalty imposed or other disposition in the case***[;]; or

(b) Been subject of a judgment, [~~or~~] decree ***or final order, including a description of the proceeding with a summary of the terms of judgment, decree, or final order,*** entered by a court or governmental agency with respect to laws relating to:

(1) Antitrust,

(2) Fair employment practices,

(3) Purchase or sale of securities, or

(4) Environmental protection, or

(c) Been subject of a disciplinary action such as, but not limited to, a censure, reprimand, or warning, by a non-governmental body commonly known as a self-regulatory organization, or SRO, such as, but not limited to, the National Association of Securities Dealers, the New York Stock Exchange, or the American Stock Exchange[~~; and~~].

X. A statement of risk factors related to the transaction for security holders of the target company.

[~~X~~] *XI.* Such other and further documents, exhibits, data, and information as may be required by regulations of the secretary of state or as may be necessary to make fair, full, and effective disclosure to offerees of all information material to a decision to accept or reject the offer. If any material change occurs in the facts set forth in the registration statement required by RSA 421-A:3, the offeror who filed such statement shall promptly notify the secretary of state and the target company of such change and shall amend the registration statement to reflect such change within 10 days of the change.

19 Effective Date. This act shall take effect 60 days after its passage.

Amendments

Rep. Fraser, Merr. 37
March 18, 2003
2003-0771h
05/01

Amendment to HB 816

Amend the bill by replacing sections 9 and 10 with the following:

9 Securities; Investigations and Subpoenas; Application by Secretary of State. Amend RSA 421-B:22, III to read as follows:

III. In the event that a person refuses to obey a subpoena issued to him ***or her*** or any order or determination the secretary of state is authorized to make, the superior court, upon application by the attorney general ***or secretary of state or any officer designated by the secretary of state,*** may issue to the person an order directing him ***or her*** to appear before the attorney general ***or secretary of state,*** or the officer designated by him ***or her***, [~~thereto~~] to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

10 Securities; Cease and Desist Orders; Injunctions; Receivers. Amend RSA 421-B:23 to read as follows:

421-B:23 Cease and Desist Orders; Injunctions; Receivers.

I. Whenever it appears to the secretary of state that any person has engaged or is about to engage in any act or practice constituting a violation of this chapter or any rule or order under this chapter:

(a) The secretary of state shall have the power to issue and cause to be served upon such person an order requiring the person to cease and desist from violations of this chapter. The order shall be calculated to give reasonable notice of the rights of the person to request a hearing on the order and shall state the reasons for the entry of the order. ***The order shall be served at the last known address of such person. Service of the order and publication of the order in a newspaper of general circulation in the area of the last known address of such person shall serve to duly notify the person of the order and of the right to a hearing on the order.*** A hearing shall be held not later than 10 days after the request for such hearing is received by the secretary of state after which and within 20 days of the date of the hearing the secretary of state shall issue a further order vacating the cease and desist order or making it permanent as the facts require. All hearings shall be conducted in accordance with the rules adopted pursuant to this chapter. If the person to whom a cease and desist order is issued fails to appear at the hearing after being duly notified, such person shall be deemed in default, and the proceeding may be determined against him ***or her*** upon consideration of the cease and desist order, the allegations of which may be deemed to be true. If the person to whom a cease and desist order is issued fails to request a hearing

within 30 calendar days of receipt of such order, ***but in any case no later than 60 calendar days from the issuance of the order,*** then such person shall likewise be deemed in default, and the order shall, on the thirty-first day ***from the receipt of the order and no later than the sixty-first day from the issuance of the order***, become permanent, and shall remain in full force and effect until and unless later modified or vacated by the secretary of state, for good cause shown. The secretary of state may adopt rules of procedure concerning all proceedings conducted pursuant to this section;

(b) The attorney general ***or secretary of state or his or her designee*** may, with or without prior administrative action by the secretary of state, bring an action in the superior court to enjoin the acts or practices and to enforce compliance with this chapter or any rule or order under this chapter. Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted [~~and a receiver may be appointed for the defendant or the defendant's assets~~]. ***In addition, the court may issue an order for other appropriate or ancillary relief, to include an asset freeze, accounting, writ of attachment, writ of general or specific execution, and an appointment of a receiver or conservator, that may be the administrator, for the defendant or the defendant's assets.*** The court shall not require the attorney general ***or secretary of state*** to post a bond; and

(c) The attorney general ***or secretary of state or his or her designee*** may bring an action [~~in the name of the state~~] for injunctive relief and civil penalties for violations of any provision of this chapter. In any action brought by the attorney general ***or secretary of state or his or her designee***, the civil penalties shall not exceed $5,000 for each violation in the case of knowing violations, or $2,500 for each violation in the case of negligent violations, and each of the acts specified shall constitute a separate violation. The action may be brought in the superior court of the county in which the defendant resides or has his ***or her*** principal place of business, or, with the consent of the parties or if the defendant is a nonresident and has no place of business within the state, in the superior court of Merrimack county.

II. In a proceeding in superior court under this section where the state prevails, the secretary of state and the attorney general shall be entitled to recover all costs and expenses of investigation, and the court shall include the costs in its final judgment.

Amend RSA 421-A:3 as inserted by section 17 of the bill by replacing it with the following:

421-A:3 Requirement of Financial Disclosure. No offeror shall make a takeover bid unless as soon as practicable on the date of commencement of the takeover bid [~~he~~] ***the offerer*** files with the secretary of state and the target company a registration statement containing the information required by RSA 421-A:4 and publicly discloses the material terms of the offer, ***including the total number and class of securities sought in the offer and the type and amount of***

consideration offered to security holders. The registration statement filed with the secretary of state shall be accompanied by such fees as may be prescribed under RSA 421-A:9. ***The offeror shall provide the target company with any amendments or revisions to the registration statement at the same time that such amendments or revisions are filed with the secretary of state.***

Amend the bill by inserting after section 18 the following and renumbering the original section 19 to read as 20:

19 Disclosure of Security Takeovers; Scheduling of Public Hearing; Offeror and Target Companies As Parties. Amend RSA 421-A:5 to read as follows:

421-A:5 Scheduling of Public Hearing. Within 20 days after the filing of a registration statement pursuant to this chapter, the secretary of state shall commence his investigation and order a hearing, if he determines a hearing is necessary or appropriate for the protection of offerees in this state, for the purpose of determining compliance with the requirements of this chapter and whether the offeror has provided full and fair disclosure to the offerees of all material information concerning the takeover bid including the filing of a complete and accurate registration statement. Any [~~initial~~] hearing shall ***include the offeror and the target company as parties, and shall*** commence within 25 days after the filing of a registration statement.

2003-0771h

AMENDED ANALYSIS

This bill:

I. Narrows the definition of agent to exclude certain individuals who provide the secretary of state with securities notice filings.

II. Defines broker-dealer and agent responsibility with respect to the suitability of recommended securities.

III. Inserts authorization to charge $100 per diem and other expenses related to a securities broker examination.

IV. Shortens the time period in which the secretary of state may consider a license application withdrawn for lack of information.

V. Clarifies and makes technical corrections to the filing requirements for the registration of securities.

VI. Authorizes the secretary of state or the attorney general to perform certain investigatory and enforcement functions relative to securities regulation.

VII. Increases the fine for violation of a cease and desist order.

VIII. Provides that the offeror and target company shall be parties to any public hearing relative to a security takeover.

This bill is a request of the department of state.

Hearing Minutes

HOUSE COMMITTEE ON COMMERCE

PUBLIC HEARING ON HB 816

BILL TITLE: making technical corrections to the securities laws.

DATE: March 7, 2003

LOB ROOM: 302 **Time Public Hearing Called to Order:** 10 am

Time Adjourned: 11 am

(please circle if present)

Committee Members: Reps. Hunt, L. Fraser, Francoeur, Belanger, Langley, DiFruscia, D. Flanders, Spiess, Holden, Liebl, Quandt, Charles Clark, Brady, Scamman, Stepanek, Reardon, Kathleen Taylor, Meader, DeStefano, Vachon and Kopka.

Bill Sponsors: Reps. Spiess and Welch and Sen. Petersen

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

***Rep. Paul Spiess, prime sponsor** –He is unable to attend but submitted written testimony.

Mark Connolly & Jeff Spill, Bureau of Securities Regulation, NH Attorney Generals Office – Housekeeping measure. Introduced new members of staff. Changes made apply to 421A and 421B. Will make department more effective and they will be able to utilize their resources in a better way. Went through the VII steps of this bill. This is not intended to exclude the AG's Office but to expedite the process. Gave figures on how many bankers/financial advisers they serviced last year-$100 fee not unreasonable. Explained various fees. Looking for more uniformity. Changed proposed 421A. Clarify what information that must be given on registration statement. Changes modeled in federal regulations. Authority of Secretary of State's Office re: enforcement action would enable rapid action to get information into the courts and freeze assets, etc.

Chairman John Hunt – Said originally this authority was in the Securities Division, then the authority went to the AG's Office, and now we are being asked to grant the authority back to Securities Division.

Mark Connolly – Fees would make the department more uniform with other states. An estimated reduction of $15,000 in state revenue. Not from bill.

Q: Rep. Sheila Francoeur – Questioned how they would determine the Secretary of State's Office could handle enforcement or to go to AG's.

A: If possible they would like to make a decision and go right forward if they felt the need.

Suzanne Gorman, NH Attorney General's Office – Section 9 her only concern. A very good relation with the two departments. AG's Office has legal authority to all departments in New

Hampshire. Can't anticipate problems. Bill should be written to include AG as well as Sec. Of State. Would certainly hope AG and Secretary of State's Office would work together. "Appearance before" section should also include both AG and Secretary of State.

Chairman Hunt – Requests both departments get together and agree on the wording, re: enforcement.

Respectfully Submitted:

Jane S Langley

Jane S. Langley, Clerk

Sub-Committee Actions

HOUSE COMMITTEE ON COMMERCE

SUBCOMMITTEE WORK SESSION ON HB 816

BILL TITLE: making technical corrections to the securities laws.

DATE: March 17, 2003

Subcommittee Members: Reps. Fraser, Clark, Stepanek, Taylor & Kopka

Comments and Recommendations: OTP recommendation. Vote 5-0.

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: (OTP) OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. Not Recorded

Seconded by Rep. Not Recorded

Vote: 5-0

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep. Leo W. Fraser, Jr.
Subcommittee Chairman/Clerk

Sub-Committee Minutes

HOUSE COMMITTEE ON COMMERCE

SUBCOMMITTEE WORK SESSION ON HB 816

BILL TITLE: making technical corrections to the securities laws.

DATE: March 14, 2003

Subcommittee Members: Reps. Fraser, Clark, Stepanek, Taylor & Kopka

Comments and Recommendations: No notes.

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep. Leo W. Fraser, Jr.
Subcommittee Chairman/Clerk

Testimony

TESTIMONY BEFORE HOUSE COMMERCE COMMITTEE
MARCH 7, 2003
HB816
MAKING TECHNICAL CORRECTIONS TO SECURITIES LAWS AND ENHANCING THE POWERS OF THE SECRETARY OF STATE.

Good morning Mr. Chairman and members of the Committee. For the record, I am Representative Paul Spiess, Hillsborough 47, representing the towns of Amherst and Milford. I regret that I am unable to present this testimony in person, but I believe that it is important for you to understand my reasons for sponsoring this bill.

This bill has been introduced at the request of the Secretary of State's office. It is a companion bill to HB815, which you just heard. HB816 makes numerous technical corrections to existing securities laws. Rather than describe these changes in my remarks, I will let the representatives of the Secretary's office testify to the specifics of the bill.

I would, however, like to point out the relatively important changes embodied in sections 9 and 10 of the bill. Section 9 (page 3) grants to the Secretary (or his designee) the right to petition the Superior Court directly to compel testimony and produce requested documentation. This will accelerate the Secretary's ability to obtain information in a timely basis. Section 10 (page 3, 4 and 5) allows the Secretary of State to petition the court directly for appropriate orders to protect assets. Both these sections alleviate the requirement to work through the Attorney General's office to achieve court action in a timely manner.

Once again, if the Secretary of State believes that he needs enhanced powers to supervise and regulate business conduct, we should listen.

Thank you for your consideration of this bill.

Amendments to HB 816

Amendment to NHRSA 421-A:3-add at the end of the section:

Any amendments or revisions to the registration statement must be provided to the target company by the offeror at the time they are filed with the secretary of state's office.

Amendment to NHRSA 421-A:5 as follows:

Within 20 days after the filing of a registration statement pursuant to this chapter, the secretary of state shall commence his investigation and order a hearing, if he determines a hearing is necessary or appropriate for the protection of the offerees in this state, for the purpose of determining compliance with the requirements of this chapter and whether the offeror has provided full and fair disclosure to the offerees of all the material information concerning the takeover bid including the filing of a complete and accurate registration statement. Any ~~initial~~ hearing shall **include the offeror and the target company as parties, and shall** commence within 25 days after the filing of a registration statement.

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Voting Sheets

HOUSE COMMITTEE ON COMMERCE

EXECUTIVE SESSION on HB 816

BILL TITLE: **making technical corrections to the securities laws.**

DATE: March 19, 2003

LOB ROOM: 302

Amendments:

Sponsor: Rep. Fraser — OLS Document #: 2003 0771h

Sponsor: Rep. — OLS Document #:

Sponsor: Rep. — OLS Document #:

Motions: (OTP), OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. Fraser Amendment

Seconded by Rep. Meader

Vote: 13-0 (Please attach record of roll call vote.)

Motions: OTP, (OTP/A), ITL, Interim Study (Please circle one.)

Moved by Rep. Fraser

Seconded by Rep. Meader

Vote: 13-0 (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: 13-0

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Paul D. Spiess, Clerk

OFFICE OF THE HOUSE CLERK

COMMERCE

Bill #: 816 Title:

PH Date: / / Exec Session Date: / /

Motion: OTP Amendment #: 0716

MEMBER	YEAS	NAYS
Hunt. John B. Chairman	✓	
Fraser. Leo W. V Chairman	✓	
Francoeur. Sheila T	✓	
Belanger. Ronald J	✓	
Langley. Jane S	✓	
DiFruscia. Anthony R		
Flanders. Donald H	✓	
Spiess. Paul D	✓	
Holden. Randolph N		
Liebl. George J		
Quandt. Matthew J	✓	
Clark. Charles L	✓	
Brady. Mark A	✓	
Scamman. Stella	✓	
Stepanek. Stephen B		
Reardon. Tara G		
Taylor. Kathleen N		
Meader. David R	✓	
DeStefano. Stephen T	✓	
Vachon. Dennis P		
Kopka. Angeline A		
	13	0

TOTAL VOTE:
Printed: 1/6/2003

OFFICE OF THE HOUSE CLERK 2003 SESSION

COMMERCE

Bill #: 816 **Title:**

PH Date: ____/____/____ **Exec Session Date:** ____/____/____

Motion: OTPA **Amendment #:**

MEMBER	YEAS	NAYS
Hunt. John B. Chairman	✓	
Fraser. Leo W. V Chairman	✓	
Francoeur. Sheila T	✓	
Belanger. Ronald J	✓	
Langley. Jane S	✓	
DiFruscia. Anthony R		
Flanders. Donald H	✓	
Spiess. Paul D	✓	
Holden. Randolph N		
Liebl. George J		
Quandt. Matthew J	✓	
Clark. Charles L	✓	
Brady. Mark A	✓	
Scamman. Stella	✓	
Stepanek. Stephen B		
Reardon. Tara G		
Taylor. Kathleen N		
Meader. David R	✓	
DeStefano. Stephen T	✓	
Vachon. Dennis P		
Kopka. Angeline A		
	13	0

TOTAL VOTE:

Printed: 1/6/2003

Committee Report

COMMITTEE REPORT

COMMITTEE: **Commerce**

BILL NUMBER: **HB 816**

TITLE: making technical corrections to the securities laws.

DATE: March 19, 2003 CONSENT CALENDAR YES ☒ NO ☐

☐ OUGHT TO PASS

☒ OUGHT TO PASS WITH AMENDMENT

☐ INEXPEDIENT TO LEGISLATE

☐ REFER TO COMMITTEE FOR INTERIM STUDY
(Available only in second year of biennium.)

STATEMENT OF INTENT
(Include Committee Vote)

This bill has been introduced at the request of the Secretary of State's Office. It does the following things: (1) Narrows the definition of agent to exclude certain individuals who provide the Secretary of State with securities notice filings; (2) Defines broker-dealer and agent responsibility with respect to the suitability of recommended securities; (3) Inserts authorization to charge $100 per diem and other expenses related to a securities broker examination; (4) Shortens the time period in which the Secretary of State may consider a license application withdrawn for lack of information; (5) Clarifies and makes technical corrections to the filing requirements for the registration of securities; (6) Authorizes the Secretary of State, rather than the Attorney General, to perform certain investigatory and enforcement functions relative to securities regulation; and (7) Increases the fine for violation of a cease and desist order. The Attorney General's Office, in its testimony, was only concerned with one section of the bill. This was addressed in the amendment so that in all sections where the Secretary of State was noted, that was changed to the Attorney General or the Secretary of State. The final change is that once the takeover bid filing is complete and accurate, the hearing shall include the offeror and the target company as parties, and shall commence within 25 days after the filing of a registration statement.

Vote 13-0.

Rep. Leo W. Fraser Jr.
FOR THE COMMITTEE

Original: House Clerk
cc: Committee Bill file

USE ANOTHER REPORT FOR MINORITY REPORT

CONSENT CALENDAR

Commerce

HB 816, making technical corrections to the securities laws. **OUGHT TO PASS WITH AMENDMENT**

Rep. Leo W. Fraser Jr. for Commerce: This bill has been introduced at the request of the Secretary of State's Office. It does the following things: (1) Narrows the definition of agent to exclude certain individuals who provide the Secretary of State with securities notice filings; (2) Defines broker-dealer and agent responsibility with respect to the suitability of recommended securities; (3) Inserts authorization to charge $100 per diem and other expenses related to a securities broker examination; (4) Shortens the time period in which the Secretary of State may consider a license application withdrawn for lack of information; (5) Clarifies and makes technical corrections to the filing requirements for the registration of securities; (6) Authorizes the Secretary of State, rather than the Attorney General, to perform certain investigatory and enforcement functions relative to securities regulation; and (7) Increases the fine for violation of a cease and desist order. The Attorney General's Office, in its testimony, was only concerned with one section of the bill. This was addressed in the amendment so that in all sections where the Secretary of State was noted, that was changed to the Attorney General or the Secretary of State. The final change is that once the takeover bid filing is complete and accurate, the hearing shall include the offeror and the target company as parties, and shall commence within 25 days after the filing of a registration statement. **Vote 13-0.**

From

This bill has been introduced at the request of the Secretary of State's office. ~~It~~

IT does The following Things

I. Narrows the definition of agent to exclude certain individuals who provide the secretary of state with securities notice filings.

II. Defines broker-dealer and agent responsibility with respect to the suitability of recommended securities.

III. Inserts authorization to charge $100 per diem and other expenses related to a securities broker examination.

IV. Shortens the time period in which the secretary of state may consider a license application withdrawn for lack of information.

V. Clarifies and makes technical corrections to the filing requirements for the registration of securities.

VI. Authorizes the secretary of state, rather than the attorney general, to perform certain investigatory and enforcement functions relative to securities regulation.

VII. Increases the fine for violation of a cease and desist order.

~~This bill is a request of the department~~ of state.

The Attorney General's office in Jan testimony was only concerned with one section of the bill

This was addressed in the amendment so that where in all sections where The Secretary of State was stated, that was changed to The Attorney General or The Secretary of State

JBH

The final changes once the take over bid filing is complete and accurate, The hearing shall include the offeror and the target company as parties and shall commence within 21 days after the filing of the Registration Statement