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HOUSE RECORD

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No. 39

**Contains: Committee Reports for June 3, Amendment to House Rules, House Deadlines,
House Bills Amended by the Senate, Bills Laid on Table, Committee of Conference
Procedures, Meetings and Notices**

HOUSE CALENDAR

MEMBERS OF THE HOUSE:

The next House session will be Wednesday, June 3, 2015.

When the House recesses for lunch on the 3rd, you are cordially invited to attend the Speaker's Annual Ice Cream Social on the State House Plaza. Rep. Burt's Hot Dog Day event will also take place on the plaza, so I hope you will stop by to relax and enjoy the offerings of both. All legislators and staff are welcome.

Please keep in mind that reimbursement for travel to the State House is limited to Tuesdays, Wednesdays and Thursdays, unless you are a member of a statutory committee which meets on Mondays or Fridays. Please try to consolidate your trips by doing constituent and other legislative work on the days you need to be in Concord for committee meetings or House sessions. Your continued cooperation is greatly appreciated.

Committee chairs should keep checking in with the House Clerk's Office regarding Senate-amended House bills.

Shawn N. Jasper, Speaker

NOTICE

There will be a meeting of chairs and vice chairs on Tuesday, June 2, 2015, at 9:00 a.m. in Rooms 305-307 of the Legislative Office Building.

Shawn N. Jasper, Speaker

NOTICE

There will be a Republican caucus on **Wednesday, June 3rd** at 9:00 a.m. in Representatives Hall.
Rep. Jack Flanagan

NOTICE

There will be a Democratic caucus on **Wednesday, June 3rd** at 9:00 a.m. in LOB 305-307.
Rep. Stephen Shurtleff

NOTICE

The **2013 House Permanent Journals** have arrived. **House Members** who ordered a Journal may pick it up in the Clerk's office. Thank you.

Paul C. Smith, Clerk of the House

AMENDMENT TO HOUSE RULES

PROPOSED BY THE RULES COMMITTEE

Wednesday, September 2, 2015

Friday, September 18, 2015

Friday, October 30, 2015

Thursday, November 12, 2015

Wednesday, January 6, 2016

First day to file LSRs for 2016

Last day to file LSRs (4:00 p.m.)

Last day to sign off LSRs (4:00 p.m.)

Last day to report retained bills

Last day to introduce House Legislation

NOTICE

The House Calendar closes at **3:00 p.m.** on **Wednesdays** for **scheduling and notices**. It will close at **NOON** on **Thursdays** for **Committee Reports**. Please be sure to do your scheduling in order to meet that deadline.

CLOSES NOON on THURSDAY:

June 4
June 11

AVAILABLE FRIDAY:

June 5
June 12

Paul C. Smith, Clerk of the House

2015 HOUSE DEADLINES

Thursday, June 4, 2015
Thursday, June 11, 2015
Thursday, June 18, 2015
Thursday, June 25, 2015

Last day to act on SBs
Last day to form Committees of Conference
Last day to sign Committee of Conference reports
Last day to act on Committee of Conference reports

BILLS LAID ON TABLE

HB 112, relative to domicile for voting purposes. (Pending question: Ought To Pass)

HB 191, relative to projects which are privately financed in energy efficiency and clean energy districts. (Pending question: Ought To Pass)

HB 241-FN, prohibiting driving while holding an animal in the driver's seat. (Pending question: Ought To Pass)

HB 263, prohibiting residency restrictions on sex offenders. (Pending question: Ought To Pass)

HB 303, relative to statewide assessment standards and relative to parental consent for psychological services to students. (Pending question: Ought To Pass)

HB 349, relative to state buffers for projects requiring wetland permits. (Pending question: Inexpedient to Legislate)

HB 379, establishing a commission to study the effects of ocean acidification on commercially harvested species. (Pending question: Inexpedient to Legislate)

HB 446, relative to access to investigational drugs, biological products, and devices. (Pending question: Inexpedient to Legislate)

HB 457-FN-A, establishing a nurse practitioner position at the veterans' home and making an appropriation therefor. (No pending question)

HB 459, establishing a committee to study medical services provided to residents of the New Hampshire veterans' home. (Pending question: Inexpedient to Legislate)

HB 461, prohibiting the use or application of foreign laws in the state court. (Pending question: Inexpedient to Legislate)

HB 496, prohibiting public employers from using criminal history in employment decisions. (Pending question: Inexpedient to Legislate)

HB 516, relative to the determination of parental rights based on the best interest of the child and relative to grounds for modification of an order regarding parental rights and responsibilities. (Pending question: Inexpedient to Legislate)

HB 543, repealing the electric renewable portfolio standard. (Pending question: Inexpedient to Legislate)

HB 551, relative to preventing diversion of business income to tax havens. (Pending question: Inexpedient to Legislate)

HB 595, relative to banning abortion after viability. (Pending question: Adopt committee amendment 2015-0748h)

HB 646, allowing public bodies or agencies to charge for the costs of retrieval of public records under the right-to-know law. (Pending question: Adopt committee amendment 2015-0753h)

HB 647, exempting convictions for simple assault from an extended term of imprisonment and relative to annulments of certain criminal convictions. (Pending question: Inexpedient to Legislate)

HB 655, establishing a credit against business profits taxes for motion picture production expenditures in New Hampshire. (Pending question: Inexpedient to Legislate)

HB 676-FN-A, establishing a science, technology, engineering, and mathematics scholars program. (Pending question: Inexpedient to Legislate)

HCR 3, applying to Congress to call a convention of states under the United States Constitution. (Pending question: Adopt committee amendment 2015-0423h)

HR 6, recognizing February 26, 2015, as the 23rd anniversary of the Khojaly Tragedy in Azerbaijan. (Pending question: Inexpedient to Legislate)

HR 12, affirming revenue estimates for fiscal years 2015, 2016, and 2017. (Pending question: Third reading)

SB 125-FN, relative to certification and licensure for mold assessment or remediation services. (Pending question: Adopt committee amendment 2015-1470h)

SB 181, relative to registration fees for hunter education programs of the fish and game department. (Pending question: Ought To Pass with Amendment)

2015 HOUSE BILLS AMENDED BY THE SENATE

HB 122, relative to advertising of liquor or beverages. (House Concurrs 5/6/2015)

HB 126, establishing a commission to study issues related to students receiving special education services while attending a chartered public school. (House Concurrs 5/6/2015)

HB 133, relative to recounts on questions. (SJ 5/7/2015)

HB 134, establishing a committee to study the use of motorized scooter chairs on roadways and sidewalks. (House Concurrs 5/6/2015)

HB 140, relative to appointment of inspectors of election. (House Concurrs 5/6/2015)

HB 142, (2nd New Title) relative to student social media policies by educational institutions and nonpublic sessions under the right-to-know law, and establishing a commission to study social impact bond funding for early childhood education for at-risk students. (SJ 4/30/2015)

HB 153, relative to the telecommunications planning and development advisory committee. (SJ 4/30/2015)

HB 187, relative to information sharing for enforcement of the tobacco tax and relative to the biennial adjustment of the filing threshold for the business enterprise tax. (SJ 4/30/2015)

HB 190, (New Title) establishing a statutory commission to study the standards for collaborative pharmacy practice. (SJ 4/30/2015)

HB 196, requiring the removal of identifying features from vehicles formerly used as ambulances. (House Concurrs 5/6/2015)

HB 206, (2nd New Title) establishing a committee to study non-academic surveys or questionnaires administered by a public school to its students and relative to non-academic surveys or questionnaires given to students. (SJ 5/14/2015)

HB 212, (New Title) relative to revocation of fish and game licenses of persons convicted of sexual assault while hunting, trapping, or fishing and relative to the authority of the fish and game department to establish fees. (SJ 5/14/2015)

HB 219-FN, relative to the use of electronic benefit transfer (EBT) cards. (SJ 5/14/2015)

HB 233, relative to local approval of mining activity. (SJ 5/21/2015)

HB 279, establishing a commission to study the economic impact of the arts and culture in New Hampshire. (House Concurrs 5/6/2015)

HB 281, defining "exotic aquatic species of wildlife" and relative to the duties of the exotic aquatic weeds and species committee. (SJ 4/30/2015)

HB 306, relative to membership of the wetlands council and the water council. (House Concurrs 5/6/2015)

HB 323, relative to the administration of the statewide assessment program. (SJ 5/21/2015)

HB 332, relative to school district policy regarding objectionable course material. (SJ 5/14/2015)

HB 333, establishing a process for review and reporting of dedicated funds. (SJ 4/30/2015)

HB 344, (New Title) relative to tax increment financing plans of municipal economic development and revitalization districts. (SJ 4/30/2015)

HB 347, relative to payment of wages of certain hourly school district employees. (SJ 5/14/2015)

HB 358, relative to driver's license information obtained by pawnbrokers and secondhand dealers. (SJ 4/30/2015)

HB 363, relative to Lyme disease awareness. (House Concurrs 5/6/2015)

HB 364, (2nd New Title) relative to renewal fees administered by the office of professional licensing, the salt applicator certification program, and pesticide product registration requirements. (SJ 5/21/2015)

HB 382, establishing a committee to study facilitating private investment in energy efficiency and renewable energy. (House Concurrs 5/6/2015)

HB 395-FN, relative to electronic toll collection. (SJ 4/30/2015)

HB 407, (2nd New Title) establishing a committee to study the classifications of military vehicles and equipment that may be purchased by the state and its political subdivisions and establishing a committee to study honorary legislation. (SJ 4/30/2015)

HB 421, (New Title) authorizing the university of New Hampshire to grow industrial hemp for research purposes and proclaiming September 25 as Ataxia Awareness Day. (SJ 4/30/2015)

HB 425, relative to procedures for the adoption of agency rules under the administrative procedures act. (SJ 4/30/2015)

HB 451, relative to local approval of mining permits. (SJ 5/21/2015)

HB 460, (2nd New Title) establishing a commission to study revenue alternatives to the road toll for electric-powered and hybrid vehicles for the funding of improvements to the state's highways and bridges. (SJ 5/7/2015)

HB 473, (New Title) requiring the board of managers of the veterans' home to adopt a policy relative to therapeutic use of cannabis by residents of the home. (SJ 5/14/2015)

HB 476-FN, amending the definition of "qualifying medical condition" in the therapeutic cannabis law. (SJ 5/14/2015)

HB 479, (New Title) relative to uninsured or hit-and-run motor vehicle coverage and relative to the New Hampshire excellence in higher education endowment trust fund. (SJ 5/7/2015)

HB 483, relative to the commission on primary care workforce issues. (SJ 5/21/2015)

HB 484, (New Title) relative to medication administration by licensed nursing assistants and relative to exemptions from regulation for certain nursing care and attendant care services. (SJ 4/30/2015)

HB 493, (New Title) relative to minimum voting booths for city, town, school district, and village district elections. (SJ 4/30/2015)

HB 506, clarifying the conditions under which motor vehicle information may be used. (SJ 5/7/2015)

HB 510, establishing a commission to study the regulation of pawnbrokers, secondhand dealers, and junk or scrap metal dealers. (House Concur 5/6/2015)

HB 519, (New Title) establishing a committee to study policies which it determines are necessary for dyslexic students. (SJ 4/30/2015)

HB 531, establishing a committee to study short-term rentals by homeowners and owners of residential properties. (SJ 4/30/2015)

HB 547, (2nd New Title) requiring the assessing standards board to make recommendations on the valuation of telecommunications poles and conduits and the assessment of utility property. (SJ 4/30/2015)

HB 553-FN, relative to dealer registration privileges by a dealership management company and proof of ownership of a vehicle at the time of sale. (SJ 5/14/2015)

HB 564-FN, relative to prior authorization for certain prescription drugs. (SJ 5/21/2015)

HB 584-FN, making various changes to laws relating to motor vehicles and vessels. (SJ 5/7/2015)

HB 597-FN, relative to penalties for indecent exposure and lewdness. (SJ 5/7/2015)

HB 599, relative to the economic revitalization zone tax credit program. (SJ 4/30/2015)

HB 616-FN. (New Title) relative to compensation to claimants under the victims' assistance fund. (SJ 5/7/2015)

HB 662-FN-L, relative to property taxes paid by chartered public schools leasing property. (SJ 4/30/2015)

HB 666-FN, relative to licensing of money transmitters. (SJ 5/7/2015)

HB 681-FN-A, (3rd New Title) establishing a fine for persons convicted of domestic violence and increasing the marriage license fee. (SJ 5/14/2015)

2015 HOUSE COMMITTEE OF CONFERENCE PROCEDURES

The Chairmen of the policy committees will receive bills amended by the Senate and should check with their committees to determine whether to recommend that the House concur, non-concur, or non-concur and request a Committee of Conference.

When a committee requests that the bill be sent to a Committee of Conference, the Chairman will recommend members for appointment. If the bill has gone to more than one committee, the members may come from the different committees as determined by the Speaker. Chairmen should recommend only those members from their policy committees. The Speaker shall make the final decision of Conference committee members, and the committee choices are generally limited to those who support the House position.

The first named House member shall serve as Chairman of the House Conferees. For House bills in Committee of Conference, **the House Conferee Chairman shall set the time and place of the first meeting with the Clerk's Office** and shall chair each meeting of the Committee of Conference. **Each meeting shall be posted in the Clerk's Office and outside the committee room at least 24 hours in advance.** [House Rule 43 (c)]. If a Committee of Conference meeting recesses, **the reconvening time shall be posted in the Clerk's office and outside the committee room.**

The House and Senate Conferees on a bill shall meet jointly but vote separately while in conference.

The Committee of Conference may not change the title of the bill. The Committee also may not add amendments that are not germane to the subject matter of the bill or contain subject matter that has been indefinitely postponed. A non-germane amendment is one in which the subject matter is not contained in either the House or Senate version of the bill. [House Rule 49 (g)]

The sponsor of a bill that is in Committee of Conference shall, upon request, be provided an opportunity to be heard.

A unanimous vote of both the House and Senate Conferees, voting separately, is necessary for an agreed upon report to be sent to the House and Senate.

Reports of all Committees of Conference must be filed with the Office of Legislative Services by the June 18, 2015 deadline adopted by the House. All Committee of Conference members must sign their reports in the Office of Legislative Services by June 18, 2015 by 4:00 p.m.

The first-named House member on all bills in Committee of Conference must prepare an analysis of the report. This "blurb" should contain a complete explanation of all changes made to the bill since it was passed by the House and must be submitted to the House Clerk for printing in the calendar.

Representative Dick Hinch will be the liaison between the Speaker's Office, Clerk's Office and the Committee of Conference Chairs.

All Committee of Conference reports shall be distributed in seat pockets to be acted on some subsequent day. [House Rule 49 (f)].

*See House Rule 49 for more information

WEDNESDAY, JUNE 3 CONSENT CALENDAR

COMMERCE AND CONSUMER AFFAIRS

SB 35, relative to the definition of wine-fortified. **OUGHT TO PASS.**

Rep. Barbara Biggie for Commerce and Consumer Affairs. This bill removes the word "grape" from the first sentence of the definition of wine-fortified. However, wine-fortified will continue to be defined to include those products made with honey, apples, grapes and other sources. Fortified wine has a higher alcohol concentration than a table wine. Aperitif, marsala, port and sherry are examples with an alcohol content between 15.5% and 24%. Passage of the bill will add products such as honey-based mead to this definition. The liquor commission supports this bill. **Vote 19-0.**

SB 50, relative to the content of a mortgage foreclosure notice. **OUGHT TO PASS WITH AMENDMENT.**

Rep. John Bordenet for Commerce and Consumer Affairs. This bill requires a mortgage foreclosure notice to include contact information for the mortgagee and banking department. The bill is a request of the commission to study New Hampshire mortgage foreclosure law, new federal regulations, and fair foreclosure practices, established in RSA 479:21-a (2014, 198). **Vote 19-0.**

SB 57, relative to qualifications and duties of condominium association board members. **OUGHT TO PASS WITH AMENDMENT.**

Rep. Kermit R. Williams for Commerce and Consumer Affairs. This bill, as amended, specifies that a condominium association board of directors shall have a fiduciary relationship with the unit owners. It also provides additional structure for the operation of a condominium association, including requirements for the bylaws, which are the rules that control the association, a framework for how meetings of the association operate, and rules for the membership and actions of the board of directors. **Vote 21-0.**

SB 73, (New Title) relative to documentation of age to purchase alcoholic beverages and tobacco products. **OUGHT TO PASS.**

Rep. Barbara Biggie for Commerce and Consumer Affairs. Some New Hampshire store clerks realized that the District of Columbia driver's license was not listed as an acceptable form of identification. This bill fixes the problem and adds United States territories and provinces of Canada. It addresses only licenses and will take effect upon passage. **Vote 19-0.**

SB 93-FN-A, (New Title) relative to the definition of beverage. **OUGHT TO PASS WITH AMENDMENT.**

Rep. Barbara Biggie for Commerce and Consumer Affairs. This bill will add "fermented malt beverages" with a 6% to 8% alcohol content to the "beverage" definition. New Hampshire will now become more in sync with other New England states by being able to offer the same products for sale that are currently available in other states. The effective date will be upon passage. **Vote 19-0.**

SB 99, establishing a committee to study allowing the sampling of beer or wine at farmer's markets. **OUGHT TO PASS WITH AMENDMENT.**

Rep. Pamela Z. Tucker for Commerce and Consumer Affairs. This bill, as amended, creates two study committees: one to study the sale of beer and wine at farmers markets and one to study the potential sales of powdered alcohol in New Hampshire. The bill also adds to RSA 175:1 III, to include powdered alcohol in the definition of alcohol by adding three words: solids, powders, crystals. **Vote 21-0.**

SB 111, making changes to the life and health insurance guaranty association. **OUGHT TO PASS.**

Rep. Laura M. Jones for Commerce and Consumer Affairs. A request of the insurance department, this bill makes changes to the law governing the Life and Health Insurance Guaranty Association. It expands the definition of resident, and makes other changes, to provide clarity and to align NH statute with National Association of Insurance Commissioners' (NAIC) model law. The guaranty association is part of a non-profit, unincorporated, state-based statutorily created system that pays certain covered claims of insolvent insurance companies' policyholders and claimants. New Hampshire law requires that all licensed property and casualty insurance companies that write covered lines of insurance in the State of New Hampshire be a member. **Vote 17-2.**

SB 119, (New Title) relative to the regulation of consumer guaranty contracts and debt cancellation or debt suspension agreements by the insurance department. **OUGHT TO PASS WITH AMENDMENT.**

Rep. Laura M. Jones for Commerce and Consumer Affairs. This bill expands lines of business for service contracts and establishes procedures for the regulation of guaranteed asset protection waivers offered in New Hampshire. The bill changes the regulating authority of guaranteed asset protection waivers from the insurance department to the banking department, which already regulates the entities that sell this product. SB 119, as amended, provides guidance to regulators and makes compliance easier. **Vote 19-0.**

SB 145, relative to wine consumed at cocktail lounges. **OUGHT TO PASS.**

Rep. Barbara Biggie for Commerce and Consumer Affairs. Currently, a full-service restaurant with an on-premise license can permit customers to bring in table wine beforehand and it will be stored on premise. Then, customers can ask for their wine and the restaurant will uncork and serve it. The licensee may charge a corkage fee. This bill will allow licensees with a cocktail license to also provide this service, which is supported by the liquor commission. **Vote 19-0.**

SB 163, relative to wholesale hospital-to-hospital laboratory and testing services. **OUGHT TO PASS.**

Rep. Edward A. Butler for Commerce and Consumer Affairs. This bill clarifies statutory language to allow hospital-to-hospital use of laboratory and testing services. This is especially important for our small and rural hospitals who cannot perform laboratory services in as cost-effective a way as some of our larger hospitals. This bill allows a hospital-to-hospital transaction and clarifies it as different from provider-to-patient transaction. This makes it possible to separate these from the Medicaid 'usual and customary' charges and allows the DHHS commissioner to ensure that hospitals can contract these services with each other. **Vote 19-0.**

SB 189, relative to liquor manufacturers. **OUGHT TO PASS.**

Rep. Barbara Biggie for Commerce and Consumer Affairs. This bill requires that all liquor manufacturers ferment and distill liquor from raw materials and it expands their authority to sell their products. It also clarifies that a manufacturer can sell wholesale, known as bond transfer in bulk, within New Hampshire and to other states, as well as selling up to 3,000 9-liter cases (or its equivalent) at their manufacturing site. The definitions of "liquor manufacturer" and "rectifier" are updated. Where a manufacturer produces from raw materials and can sell at their own site, the rectifier produces liquor by combining it with other products and cannot sell at their site. There is consensus by the liquor commission with representatives from lodging, nano-breweries, liquor and wine manufacturers. **Vote 19-0.**

SB 216-FN, (New Title) relative to sales of alcoholic beverages by manufacturers. **INEXPEDIENT TO LEGISLATE.**

Rep. Laura M. Jones for Commerce and Consumer Affairs. This bill, which authorizes sales of samples of alcoholic beverages by manufacturers for on-premises consumption, is the companion bill to HB 177. HB 177 was signed into law on May 5th of this year. Therefore, SB 216-FN is no longer needed and the committee recommends ITL. **Vote 19-0.**

SB 254, establishing a committee to study the provision of services to the public through peer-to-peer or sharing economy businesses. **OUGHT TO PASS WITH AMENDMENT.**

Rep. Joseph A. Hannon for Commerce and Consumer Affairs. This bill establishes a committee to study the provision of services to the public by Uber and existing taxi services. This would establish a committee to study the adequacy and safety of services to the public through Uber and existing taxi services. It would also study the current taxi regulations in cities and towns in New Hampshire. It will study whether such businesses are over or under regulated. It will also investigate how other states and municipalities are addressing this. **Vote 18-1.**

FINANCE

SB 32, relative to state agency budgetary reporting requirements. **OUGHT TO PASS WITH AMENDMENT.**

Rep. J. Tracy Emerick for Finance. The bill expands the department of administrative services reporting to include an on-demand report available to all departments, delivered to the fiscal committee on September 30, December 31 and March 31 and available to the governor any time especially when considering spending adjustments. The committee worked with a variety of state agencies to craft a report that would become useful without adding workload to existing staff. This report uses existing data, existing systems and can be written once and run multiple times with no additional effort. Therefore no additional staff is needed nor will there be an impact on existing staff workload. The report has various levels of details from summary to budget line detail. The focus of the report is the state-generated funding expenditures (excludes federal funding and other non-state generated funding sources) of general funds, education funds, highway funds, turnpike funds, DOT funds, liquor funds, sweepstakes funds and lottery commission funds. It is intended to provide a picture of current expenditures and will be a tool to measure spending versus budgeted. **Vote 20-0.**

SB 112, (2nd New Title) requiring the Medicaid program to cover telehealth services. **OUGHT TO PASS WITH AMENDMENT.**

Rep. Frank A. Byron for Finance. As amended, this bill requires the department of health and human services to develop a plan to reimburse Medicaid providers for telehealth services by specialists (excluding primary care). The department must demonstrate to the fiscal committee by February 1 of next year that this newly-covered service does not increase overall costs for the Medicaid program. With approval from the fiscal committee, a state plan will be submitted to the Centers for Medicare and Medicaid Services, and the benefit will start July 1, 2016. A follow-up financial impact report on the first six months of the service will be presented to the finance committees of the house and senate and the health and human services oversight committee by March 1, 2017. In order to compare apples to apples, the report will not include the population covered by the NH Health Protection Program. **Vote 23-0.**

SB 192-FN, permitting the department of revenue administration to conduct employee candidate background checks and establishing the position of tax policy analyst within the department. **OUGHT TO PASS WITH AMENDMENT.**

Rep. Timothy L. Twombly for Finance. This bill, as amended, makes a few changes for the DRA. It allows the department of revenue administration to conduct employee candidate background checks, which the commissioner said was needed for employees who will handle state money and who live out of state. The commissioner may request only a state records check or both a federal and state records check, to be conducted through the division of state police. No appropriation is needed for this. The bill also establishes the position of tax policy analyst within the agency while abolishing a tax auditor position. The commissioner testified there would be no appropriation needed for this change because money from the budgeted position that is being abolished will be transferred to the new position in order to fund it. The new position more appropriately represents the work being done by this staff member, who is not actually auditing. The third housekeeping task is to codify that the commissioner hires certain unclassified positions. No appropriation is needed for this as this is current policy. **Vote 22-0.**

HEALTH, HUMAN SERVICES & ELDERLY AFFAIRS

SB 169, relative to permissible uses of electronic benefit transfer (EBT) cards. **OUGHT TO PASS WITH AMENDMENT.**

Rep. Charles E. McMahon for Health, Human Services & Elderly Affairs. This bill, as amended, is the product of the interim study committee charged in 2014 to address the management and oversight of cash and product benefits provided to qualifying New Hampshire citizens using the electronic benefits transfer/EBT card. The EBT card is used for the SNAP (food stamp) benefit program and the four cash assistance programs known as TANF, APTD, OAA & ANB. In order to improve and enhance oversight and tighten management controls, the committee worked collaboratively with stakeholders and the department to address EBT card restrictions by location via technology enhancements and improved education outreach. The bill reflects the committee consensus to support a cost effective methodology to enhance EBT rule compliance and reduce the incidence of misuse of the cash benefit. We move towards this goal by increasing the management of ATM terminals and point of sale store registers utilizing the department's new merchant category codes tool now in place. **Vote 17-0.**

JUDICIARY

SB 41, establishing a commission to study government immunity from suit and accountability by its citizens. **OUGHT TO PASS WITH AMENDMENT.**

Rep. David Woodbury for Judiciary. This bill, as amended, creates a committee of four house members and three senators to study and recommend legislation dealing with New Hampshire Supreme Court decisions regarding immunity from suit and open ended limitation periods on these suits that are permitted. The overall issue is whether the state ought to be treated like a private citizen or corporation for purposes of litigation or whether different rules ought to apply regarding suits by or against the state. Immunity is of long standing and of great significance to potential litigants. The judiciary committee believes this size and composition of this study committee is both workable and fairly balanced. **Vote 17-2.**

MUNICIPAL AND COUNTY GOVERNMENT

SB 77-L, authorizing the creation of a special purpose village district within the town of Danbury. **INEXPEDIENT TO LEGISLATE.**

Rep. James E. Coffey for Municipal and County Government. This bill proposes to create a "village district" for the primary purpose of issuing tax exempt bonds for the construction of water and sewer facilities to serve a vacation housing development at Ragged Mountain in the town of Danbury. The proposed village district would have no residents and be controlled by a three member board of commissioners, two appointed by the developer and one by the selectmen. It then attempts, over time, to transition to a village district as defined

under RSA 52. The committee felt that this was legislation that benefits one corporation with lower borrowing costs, and the borrower would be the village district, not the developer. The mechanics of how the village district would function were also suspect and with the state defining a municipality as a city, town or village district creating a new type of village district would lead to more confusion over what is a village district. The committee's bi-partisan vote of 14-1 to recommend inexpedient to legislate reflects our great concern with creating a municipality with no residents for the sole purpose of issuing tax exempt municipal bonds. **Vote 14-1.**

SB 235, relative to the condominium act and the land sales full disclosure act. **OUGHT TO PASS WITH AMENDMENT.**

Rep. Franklin W. Sterling for Municipal and County Government. This bill, as amended, changes the financial statement requirements for principals that hold a 25% interest in a development corporation. The attorney general is in full agreement with this change. The bill further allows for a financing institution to extend a line of credit to a large development that is to be built in phases to reauthorize funding for additional phases without having to resubmit documentation to the attorney general's office for each phase of the process. Again the attorney general is in agreement with this change. **Vote 16-0.**

SB 241, relative to authorization for the town of Rindge to make capital expenditures from a trust fund. **OUGHT TO PASS.**

Rep. Franklin W. Sterling for Municipal and County Government. This bill amends chapter 370 from the 1957 session of the general court. Currently 50% of the voters on the previous election voter checklist must attend a deliberative session to vote on withdrawal of funds no matter if they actually voted in that election. Rindge is now an SB2 town so this bill changes the requirement to 3/5 of those in attendance and voting to make the requirement the same as all other trust fund votes to expend. **Vote 15-0.**

SB 242-L, relative to amending the budget in towns that have adopted official ballot voting. **OUGHT TO PASS WITH AMENDMENT.**

Rep. Franklin W. Sterling for Municipal and County Government. This bill, as amended, creates a study committee to investigate possible changes to official ballot towns in regards to the adoption of both a final budget and a default budget. The sponsors of the bill would like to find a method for placing amendments to the budget adopted at the deliberative session on the official ballot. They also would like to investigate allowing for changes to the default budget to be placed on the official ballot. Budget and default budget adoption has been an issue for so long it is time to attempt to arrive at a final solution. **Vote 15-0.**

PUBLIC WORKS AND HIGHWAYS

SB 88, establishing a committee to study public-private partnerships for intermodal transportation. **OUGHT TO PASS.**

Rep. John R. Cloutier for Public Works and Highways. This bill would simply establish a five member committee of three representatives and two senators to study the possibilities and propose legislation for forming public-private partnerships for intermodal transportation. Under the bill the study committee would have until Jan. 1, 2016 to submit its findings. **Vote 14-1.**

SB 132-FN, relative to dredging projects conducted by the Pease development authority division of ports and harbors. **OUGHT TO PASS.**

Rep. Martin L. Jack for Public Works and Highways. This bill authorizes the Pease Development Authority to enter into agreements containing language required by the U.S. Army Corps of Engineers for the Piscataqua River turning basin dredging project. Without this change, the project cannot go forward using the funds that were appropriated in HB 25. The project enlarges the turning basin to accommodate modern vessels. In concert with channel widening that is part of the new Sarah Mildred Long Bridge design, the project is critical to operational safety and the continued economic viability of several upstream ports. It is possible that the language in SB 132 is broad enough to authorize other similar projects without future legislative action. **Vote 15-0.**

STATE-FEDERAL RELATIONS AND VETERANS AFFAIRS

SCR 1, recognizing the contribution of Bhutanese refugees to New Hampshire, and requesting the United States government to work diligently on resolving the Bhutanese refugee crisis, reaching an agreement to allow the option of repatriation, and promoting human rights and democracy in Bhutan. **OUGHT TO PASS.**

Rep. Robert L. Theberge for State-Federal Relations and Veterans Affairs. This resolution would permit the state of NH to be the first of several states having Bhutanese refugee communities to provide a voice for democracy. Furthermore the resolution is a request to members of Congress to work toward resolving the Bhutanese refugee crisis. Through this resolution the members of both the senate and the house urge congress to allow for repatriation and the promotion of human rights. The State of New Hampshire must advocate and provide a voice for Bhutanese refugees who do not have a voice. The members of the committee recognize that the Bhutanese struggle for justice has been non-violent. **Vote 13-0.**

WAYS AND MEANS

SB 104-FN, relative to licensure of research organizations by the pharmacy board. **OUGHT TO PASS.**

Rep. Susan W. Almy for Ways and Means. The policy of licensing pharmaceutical and drug research companies under the pharmacy board to enhance the state's attractiveness to these valuable biotech companies was passed by the house already. The ways & means committee agreed that it is reasonable for the license fee to be set at or below that for regular pharmacies and that since the pharmacy board sets all its other fees, this one should be done the same way. **Vote 16-0.**

SB 120-FN, (New Title) relative to applicants for secondary game operator licenses. **OUGHT TO PASS WITH AMENDMENT.**

Rep. Patrick F. Abrami for Ways and Means. This bill allows the racing and charitable gaming commission to issue provisional secondary game operator licenses. In certain communities in which volume of gaming activity increases seasonally, there is a need to hire seasonal employees. The current delay in waiting for the formal background checks for these seasonal job candidates is resulting in many good candidates finding other jobs, especially within the student population. The original bill was amended to correct a drafting error in which one section contradicted another section. This amendment also addressed a concern brought up by the racing and charitable gaming commission that the provisional license be good for 90 days. The committee agreed with the commission that this should be changed to 45 days and that the formal background checks can be performed within this 45 day timeframe. The amendment was passed on a unanimous bipartisan basis. This amendment replaced a majority of the bill; therefore the bill as amended was also passed on a unanimous bipartisan basis. **Vote 16-0.**

SB 160, relative to duplicate vessel registration certificates. **OUGHT TO PASS.**

Rep. Robert L. Nigrello for Ways and Means. This bill allows a vessel owner to obtain a duplicate registration by putting into statute the process. This process is for the vessel owner to submit an application to the department of motor vehicles for a duplicate registration certificate for a payment of a \$15 fee. **Vote 16-0.**

SB 232-FN-A, exempting certain leases from the real estate transfer tax. **OUGHT TO PASS.**

Rep. Bill H. Ohm for Ways and Means. This bill establishes the authority of the legislature, rather than administrative rules, to decide if and how ground leases are taxable transactions. It clarifies that ground leases less than 99 years are not taxable. **Vote 16-0.**

WEDNESDAY, JUNE 3 REGULAR CALENDAR

COMMERCE AND CONSUMER AFFAIRS

SB 52, establishing a commission to study the issue of residential tenancies in foreclosed properties. **MAJORITY: INEXPEDIENT TO LEGISLATE. MINORITY: OUGHT TO PASS.**

Rep. Bart Fromuth for the **Majority** of Commerce and Consumer Affairs. The purpose of the committee was to study the impact of foreclosure on those that are renting the foreclosed property. The majority felt that there was nothing to study as the situation, while unfortunate, could not be improved with state intervention. The minority felt that there could be some protected period of pro-longed tenancy, however, it would be inappropriate to force a mortgage lender to extend their losses on a non paying property for some or all the remaining life of the tenancy. **Vote 11-8.**

Rep. Edward A. Butler for the **Minority** of Commerce and Consumer Affairs. In the 2014 report from the SB306 Commission on NH Mortgage Foreclosure Law and Fair Foreclosure Practices, several recommendations were made, one of which was to create such a study of the effect of foreclosure on tenants. Though many issues were clarified & proposals made, some of which this body has passed, the issue of the effect of foreclosure on tenants remained unresolved. The Federal Protecting Tenants at Foreclosure Act ("PTFA"), which gave tenants the right to remain in place until the later of 90 days, or the expiration of their leases, expired at the end of 2014. The minority believes that this study is needed to find a way to protect tenants from precipitous eviction while taking into account the needs of new building owners in foreclosure situations.

SB 55, allowing private employers to establish a policy granting a veterans' preference in employment decisions. **MAJORITY: OUGHT TO PASS WITH AMENDMENT. MINORITY: INEXPEDIENT TO LEGISLATE.**

Rep. Kermit R. Williams for the **Majority** of Commerce and Consumer Affairs. This bill allows private employers to establish a policy granting a veterans' preference in employment decisions. Title VII of the Civil Rights Act prohibits private companies from offering hiring preference to veterans, unlike the federal government, but it allows states to create their own exemption, and that is the purpose of this bill. The commerce committee amended the senate version of the bill by removing the section that allows the preference to apply during layoffs. **Vote 12-7.**

Rep. Bart Fromuth for the **Minority** of Commerce and Consumer Affairs. Although this bill passed commerce by a vote of 12-7, the first motion of ITL lost by a single vote. SB 55 was introduced at the request of a single entity; Wal-Mart. Wal-Mart hires a significant number of veterans across the country, including 490 in New Hampshire and has a national campaign in place announcing this preference. That advertising campaign has not been launched in New Hampshire as of yet, for fear that they might be sued for unfair hiring practices. In order to clear the way for the ad campaign, Wal-Mart has requested this legislation. Wal-Mart could not identify any instances in which other companies advertising their preference for veterans had been sued in New Hampshire and as such the minority was not convinced there was an actual need for this bill.

SB 188-FN, (New Title) revising banking, credit union, and trust laws. **OUGHT TO PASS.**

Rep. Laurie J. Sanborn for Commerce and Consumer Affairs. As a comprehensive revision of our banking statutes, SB 188 modernizes, recodifies, organizes and streamlines the regulations for banks, credit unions, trust companies and family trust companies. This bill replaces 21 existing chapters that were established in a patchwork fashion over more than 100 years, with five new chapters. The bill was drafted over the course of the last year by members of the NH Bankers Association, the NH Credit Union League, the NH Trust Council and the state banking department. The legislation had hundreds of hours of input from all stakeholders over numerous meetings, and is strongly supported by members of this highly regulated industry. The intention was to provide a thoughtful and efficient body of law that will serve New Hampshire's financial institutions well into the future by providing much needed clarity and organization while maintaining strong existing consumer protections. We believe that SB 188 accomplishes its goals and makes compliance easier and more efficient for the regulators and the regulated. **Vote 19-0.**

SB 218-FN, making spoofing an unfair and deceptive act under the consumer protection law. **MAJORITY: INEXPEDIENT TO LEGISLATE. MINORITY: OUGHT TO PASS WITH AMENDMENT.**

Rep. John Bordenet for the **Majority** of Commerce and Consumer Affairs. The department of justice (DOJ) states this bill adds a new section to the Consumer Protection Act, RSA 358-A, prohibiting a practice commonly known as "spoofing," which includes, among other acts, transmitting to the consumer misleading or inaccurate caller identification information. The DOJ states this bill could necessitate additional investigative resources although prosecution of the offenders could be accomplished with existing resources. **Vote 13-8.**

Rep. David Luneau for the **Minority** of Commerce and Consumer Affairs. The committee heard testimony from law enforcement and the attorney general with regards to an increase in telemarketing scams. Scammers use false and deceptive caller ID information pretending to be the IRS, the sheriff's office or other family members in order to trap their victims, often senior citizens. SB 218 improves an existing statute to prohibit telephone solicitors from using false, misleading or deceptive caller ID information.

SB 223-FN, relative to name availability for business organizations. **OUGHT TO PASS.**

Rep. Bart Fromuth for Commerce and Consumer Affairs. The committee believes that this bill will greatly improve the process of new business registration in the state. At present the secretary of state's office wields significant discretion in its approval of name availability for new business registrants. During testimony the committee learned that an alarming percentage of initial applications are rejected due to the subjective and unclear standards utilized by the secretary of state's office. While the current process in place is intended to avoid name confusion, testimony from business as well as Live Free and Start indicated that despite the best of intentions the current guidelines were an impediment to new business. It became clear to the majority of the committee that the bright line standards contained in this bill were needed to remove the unnecessary confusion, cost and lack of administrative efficiency in the current approval process. As a result the majority of the committee, along with the governor, recommends ought to pass. **Vote 15-4.**

SB 266-FN, adopting the Uniform Securities Act. **MAJORITY: OUGHT TO PASS WITH AMENDMENT. MINORITY: OUGHT TO PASS WITH AMENDMENT.**

Rep. Laurie J. Sanborn for the **Majority** of Commerce and Consumer Affairs. As amended by the committee, SB 266 puts New Hampshire on the map as having one of the strongest bodies of securities law in terms of its 1) friendliness for the industry (both regulators and the regulated), 2) friendliness for start up companies, and 3) friendliness for investors. Passage of this bill makes NH more competitive and shows the world that we are committed to modernizing, streamlining and improving the environment for businesses and investors in our state. New Hampshire's current securities act, RSA 421-B, is based on the Uniform Securities Act of 1956, and is viewed as outdated and confusing. This bill brings our law in line with the model Revised Uniform Security Act (RUSA) of 2002, as amended in 2005. In a report titled "Improving New Hampshire' Startup Environment," economist and community college system chancellor Ross Gittell, and UNH professor of law John Orcutt, identified securities regulation reform as one of their top recommendations for improving our state's competitiveness in attracting and retaining businesses in our state, and this bill accomplishes the specific suggestions described in that report. SB 266 does not add additional regulatory requirements or costs to doing business, and in fact is expected to lower costs by removing complexity, idiosyncrasy, hurdles and traps for the unwary. SB 266 does not weaken investor protection, and in fact makes it stronger by keeping New Hampshire's existing statute of limitations at 6 years, and extending the standard RUSA limit of one year for discovery to two years. Excitingly, this bill modifies New Hampshire's limited offering transaction exemption to bring it in line with best practices among the states. Issuers would be allowed to conduct private placements to up to 25 purchasers in a 12 month period (without a lifetime limit), up from 10 purchases under the current statute (with a lifetime limit of 25). Increasing the number of sales allowed per investment round should allow startups to raise more of their needed capital in each round. Approximately 18 other states have adopted versions of this Revised Uniform Securities Act. Without passage of SB 266, New Hampshire will be increasingly viewed as being non-uniform, more difficult and more expensive to conduct business. As amended by the committee, SB 266 significantly eases capital formation and business formation in New Hampshire. **Vote 15-6.**

Rep. Kermit R. Williams for the **Minority** of Commerce and Consumer Affairs. The minority, like the majority, supports the goal of this bill. The bill was written to make our state more "business-friendly," to make the process of selling securities and funding new businesses in New Hampshire easier and more similar to other states. The minority's objection to the bill is the loss of more than \$1 million annually in state revenue from unnecessary changes in the securities law. Two changes, one of which was an inadvertent omission and one of which was introduced in the committee amendment, reduce the fees that the secretary of state's office receives from the creation of companies and the registration of securities. We heard testimony that these costs were already much lower than in other states, so the revenue loss is not necessary to encourage business investment in the state. While we continue to support the process streamlining which the bill provides, we believe that the missing revenue should be restored.

CRIMINAL JUSTICE AND PUBLIC SAFETY**SB 29-FN**, relative to fines for motor vehicle offenses. **OUGHT TO PASS WITH AMENDMENT.**

Rep. Arthur E. Barnes for Criminal Justice and Public Safety. As amended, this bill makes various changes to fines for motor vehicle offenses that currently can only be resolved in court. In testimony the committee heard that approximately 80% of offenders pay fines by mail if it is an option. This bill adds several offenses to the list that have a pay by mail option, thus potentially saving people money by not losing time at work. The new fine schedule is based on the past paid fines for that offense. A person can still see a judge by pleading "not guilty" and law enforcement can still issue a "must appear" if its considered egregious. This bill was a request of the department of safety. The committee amendment establishes the same fine for 1-5 miles above the speed limit for 65 mph & 70 mph speed limit areas. **Vote 15-0.**

ELECTION LAW

SB 39, relative to recounts on questions. **MAJORITY: OUGHT TO PASS WITH AMENDMENT. MINORITY: INEXPEDIENT TO LEGISLATE.**

Rep. James P. Gray for the **Majority** of Election Law. This bill adds a requirement to RSA 40:4-c to notify the first-named voter and other known interested parties 3 days prior to the day appointed for the recount of a question. Additionally it requires that the notice shall be posted in 2 public places for at least 24 hours prior to the recount. The committee amendment changes RSA659:13, I(c)(2) to allow pictures of voters who do not have the required identification to be color or black and white. **Vote 11-7.**

Rep. William A. Pearson for the **Minority** of Election Law. It is not SB 39 that the minority disagrees with but, instead, the non-germane amendment that has been attached to it. The committee was told that the amendment would provide an avenue to purchase the equipment required to catalogue voters photographically at every polling location; it does not. Now the committee is being told that funds from the Help America Vote Act (HAVA) will be available and appropriated in HB 2; they are not. Even if such were the case, these are federal monies entrusted to the secretary of state with the mandate that he or she must use it to "improve elections." While the house may request that HAVA money be used to fund cameras at the polls, the ultimate decision will rest with the likely federal audit that will ensue. Thus, SB 39 becomes just an attempt to remedy a bad law from a prior legislature and hangs New Hampshire's moderators out to dry. It is for these reasons that the minority finds it inexpedient to legislate.

SB 179, relative to eligibility to vote. **MAJORITY: OUGHT TO PASS WITH AMENDMENT. MINORITY: INEXPEDIENT TO LEGISLATE.**

Rep. James P. Gray for the **Majority** of Election Law. This bill, as amended, is the result of many hearings and meetings with the public, the secretary of state and his deputy, and groups concerned with the election process. Everyone believes that each citizen should have an equal right to vote and have his vote count equally, and that each candidate should have an equal right to be elected through a fair voting process. The purpose of this bill is to better serve those goals, and to ensure our elections are as open and fair as possible. Increasingly, allegations are being made that our voter registration laws are not sufficient to protect the integrity of the vote, and SB 179 resulted from a serious look at our RSA's. In recent years, the secretary of state has undertaken measures to investigate these claims, to try to ensure that each person that votes in New Hampshire is entitled to vote in New Hampshire. During the last presidential election, persons without identification, or known to election officials, were asked to sign affidavits affirming their ability to vote in N.H. The secretary of state then followed up on each of these affidavits with a letter to the address given. 1,786 such letters were returned as undeliverable. The attorney general now has the task of trying to locate these individuals to ascertain the legitimacy of their votes. This is an example of the efforts our state has made to ensure the integrity of our voting. If only a small percentage of these undeliverable letters turn out to represent illegitimate votes, that is still too many. The perception of voter fraud is real in New Hampshire, and this diminishes the importance of voting to our citizens. Indeed, the election law committee heard stories of constituents who did not feel their vote counted for much in their own home towns, their vote being nullified by those they felt were not N.H. residents. We heard stories of campaign workers coming to our state for a few weeks, voting on election day, and leaving for their home states. Our own secretary of state personally encountered non-N.H. residents voting in N.H., but, under the wording of our current statutes, could not prevent this abuse from taking place. A contributor to this situation is the ambiguity of the word "domicile," as used in our RSA's. "Domicile," the criteria for legal voting, is not well defined in our election laws. It is vague and unenforceable. SB 179 seeks to cure this deficiency by defining "domicile" as "the principal or primary home or place of abode of a person." It is further defined as "that home or place in which his or her habitation is fixed and to which a person, whenever he or she is temporarily absent, has the intention of returning after a departure or absence there from, including when the person is absent because of military service or temporarily absent as described in RSA 654:2." SB 179 provides guidelines to determine - for the benefit of the voter and the benefit of the election worker - the principal place of abode. Without limitation, such factors are: civic and community participation, the place where a person spends most nights of the year, the location from which a person would apply for a passport or other federal identification, residence for income or other tax pursuits, eligibility for a resident hunting and fishing license, and a New Hampshire's driver's license. These, and possibly other, factors apply to every person and no one person or class or persons would be treated differently from any other person or class of persons. Further, SB 179 establishes a 30-day domicile requirement for voting in New Hampshire. Guidelines for those moving away from or to New Hampshire, as well as those moving within the state are provided, to ensure that every person who has been domiciled in the state for 30 days will be able to vote. For example, a person moving from one locale in the state to another locale within 30 days of an election, may transfer his or her voting registration to ensure his or her right to vote at the polling place of his new home. Similar provisions are made to protect the voting rights of citizens who move out of state. Also, SB 179 revises the voter registration forms to reflect the substance of this bill. It adds clarity to the language requiring the use of standard forms by reflecting that the state has

two voter registration forms: one to be used prior to election day and one to be used on election day at the polling place. SB 179 also removes the paragraph which was struck down by the supreme court in the Guare decision and adds a paragraph which ensures that those who do not meet the 30 day domicile requirement will be able to vote in their previous domicile. Lastly, SB 179 adds a provision to RSA 654:31-a to ensure that the legislature can gain access to statistical data pertaining to registration forms and affidavits. This provision will make sure that individual identities are protected while offering more transparency and the ability of the legislature to make better informed decisions going forward. **Vote 9-8.**

Rep. Wayne T. Moynihan for the **Minority** of Election Law. The minority believes that SB 179, even as amended, is inexpedient to legislate. Without a sufficient reason, SB 179 would impose a durational voter qualification that, according to the "Amended Analysis" appended to the bill, "requires that a voter be a resident of the state for at least 30 days." SB 179 attempts to make "domicile" the same as "residency" contrary to the New Hampshire Constitution. It adds confusing and inaccurate text to voter registration forms, and it makes public certain voter registration and affidavit information, that is now considered confidential. As recently as two weeks ago, the New Hampshire Supreme Court declared that certain 2012 legislative changes to voter registration forms were unconstitutional, because the changes used the terms "residency" and "domicile" interchangeably. This created confusion and inaccuracies, and "unreasonably burdened the fundamental right to vote in New Hampshire" without justification. The original SB 179 included some of the same unconstitutional language in its provisions. The Minority opposed the Bill then as now. The U.S. Supreme Court has declared that a 30 day limit on voter registration prior to an election may be permissible for "administrative reasons," but that residency requirements in excess of that violated the equal protection clause of the United States Constitution. New Hampshire has no administrative or other constitutional reason to justify the exclusion of some voters by imposing a 30 day durational requirement. New Hampshire election officials are able to administratively manage "same day" voter registration. This capacity enables New Hampshire to remain exempt from very costly the requirements of the federal "motor voter" law. This capacity also demonstrates that the state does not require a 30 day cut off for some voters for administrative reasons. Part I, Art. 11 of the NH constitution declares that "every inhabitant of the state of 18 years of age and upwards shall have an equal right to vote in any election...in the...place where he has his domicile." This has been the law for decades. Well trained election officials administer the law well. Anecdotes abound about "voter fraud," "drive by voting," "undeserving voters" and the like. However, the Committee received no verified or credible record that NH elections are tainted in such a way. Those angry about "students voting" must recognize that New Hampshire law expressly allows students enrolled at our New Hampshire colleges to declare our state as their domicile while they attend these New Hampshire "institutions of learning." (RSA 654:1 I-a) SB 179, as amended, may still contain unconstitutional provisions, and puts our well managed, efficient, and wholly credible election system at risk. It is inexpedient to legislate.

FINANCE

SB 151-FN, requiring inclusion of home educated pupils in the definition of average daily membership in attendance. **MAJORITY: OUGHT TO PASS WITH AMENDMENT. MINORITY: INEXPEDIENT TO LEGISLATE.**

Rep. Kenneth L. Weyler for the **Majority** of Finance. This bill recognizes that home schooled students are currently attending courses in public schools but there is no state support for this service provided to the public schools. This bill recognizes there is a cost and will fund a home school student at 0.15 of an adequate education grant or \$525 per credit for each academic course. The amendment only provides funding for this program if there is budgeted money still available after distribution of adequate education grants to all schools. **Vote 13-10.** Rep. Susan M. Ford for the **Minority** of Finance. The goal of SB 151-FN, providing funding to school districts that have home schooled students enrolled in high school academic courses, is worthy of more study. While the minority would like to support the concept, the bill itself is confusing and needs further study. "The department of education shall only make grant payments for such pupils to the extent of available appropriations." Does this mean that the available monies are calculated from the education trust fund or general funds? Also a survey of NH high schools was incomplete and the fiscal data is incomplete. There are too many questions that have not been answered and the minority cannot support this bill as amended.

SB 190-FN, (New Title) relative to payment of costs for career and technical education center programs and administration by the department of education. **MAJORITY: OUGHT TO PASS WITH AMENDMENT. MINORITY: INEXPEDIENT TO LEGISLATE.**

Rep. Karen C. Umberger for the **Majority** of Finance. This bill modifies and updates the language currently in RSA 188-E. This section of the current law refers to the career and technical centers as vocational centers and clarifies how tuition is calculated for sending school districts for students attending a regional career and technical center. There is also established a Career and Technical Education Advisory Council. There is no fiscal impact associated with the changes made. The amendment incorporates SB 101, which has already

passed the house. SB 101 provides a school board that elects not to implement or participate in common core standards the ability to adopt and implement standards of its own that either meet or exceed standards established by the state. This is truly an effort to preserve local control. **Vote 13-10.**

Rep. Susan M. Ford for the **Minority** of Finance. This bill modifies the financial responsibility for tuition for career and technical education centers and codifies an advisory council on career and technical education (CTE). This bill is supported by the department of education and the CTE state organization and has the full support of finance division II. At issue is the amendment that the state board not adopt a policy or guideline that requires a school district to implement or participate in the common core standards. Since it is clear that the state board does not require adoption of the common core, and this issue has already been addressed this session, this amendment jeopardizes a bill that will benefit our career and technical education schools.

SB 191-FN, relative to the use of the state's procurement card services. **OUGHT TO PASS WITH AMENDMENT.**

Rep. J. Tracy Emerick for Finance. This bill allows the department of administrative services to utilize procurement cards to pay for major contract purchases such as salt, oil, gasoline and other commodities where the state has a master contract. The procurement cards would be used on multi state agency contracts issued and managed by the department of administrative services, division of procurement and support services. By using procurement cards as a payment method the department of administrative services (DAS) is anticipating rebates totaling \$262,944 in FY 16 and increasing steadily to \$1.5 million by FY 2019. Any rebates will initially be placed in a revolving account that is also being requested as part of this legislation. This legislation allows DAS to pay for any costs to administer the procurement card program from the rebates that are deposited into the revolving account. DAS estimates that they will need one new full time position to oversee the program. Funds in the revolving account will be used to pay for these costs, for interests or fees associated with the program and to prevent the payment card program from being shut off due to tardy state agency payments. Any remaining funds generated by the rebates will be returned to the respective funding sources including federal, highway, turnpike and liquor funds. All other rebate revenue after deducting expenses for the program will revert to the general fund. This bill also allows cities, towns, counties and school districts to aggregate their procurement card spend with the state's procurement card spend to qualify for larger rebates. Any such incremental rebates will be forwarded from the procurement card-issuing bank to the respective city, town, county or school district. **Vote 21-0.**

JUDICIARY

SB 124-FN, relative to filing felonies first in the superior court. **OUGHT TO PASS WITH AMENDMENT.**

Rep. Claire A. Rouillard for Judiciary. As amended, this bill provides that all felony complaints, along with misdemeanors and violations directly related to those felonies, shall be filed exclusively with the superior court. This project, known as "felonies first" will manage the flow of felony cases from initiation of the charge through disposition. Currently, the lower circuit court has no jurisdiction to dispose of felony charges. This means that cases are first processed in circuit court then re-filed in the superior court. "Felonies first" will eliminate the circuit court duplicative process, resulting in cost savings for the courts, counties, attorneys and litigants, as well as bring closure to victims of crime more quickly. This bill provides a more effective process from the initial charges through resolution, while maintaining justice for the accused. The accused will no longer have to wait for discovery. This bill provides that discovery in the hands of the prosecutor shall be provided to the defendant within 10 days for incarcerated defendants and within 20 days for non-incarcerated defendants. If discovery is not provided within this timeframe a probable cause hearing shall be scheduled. The defendant, in other circumstances, may also request a probable cause hearing in superior court. The state shall have a continuing obligation to provide discovery to defendants as it becomes available. Additionally, upon a plea of not guilty, a dispositional hearing shall be scheduled, with the ability to resolve the case earlier. There will also be an increase in video conferences between jails, courts and police departments, eliminating time and travel for all involved. This bill also provides for psychiatric evaluations of persons who are charged, along with drug or alcohol dependency examinations. The roll out of this project will be in three counties: Strafford and Cheshire county superior courts on January 1, 2016, and in Belknap county superior court beginning July 1, 2016. The judicial council will complete an annual report on the cost and effectiveness of this project beginning July 1, 2017. It is predicted by the judicial branch that there will be no fiscal impact on state, county and local revenue. **Vote 20-0.**

SB 240, protecting certified public accountants from prosecution or penalty for providing services to alternative treatment centers. **MAJORITY: OUGHT TO PASS. MINORITY: INEXPEDIENT TO LEGISLATE.**

Rep. Eric P. Estevez for the **Majority** of Judiciary. This bill provides exemption of license revocation or suspension or other penalty by the state accounting board for certified public accountants who must file certified financial statements with the government for medical marijuana facilities. Therapeutic cannabis centers are required to provide certified financial statements as part of their record keeping. This bill enables CPAs to legally fulfill that required duty. **Vote 11-9.**

Rep. Charlene F. Takesian for the **Minority** of Judiciary. This bill is another effort to provide immunity in the law for a special group – CPAs that perform legal and ethical work for an alternative treatment center. Accountants came before the committee to testify that they were concerned that the New Hampshire Board of Accountancy would subject them to some kind of “penalty” for doing work for the treatment centers, although no witness could identify a single CPA anywhere in the United States that has been arrested or sanctioned by his/her licensing board for such professional work. The minority of the judiciary committee felt that since the certified alternative treatment centers are legal in the State of New Hampshire, there would be no reason to expect that any CPA would be arrested or sanctioned for providing their services to a legal, certified business.

LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

SB 133-FN, (New Title) relative to certain health care data and relative to certain workers’ compensation medical claim data collected by the insurance department. **MAJORITY: OUGHT TO PASS WITH AMENDMENT. MINORITY: OUGHT TO PASS.**

Rep. Tammy A. Simmons for the **Majority** of Labor, Industrial and Rehabilitative Services. This bill, as amended, removes language that requires workers compensation insurance carriers to pay the full amount billed by a provider, regardless of how inflated that bill may be and instead only requires that the carrier pay the ‘reasonable value’ of medical services. The amended version of the bill puts in place the criteria the department of labor is to consider when determining the reasonableness of the charge being disputed. The criteria the department of labor is to consider includes: a guideline range of reasonable charges developed and published by the NH insurance department of 85 of the most common worker’s compensation medical services, compiled using the average payments of NH general healthcare, NH workers’ compensation, New England region workers’ compensation, and national workers’ compensation; catastrophic injury; practice type, and geographic location of the provider. While the majority of the committee would prefer that the market address the rising cost of workers’ compensation services, they agreed that many years have been spent on data collection and studying the issue and that now is the time to do something to reduce the rising worker’s compensation costs on employers. NH mandates that the employer purchase insurance for its employees, mandates that the injured worker choose which provider they go to, and mandates that the carrier pay whatever they are charged. This is NOT the free market. The NH insurance department worked with the amendment sponsor at length to insure that the guidelines would not adversely affect access to care for the injured worker. Protocols were added to allow the insurance commissioner to amend the guidelines if there was evidence of access issues. The bill also includes a study committee to review administrative procedures for worker’s compensation claims in hopes of reducing the burden on providers. **Vote 10-8.**

Rep. Douglas A. Ley for the **Minority** of Labor, Industrial And Rehabilitative Services. This bill is a solution in search of a problem. Workers compensation insurance rates in New Hampshire have been declining for a number of years, and further the medical costs that the majority is concerned about have been flat or declined in recent years. Worse though, this bill inserts the State of New Hampshire into the business relationship that exists between medical providers and employers or insurance companies. It completely undermines any market mechanisms by imposing a fee schedule disguised as a guideline. Establishing maximum payable amounts eliminates any incentive for providers or insurers to negotiate and contract with each other. The result of this price fixing may very well reduce the number of providers willing to treat injured workers; therefore reducing availability of medical care for the very people the workers compensation system exists to serve. The amendment passed by the majority was developed in consultation with a select set of interested parties but minimized the input of providers and entirely neglected any consultation with those for whom the workers compensation system exists. The minority is also deeply concerned about the data that is being used to establish public policy. The bill creates a fee schedule based on data provided by a private entity that serves insurance companies. That data is troublingly incomplete. There is no requirement for any insurer to report data and 35-40% of New Hampshire workers compensation data is currently not reported, nor does the bill address the problem. Further, the data is proprietary and not subject to any review or testing and not publicly available. The minority believes that data used to establish public policy should be transparent, complete, and open to public inspection, particularly in a state that prides itself on the public’s ‘right to know’. On this matter, Charlie Arlinghaus wrote “in truth the government setting prices is never the right solution to a problem.” We agree.

SB 255, establishing a low-wage service worker task force. **MAJORITY: OUGHT TO PASS WITH AMENDMENT. MINORITY: OUGHT TO PASS.**

Rep. Tammy A. Simmons for the **Majority** of Labor, Industrial And Rehabilitative Services. The bill was originally written as a commission to study the effect of low wage workers on New Hampshire’s economy. It has been amended to a study committee allowing for three representatives and two senators instead of members of state departments and/or commissioners. The charge of the bill remains the same. **Vote 9-8.**

Rep. Andrew A. White for the **Minority** of Labor, Industrial And Rehabilitative Services. As passed by the senate, the bill established a Low Wage Worker Task Force, which would have consisted of a diverse group of business, labor, the public, and legislators to study the issues surrounding low wage jobs and their impact on the economy, poverty, workers, children, families, and communities. As amended the bill creates a very small legislative committee and changed the duties removing the requirement to study poverty and the impact of low wage jobs on children, families, and communities. The failure to incorporate these very important areas of study and to eliminate the participation of subject matter experts leaves the minority no choice but to vote against the amended bill.

SCIENCE, TECHNOLOGY AND ENERGY

SB 221-FN, relative to electric rate reduction financing. **OUGHT TO PASS WITH AMENDMENT.**

Rep. Michael Vose for Science, Technology and Energy. This bill sets up a framework to allow the public utilities commission (PUC) to streamline the process of divestiture for PSNH, now Eversource, and to secure low-interest bonds to recover any resulting stranded costs. Divestiture (the selling of generation plants) moves the state's electricity market closer to full competition in the sale of power. The value of competition over the next five (5) years is about \$35 million in reduced costs. A proposed settlement with PSNH will see a shareholder reduction of about \$50 million per year in lost earnings on those generation assets. The settlement also provides that PSNH shareholders will write off \$25 million of scrubber costs and forego \$69 million of revenue by delaying a rate case for two years. The construction of the mercury scrubber at Merrimack station in response to passage of HB 1673 in 2006 constitutes the major portion of PSNH's stranded costs. Stranded costs occur when plants are sold below their book value. This bill takes advantage of low interest rates by providing a mechanism, called securitization, to allow PSNH to recover stranded costs spread over a 15-year period through the bond market. This is not a state backed bond. Recovering stranded costs through securitized bonds at 2.5-3% interest will be cheaper than paying those costs in regular rates, which are subject to a 9.81% profit margin under existing law. These low interest rates are secured through a small, non-avoidable charge on all PSNH distribution customers. Securitization was used successfully to lower customer costs in the settlement reached with PSNH in 2000. The amendment by the house science, technology and energy committee makes it clear that the legislature is not approving the 2015 settlement between state negotiators and PSNH. Further, it instructs the PUC to take into account the impact of the settlement on all PSNH customer classes, and to consider the impacts on the economy in PSNH's service territory, the ability to attract and retain employment across industries, and whether the proposed rate design fairly allocates the costs of divestiture among customer classes. As compared to standard divestiture, the 2015 settlement and proposed rate design results in rates significantly less across all customer classes, and it mitigates the rate impact of the non-by passable charge on PSNH customers who purchase energy service from a competitive supplier. Should this bill not pass, the PUC will order the recovery of all or some of the scrubber costs through regular rates, and those rates will climb as PSNH receives its 9.81% profit and as large deferral of costs becomes reflected in rates in January. Should PSNH disagree with the PUC's decision, years of litigation would ensue, with PSNH getting about \$50 million more in earnings each year, and ratepayers losing out on customer savings from securitization. Inaction or delay will result in higher rates, especially for many residential households. The state's consumer advocate, representing residential ratepayers, supports this bill as do several local chambers of commerce, and the Business and Industry Association. **Vote 18-1.**

STATE-FEDERAL RELATIONS AND VETERANS AFFAIRS

SCR 2, urging Congress to discontinue foreign aid to Argentina until financial disputes are resolved. **MAJORITY: OUGHT TO PASS. MINORITY: INEXPEDIENT TO LEGISLATE.**

Rep. Robert L. Theberge for the **Majority** of State-Federal Relations and Veterans Affairs. The resolution acknowledges that in addition to other companies, RiverStone located in Manchester is owed money and asks congress to put pressure on Argentina by discontinuing aid until financial disputes in excess of \$30 million be resolved. By virtue of this resolution, the State of New Hampshire sends a clear message to the government of Argentina that New Hampshire's legislative branch supports and protects its resident businesses and companies. The members of the legislature urge that Argentina respects it's written contract with TIG Insurance requiring that any and all disputes be adjudicated in U.S. courts. **Vote 8-5.**

Rep. Eric R. Eastman for the **Minority** of State-Federal Relations and Veterans Affairs. The matter of concern in this many decades-old fiscal dispute is that of an alleged debt to an American financial services company (RiverStone Resources/TIG Insurance company); the "complainant" in this matter, which claims to have endured non-payment of \$9 million on a receivable account by an Argentinean Company, "CAJA," long ago during the late 1980s. Since then, RiverStone/TIG insists that this debt has amortized due to carrying charges and late fees to a sum not less than \$30 million. Moreover, during the ensuing years, "CAJA" has been subsumed (nationalized) by the relatively new and restructured Argentinean government. This resolution is the latest in a succession of attempts on the part of RiverStone/TIG to apply the kind of pressure

they feel may result in a successful effort to collect on what they contend remains an unsatisfied account. A description of the events & history of this account that the government of Argentina offers on the matter is, predictably, considerably different. It is for numerous reasons that we of the minority in this committee urge all members of this body to vote no on the committee's recommendation of OTP.

TRANSPORTATION

SB 63, relative to membership of the board of directors for the New Hampshire rail transit authority. **OUGHT TO PASS WITH AMENDMENT.**

Rep. George E. Sykes for Transportation. This bill adjusts the number of members to the board of directors of the NH Rail Transit Authority from a cumbersome 28 members to a more efficient 9 members. Additionally it takes the stakeholders removed from the board of directors and adds them to a new advisory board to the NH Rail Transit Authority. That advisory board will have a member on the board of directors. The committee amendment adds members of the NH house back in. **Vote 10-5.**

WAYS AND MEANS

SB 213-FN-A-L, (New Title) establishing a committee to study the formula for distribution of meals and rooms tax revenues. **MAJORITY: INEXPEDIENT TO LEGISLATE. MINORITY: OUGHT TO PASS.**

Rep. Jordan G. Ulery for the **Majority** of Ways and Means. A study bill seems to infer developing more information. This bill, however, creates the presumption of changing N.H. into a local rule state, presumes local taxes required and fails to consider what exists with current legislation regarding taxation. Establishing local taxes and state taxes is the responsibility of the legislature, not towns or cities in N.H. Discovering the effects and ramifications of adding a new tax is immensely more transparent by considering a single tax or authority to tax than by mixing the discussion with expansive policies, theories and philosophies that accompany a study committee. The majority of the committee felt that rather than cloud the issue of a possible new tax by a study committee, a clean, clear, transparent bill is much more effective and efficient. **Vote 9-7.**

Rep. Mary R. Cooney for the **Minority** of Ways and Means. It is clear that in New Hampshire there are certain cities and towns which face a burden beyond the norm in providing municipal services due to seasonal, educational, or market center factors. Examples are municipalities hosting state-owned property, cities which are the center for jobs, entertainment, shopping, and tourism. This occurs in any situation in which a temporary enhanced population results in additional security and infrastructure needs such as during the day for employment opportunities, for tourist destinations, entertainment, or education. Some of these situations produce increased property taxes, some do not. Many states allow for municipalities, counties, or both to impose their own taxes on sales or occupancy in hotels as long as the taxes or fees are linked to the cost or providing those enhanced services. The minority feels that this is a subject worth studying to possibly bring some relief to these communities.

COMMITTEE MEETINGS

FRIDAY, MAY 29

COMMISSION TO STUDY MENTAL HEALTH IMPLEMENTATION IN NEW HAMPSHIRE (RSA 135-C:63-b), Room 205, LOB

10:00 a.m. Regular meeting.

MONDAY, JUNE 1

NEW HAMPSHIRE BRAIN AND SPINAL CORD INJURY ADVISORY COUNCIL (RSA 137-K:2), Walker Building, Room 100, 21 South Fruit Street, Concord

2:00 p.m. Regular meeting.

STATE COMMITTEE ON AGING (RSA 161-F:7,I), DHHS, Brown Building, 129 Pleasant Street, Concord

10:00 a.m. Regular meeting.

TASK FORCE ON WORK AND FAMILY (RSA 276-B:2, I), Room 207, LOB

1:15 p.m. Regular meeting.

TUESDAY, JUNE 2

CHILDREN AND FAMILY LAW, Room 206, LOB

10:00 a.m. Full committee work session on retained bills **HB 378**, relative to shared residential responsibility and establishing a commission to study child support and related child care issues, **HB 211**,

establishing a commission to study domestic affairs and **HB 266**, establishing a committee to study removing child custody cases which involve abuse or neglect from the jurisdiction of the family court and probate court divisions.

- 1:15 p.m. Subcommittee work session on retained bills **HB 515-FN**, relative to oversight of guardians ad litem by the guardian ad litem board and **HB 513**, relative to complaint investigation procedures of the guardian ad litem board.

EDUCATION, Room 207, LOB

- 9:30 a.m. Subcommittee work session on retained bills **HB 253**, relative to the requirements for filing a charter school application and **HB 536**, relative to payment for special education services for chartered public school students and relative to federal funds for chartered public schools.
- 11:00 a.m. Full committee work session to consider Senate amendments to House bills.

ENVIRONMENT AND AGRICULTURE, Room 303, LOB

- 10:00 a.m. Subcommittee work session on retained bill **HB 499**, permitting New Hampshire farmers to sell certain farm raised animals directly to the public.

EXECUTIVE DEPARTMENTS AND ADMINISTRATION, Room 306, LOB

- 10:00 a.m. Full committee work session to consider Senate amendments to House bills.
- 1:00 p.m. Subcommittee work session on retained bill **HB 533**, relative to arc-fault circuit-breaker protection in residential construction.
- 1:00 p.m. Subcommittee work session on retained bill **HB 661-FN**, relative to record keeping for sold or transferred animals, jointly with members of the Environment and Agriculture committee.

Room 303, LOB (*Please note room)

FISH AND GAME AND MARINE RESOURCES, Room 307, LOB

- 10:15 a.m. Full committee work session to consider Senate amendments to House bills.

SCIENCE, TECHNOLOGY AND ENERGY, Room 304, LOB

- 10:00 a.m. Full committee work session on retained bill **HB 334**, relative to the sale of personally identifiable information by Internet service providers.
- 1:00 p.m. Full committee work session on retained bill **HB 143**, relative to electric renewable energy classes.

SPECIAL COMMITTEE ON PUBLIC EMPLOYEE PENSION PLANS, Room 308, LOB

- 10:00 a.m. Full committee meeting on cash balance plans.

WAYS AND MEANS, Room 202, LOB

- 10:00 a.m. Full committee work session on revenue estimates.
- 1:30 p.m. Subcommittee work session on retained bills **HB 668-FN**, relative to expense deductions under the business profits tax, providing that funds shall be used solely for the purpose of the fund, **HB 386-FN-A**, reducing the rate of the business profits tax and **CACR 2**, Relating to dedicated funds.

WELLNESS AND PRIMARY PREVENTION COUNCIL (RSA 126-M:3), Room 205, LOB

- 10:00 a.m. Regular meeting.

WEDNESDAY, JUNE 3

ADVISORY COMMITTEE ON THE EDUCATION OF CHILDREN/STUDENTS WITH DISABILITIES (RSA 186-C:3-b), NHDOE, Londergan Hall, Room 15, 101 Pleasant Street, Concord

- 4:30 p.m. Regular meeting.

FRIDAY, JUNE 5

ADMINISTRATIVE RULES (RSA 541-A:2), Rooms 305-307, LOB

- 9:00 a.m. Continued meeting.

ASSESSING STANDARDS BOARD (RSA 21-J:14-a) New Hampshire Department of Revenue Administration, 109 Pleasant Street, Concord

- 2:00 p.m. Rules and Definitions subcommittee meeting.

NEW HAMPSHIRE STATE HOUSE BICENTENNIAL COMMISSION (RSA 17-R), Room 308, LOB

- 10:00 a.m. Regular meeting.

PERFORMANCE AUDIT AND OVERSIGHT COMMITTEE (RSA 17-N:1), Room 212, LOB

- 11:00 a.m. Regular business meeting.

MONDAY, JUNE 8**ADVANCED MANUFACTURING EDUCATION ADVISORY COUNCIL (RSA 188-E:21), Room 100, State House**

3:00 p.m. Regular meeting.

COMMISSION TO STUDY SEXUAL ABUSE PREVENTION EDUCATION IN ELEMENTARY AND SECONDARY SCHOOLS (RSA 189:69), Room 101, LOB

9:00 a.m. Regular meeting.

TUESDAY, JUNE 9**EDUCATION, Room 207, LOB**

- 10:00 a.m. Subcommittee work session on retained bills **HB 538-FN-L**, relative to the implementation of new statewide education annual assessments, **HB 243**, changing the definitions of “focus school” and “priority school” in the school performance and accountability law, **HB 581-FN**, requiring schools to continue the education of a child during the child’s suspension or expulsion and **HB 527**, establishing guidelines for school districts relative to the use of school resource officers.
- 1:00 p.m. Subcommittee work session on retained bill **SB 157-FN**, (New Title) relative to encouraging high school students to take and pass a United States citizenship test.

EXECUTIVE DEPARTMENTS AND ADMINISTRATION, Room 306, LOB

- 10:00 a.m. HB 377 subcommittee field trip to the Incident Planning and Operations Center, 110 Smokey Bear Blvd., Concord, NH.
- 1:00 p.m. Subcommittee work session on retained bill **HB 377**, establishing a commission to study the establishment of a state geographic information system office and the position of state geographic information officer.

WAYS AND MEANS, Room 202, LOB

- 10:00 a.m. Full committee work session on revenue estimates.

WEDNESDAY, JUNE 10**JUDICIARY, Room 208, LOB**

- 9:00 a.m. Subcommittee work session on retained bill **HB 636-FN**, relative to forfeiture of property.

FRIDAY, JUNE 12**ASSESSING STANDARDS BOARD (RSA 21-J:14-a) New Hampshire Department of Revenue Administration, 109 Pleasant Street, Concord**

- 9:30 a.m. Poles, Wires and Conduits Subcommittee Meeting

COASTAL RISK AND HAZARDS COMMISSION (RSA:483-E:1) Department of Environmental Services, 222 International Drive, Pease Tradeport, Portsmouth

- 9:00 a.m. Regular meeting.

STATE SUGGESTION AND EXTRAORDINARY SERVICE AWARD PROGRAM (RSA 99-E:1,I), Room 101, LOB

- 9:30 a.m. Regular meeting.

MONDAY, JUNE 15**INTERBRANCH CRIMINAL AND JUVENILE JUSTICE COUNCIL (RSA 651-E:2), Trial Courts Center, 45 Chenell Drive, Concord**

- 1:30 p.m. Regular meeting. Presentation on the authorization of the New Hampshire Health Protection Plan.

THURSDAY, JUNE 18**COMMISSION TO STUDY THE EFFECTS OF SERVICE-CONNECTED POST-TRAUMATIC STRESS DISORDER AND TRAUMATIC BRAIN INJURY (RSA 115-D:1), NH Dept. of Health and Human Services, 129 Pleasant Street, Concord**

- 2:30 p.m. Regular meeting.

FRIDAY, JUNE 19**ADMINISTRATIVE RULES (RSA 541-A:2), Rooms 305-307, LOB**

9:00 a.m. Regular meeting.

ENERGY EFFICIENCY AND SUSTAINABLE ENERGY BOARD (RSA 125-O:5-a), PUC Offices, 21 S. Fruit Street, Concord

9:00 a.m. Regular board meeting.

GUARDIAN AD LITEM BOARD (RSA 490-C:1), Room 101, LOB

11:00 a.m. Non-public session of the complaint review comm.

1:00 p.m. Regular meeting.

MONDAY, JUNE 22**COMMISSION TO STUDY SEXUAL ABUSE PREVENTION EDUCATION IN ELEMENTARY AND SECONDARY SCHOOLS (RSA 189:69), Room 101, LOB**

9:00 a.m. Regular meeting.

NEW HAMPSHIRE COMMISSION ON DEAFNESS AND HEARING LOSS (RSA 125-Q), Rooms 205, LOB

1:30 p.m. Regular meeting.

OIL FUND DISBURSEMENT BOARD (RSA 146-D:4), Room 305, LOB

9:00 a.m. Regular meeting.

THURSDAY, JUNE 25**COMMISSION ON PRIMARY CARE WORKFORCE ISSUES (RSA 126-T:1), NH Medical Society, 7 North State Street, Concord**

2:00 p.m. Regular meeting.

FRIDAY, JUNE 26**ADMINISTRATIVE RULES (RSA 541-A:2), Rooms 305-307, LOB**

9:00 a.m. Continued meeting.

ASSESSING STANDARDS BOARD (RSA 21-J:14-a), NH Department of Revenue Administration, 109 Pleasant Street, Concord

9:30 a.m. Regular board meeting.

FISCAL COMMITTEE (RSA 14:30-a), Rooms 210-211, LOB

10:00 a.m. Regular meeting.

GOVERNOR'S COMMISSION ON ALCOHOL AND DRUG ABUSE PREVENTION, TREATMENT, AND RECOVERY (RSA 12-J:1), Rooms 301-303, LOB

9:30 a.m. Regular meeting.

NEW HAMPSHIRE RAIL TRANSIT AUTHORITY BOARD OF DIRECTORS (RSA 238-A:2), Room 204, LOB

9:30 a.m. Regular meeting.

TUESDAY, JUNE 30**WELLNESS AND PRIMARY PREVENTION COUNCIL (RSA 126-M:3), Room 205, LOB**

10:00 a.m. Regular meeting.

OFFICIAL NOTICES**COUNTY DELEGATION NOTICE**

The **Hillsborough** County Executive Committee will be meeting on **Friday May 29, 2015 at 8:30 a.m.** immediately followed by the FY 16 Budget Review and **also on Monday, June 1, 2015** for FY Budget Review at the Hillsborough County Complex, Bouchard Building, Goffstown, NH.

Rep. Jim Belanger, Clerk

Hillsborough County Executive Committee

COUNTY DELEGATION NOTICE

The **Merrimack** County Executive Committee will meet on **Monday, June 1, 2015** at **10:00 a.m.** in the lower level conference room of the McDonnell Building, 4 Court Street, Concord, NH. The purpose of the meeting as follows: Review/Approve 1st Qtr. Financial Report, Review LGC Pay Back Process and any other business.

Rep. James MacKay, Chairman
Merrimack County Executive Committee

COUNTY DELEGATION NOTICE

The **Rockingham** County Delegation will meet on **Monday, June 15, 2015** at **10:00 a.m.** in the Hilton Auditorium at the Rockingham County Nursing Home in Brentwood. The purpose of the meeting is to elect a High Sheriff for Rockingham County.

Rep. David A. Welch, Clerk
Rockingham County Delegation

REVISED FISCAL NOTES

The following Bills have revised fiscal notes: HBs 177, 197, 208, 215, 221, 267, 354, 357, 476, 477, 563, 577, 578, 596, 600, 606, 609, 614, 619, 622, 626, 628, 629, 630, 632, 634, 635, 638, 639, 642, 648, 649, 651, 654, 655, 656, 658, 661, 662, 663, 665, 667, 668, 669, 671, 672, 673, 674, 677, 678, 679, 680, 681, 684, 685, SBs 20, 29, 84, 93, 104, 112, 113, 116, 120, 133, 135, 151, 157, 186, 188, 190, 191, 195, 202, 211, 214, 227, 230, 259, 265

Paul C. Smith, Clerk of the House

MEMBERS' NOTICES

The following notices are published in the House record as a courtesy to the member(s) requesting publication. These are not official public notices and will be limited to legislative policy or legislative social activities and political meetings or events. Publication should not be construed as support for either the events listed or the views espoused by the individual or organization sponsoring the event.

There are two upcoming health promotions sponsored by the Governor's Council on Physical Activity & Health. The first is the "Granite Walk of Ages" that is the kick off for the Governor's "90 Day Challenge" at White Park in Concord on **Friday, May 29** with registration from **10:00 a.m. to 10:30 a.m.** and a one mile walk to the State House for the reading of the proclamation by the governor. You can sign up for the 90 Day Challenge at www.nhmoves.org/90daychallenge. You will receive a 90 Day Challenge passport in the mail where you can track your activity and get free access to select state parks. The 90 Day Challenge begins on June 1.

Rep. Sherman Packard

The Propane Gas Association of New England is hosting its annual Outdoor Living Safety Day on the State House lawn on **Friday, May 29**, from **9:00 a.m. – 2:00 p.m.** 12 NH propane companies will be grilling and discussing propane safety for the summer season. The Governor and State Fire Marshal have been invited. All are welcome to stop by and visit!

Reps. Jack Flanagan and Stephen Shurtleff

Members are invited to join Belknap County Republicans for the 10th Annual Lincoln Day Dinner-Cruise on the M/V Mount Washington on **Friday, May 29**. This is a great event with several Presidential candidates on a beautiful setting - New Hampshire at its finest. Boarding will commence at **5:30 p.m.** at Weirs Beach with return at 9:00 p.m. Tickets are \$50 and are available from Rep. Frank Tilton or other Belknap County representatives.

Rep. Franklin T. Tilton

The OWLs will be hosting a bake sale on **Wednesday, June 3, 2015** during the House session. Please bring or purchase the wonderful baked goods that will be offered.

Rep. Debra DeSimone

TransgenderNH & GLAD (Gay & Lesbian Advocates and Defenders) will be sponsoring an educational session on Transgender Issues on **Wednesday, June 3**, during the session lunch break in rooms 305/307 of the LOB. All House members and staff are invited to learn from LGBT experts and Transgender NH citizens about what it means to live as a transgender person in our state.

Rep. Ed Butler

All Legislators and staff are invited to the 4th annual "Rep. Burt's Hot Dog Day," **Wednesday, June 3**, from **11:30 a.m. – 1:30 p.m.** on the front lawn of the State House. The Cocheco Valley Humane Society from Dover, NH is hosting this event, visit cvhsonline.org. Please contact Rep. John Burt at john@burtnh.com if you can bring a salad or other items to Hot Dog day.

Rep. John A. Burt

All House members and legislative staff are cordially invited to OHRV Appreciation Day on **Thursday, June 11** from **11:00 a.m. - 3 p.m.** on the State House Plaza. Please join the New Hampshire Off Highway Vehicle Association (NHOHVA), their local clubs and members, and OHRV dealers from New Hampshire Automobile Dealers Association kick off the 2015 riding season. There will be food, new models on display, and NHOHVA will also be showcasing their Youth Safety Simulator which is helping educate young riders! Club members and dealers from around the State will be happy to provide you with information and speak with you about the exciting ways the OHRV industry is helping the economy of New Hampshire.

Reps. Jack Flanagan and Stephen Shurtleff

Celebrate spring! New Hampshire's conservation community's annual Spring Sip has been rescheduled for **Thursday, June 11, 2015** from **5:30 p.m. – 7:30 p.m.** at the True Brew Barista located at 3 Bicentennial Square, Concord. Spring Sip is hosted by the Appalachian Mountain Club, Conservation Law Foundation, National Wildlife Federation, Nature Conservancy, NH Audubon, NH Sustainable Energy Assoc., ReVision Energy, Society for the Protection of NH Forests, and Union of Concerned Scientists.

Reps. Bill Baber and Suzanne Smith

Fellow Legislators: you have the opportunity to recommend a young person for the Legislative Youth Advisory Council. The council is a statutory committee with the mission of advising legislators about issues of concern to youth. The age to be a member is from 15 to 22. Higher education students need to be going to school in New Hampshire. Please contact Rep. Carolyn Gargas with your recommendations at carolyn.gargas@leg.state.nh.us or 465-7463.

Rep. Carolyn Gargas

There House Republican Alliance will meet **Tuesdays, 8:30 a.m. in LOB 204** to discuss legislation. All Republican Representatives are welcome.

Reps. Carol McGuire, Bill Ohm, Leon Rideout

The NH House Business Caucus will meet **Tuesdays at 8:30 a.m. in LOB 302**. All current pro-business State Representatives are welcome.

Reps. Laurie Sanborn, Patrick Abrami, Adam Schroadter

STATE HOUSE VISITATION SCHEDULE

As a convenience to the members of the NH General Court, the Visitors' Center offers the following schedule of schools and other groups visiting the State House in **2015**. These listings are to ensure all members be notified in a timely manner of visitors from their district. Our schedule is tightly booked for the school year and subject to changes.

Please contact the Visitor Center concerning school tour booking information. Legislators planning to meet with students should notify the Visitor Center. Thank you for your continued participation with your School Visitation Program.

Virginia J. Drew, Director
Deborah Rivers, Public Information Administrator

DATE	TIME	GROUP	Group#/Grade
May 29	10:00	Bernice Ray School – Hanover	45/4
May 29	11:30	Fuller School – Keene	55/4
May 29	12:30	Holderness Central School	28/4
May 29	2:00	World Affairs Council – Afghanistan	8
June 1	9:00/10:30 SH/SC	Riddle Brook School – Bedford	60/4
June 1	11:30	St. Anthony's School – Manchester	16/4
June 2	9:30	Newport Montessori School	10
June 2	10:00/11:15	Pelham Elementary School	90/4
June 2	1:30	World Affairs Council – Indonesia	
June 3	9:00	Kensington Elementary School	32/4
June 3	10:00/11:15	Pelham Elementary School	
June 4	9:00	New Hampton Community School	21/4
June 4	10:00	Gate City Charter School for the Arts	38/3&4
June 4	10:45	Winchester Elementary School	28/4
June 4	11:30	Hampton Falls School	40/4
June 5	9:00/10:30 SH/SC	Riddle Brook School – Bedford	60/4
June 5	10:30	Effingham Elementary School	13/4
June 5	11:30	Grantham Elementary School	46/4
June 5	12:30	Lancaster Memorial School – Salem	51/4
June 8	9:45	Salisbury & Webster Schools	35/4
June 8	10:00/11:30 SH/SC	Memorial School – Newton	60/4
June 9	9:00/10:30	Northwest Elementary School – Manchester	116/4
June 9	10:00	Plymouth Elementary School	39/4
June 10	12:00	Ed Fenn Elementary School – Gorham	33/4
June 10	8:30	MCPHS Pharmacy students	14/col
June 10	9:30/11:00	Maple St. School – Contoocook/Hopkinton	75/4
June 10	9:45	Bakersville Elementary School – Manchester	60/4
June 10	11:30	John Fuller School – No. Conway	40/4
June 11	9:15	New Leadership New England 2015 – St. Anselm's College	30/adults
June 11	10:30/12:15 SH/HM	William Allen School – Rochester	70/4
June 11	10:30/12:45	Broken Ground School – Concord	120/4
June 11	11:00	Cornish Elementary School	35/4
June 12	10:00	Ben Franklin School – Keene	35/4
June 12	10:00	Boscawen Elementary School – Gettysburg grp	16/5
June 12	11:30	Jonathan Daniels School – Keene	42/4
June 12	12:30	Mill Falls Charter School – Manchester	24/4
June 15	9:30	Henniker Community School	39/4
June 15	11:00	Madison Elementary School	23/4
June 16	9:30/11:00	Beaver Meadow School – Concord	75/4
June 17	9:00	Pine Tree Elementary School – Center Conway	48/3
June 18	10:15	Wheelock School – Keene	23/4
June 19	9:15	Henry Moore School – Candia	40/4

AMENDMENTS

(LISTED IN NUMERICAL ORDER)

Amendment to SB 29-FN (2015-1889h)

Proposed by the Committee on Criminal Justice and Public Safety - r

Amend RSA 265:60, VI as inserted by section 8 of the bill by replacing it with the following:

VI. The fines for violations of subparagraph II(e) shall be as follows:

Miles above the 65 mph limit:

1-5 \$65

6-10 100

11-15 150

16-20 250

~~21-25 350-~~

~~26+ Must appear]~~

21+ 350

Miles above the 70 mph limit:

1-5 \$65

6-10 100

11-15 200

16-20 300

21+ 400

The fines listed in this paragraph shall be plus penalty assessment.

Amendment to SB 32

(2015-1900h)

Proposed by the Committee on Finance - c

Amend the bill by replacing all after the enacting clause with the following:

1 Monthly Statements; Budget Report by Administrative Services. Amend RSA 9:11 to read as follows:
9:11 Monthly Statements.

I. Once each month the director, division of accounting services shall make a report to each state agency showing in detail the total amount expended during the previous month and the accumulated amount expended to date from July 1. The report shall also show the total encumbrances outstanding and the balance available for the remainder of the fiscal year. Whenever it appears that a department is spending at a rate which will deplete its appropriation before June 30 the director, division of accounting services shall immediately report the fact to the governor who shall thereupon investigate and may, if necessary, order the department head to reduce expenditures in proportion to the balance available and the remaining time in the fiscal year. When such an order has been made by the governor the director, division of accounting services shall establish a limit of expenditures for the department and shall not allow any expenditure by said department in excess of said limit unless and until said order has been modified by the governor. Provided, however, that the provisions of this section shall not apply to appropriations made for land, permanent improvements, and other capital projects.

II.(a) For the funds and entities identified in subparagraph (b), the department of administrative services shall prepare and submit to the fiscal committee of the general court a combined report describing the status of the state's fund expenditures for the current fiscal year. The report shall include a comparison of actual expenditures to projected expenditures, and an explanation for any substantial variance, as provided by each entity. The department shall submit such report for the quarters ending September 30, December 31, and March 31, and any time the governor submits to the fiscal committee, pursuant to RSA 9:16-b, a plan to reduce state expenditures.

(b)(1) For the general fund and education trust fund, the judicial branch and any agency that receives appropriations from the general fund or education trust fund.

(2) For the fish and game fund, the fish and game department.

(3) For the highway fund, including the cost of collections, the department of safety and the department of transportation.

(4) For the turnpike fund, the department of transportation.

(5) For the liquor fund, the liquor commission.

(6) For the sweepstakes fund, the lottery commission.

2 Effective Date. This act shall take effect December 31, 2015.

2015-1900h

AMENDED ANALYSIS

This bill requires the department of administrative services to compile quarterly reports regarding expenditures from certain funds.

Amendment to SB 39

(2015-1303h)

Proposed by the Majority of the Committee on Election Law - r

Amend the title of the bill by replacing it with the following:

AN ACT relative to recounts on questions and relative to photographs of voters not presenting identification.

Amend the bill by replacing all after section 1 with the following:

2 Obtaining a Ballot; Proof of Identity; Photograph. Amend RSA 659:13, I(c)(2) to read as follows:

(2) If the voter executes a challenged voter affidavit, the moderator or the moderator's designee shall take a photograph of the voter and immediately print and attach the photograph to, and thus make it a part of, the affidavit form. The photograph shall be 2 inches by 2 inches, or larger, and *may* be in color *or in black and white*. The moderator or his or her designee who took the photograph and the voter shall then sign the challenged voter affidavit. The moderator or designee shall delete the photograph from the camera *if*

applicable in the presence of the voter. If the moderator or his or her designee is unable to take the voter's photograph due to equipment failure or other cause beyond the moderator's or his or her designee's reasonable control, the voter may execute a challenged voter affidavit without a photograph.

3 Repeal. RSA 659:13, V(b), relative to waiver of photograph requirement, is repealed.

4 Effective Date.

I. Sections 2 and 3 of this act shall take effect September 1, 2015 at 12:03 a.m.

II. The remainder of this act shall take effect 60 days after its passage.

2015-1303h

AMENDED ANALYSIS

This bill requires notice to voters requesting a recount on certain local questions and public posting of notice of the time and place of the recount. This bill also eliminates the requirement that photographs taken by the moderator of voters who do not present identification be in color.

Amendment to SB 41

(2015-1708h)

Proposed by the Committee on Judiciary - c

Amend the title of the bill by replacing it with the following:

AN ACT establishing a committee to study government immunity from suit and accountability by its citizens.

Amend the bill by replacing all after the enacting clause with the following:

1 Committee to Study Government Immunity from Suit and Accountability by its Citizens.

I. There is established a committee to study government immunity from suit and accountability by its citizens.

II. The members of the committee shall be as follows:

(a) Four members of the house of representatives, appointed by the speaker of the house of representatives.

(b) Three members of the senate, appointed by the president of the senate.

III. Members of the committee shall receive mileage at the legislative rate when attending to the duties of the committee.

IV. The committee shall study the recent state supreme court decisions construing or ruling on state statutes regarding negligence and intentional torts by governmental entities, the lack of statutes of limitations for enforcement actions by governmental entities, and the denial of equitable or declaratory relief to challenge actions by all levels of government. The goal of the committee shall be to make recommendations for legislative action consistent with part I, articles 8 and 14 of the New Hampshire constitution to strike a proper balance for government to be held accountable to the citizens in our courts.

V. The first meeting of the committee shall be called by the first-named senate member and shall be held within 30 days of the effective date of this section. A chairperson shall be selected by the members of the committee. The appropriate legislative research entities shall provide assistance and support to the committee as necessary. Four members of the committee shall constitute a quorum.

VI. The committee shall report its findings and any recommendations for proposed legislation or constitutional amendments to the speaker of the house of representatives, the president of the senate, the house clerk, the senate clerk, the governor, and the state library on or before November 15, 2015.

2 Effective Date. This act shall take effect upon its passage.

2015-1708h

AMENDED ANALYSIS

This bill establishes a committee to study government immunity from suit and accountability by its citizens.

Amendment to SB 50

(2015-1366h)

Proposed by the Committee on Commerce and Consumer Affairs - c

Amend the title of the bill by replacing it with the following:

AN ACT relative to the notice required prior to foreclosure of residential property.

Amend the bill by replacing all after the enacting clause with the following:

1 Sale Under the Power, Notice Required for Residential Mortgage. Amend RSA 479:25, II to read as follows:

II.(a) A copy of said notice shall be served upon the mortgagor or sent by registered or certified mail to his *or her* last known address or to such person as may be agreed upon in the mortgage at least 25 days before the sale, *or in the case of a residential mortgage, at least 45 days before the sale*. The term "mortgagor" shall include the mortgagor and any grantee, assignee, devisee or heir of the mortgagor holding a recorded interest in the mortgaged premises subordinate to the lien of the mortgage, provided that such

interest is recorded[,] at least 30 days, ***or in the case of a residential mortgage, at least 50 days***, before the date of the sale, in the registry of deeds for the county in which the mortgaged premises are situated. ***In this paragraph, the term "residential mortgage" means a mortgage on a dwelling, as defined in RSA 397-A:1, VI-c.*** Like notice shall be sent to any person having a lien of record on the mortgaged premises ***not less than 21 days before the sale***, provided that the lien is recorded at least 30 days, ***or in the case of a residential mortgage, at least 50 days***, before the date of the sale in the registry of deeds. ~~[The notice shall be sent not less than 21 days before the sale.]~~ Such notice of sale shall be sufficient if it fully sets forth the date, time, and place of sale; the town, county, street or highway and street number, if any, of the mortgaged premises; the date of the mortgage; the volume and page of the recording of the mortgage; and the terms of the sale. Any mortgagor or record lienholder who refuses to accept or claim mailed or served notice or who frustrates attempts by the mortgagee to give notice of the sale by failing to give or leave a forwarding address or by other act or omission shall be deemed to be notified of the sale, provided that such mortgagee shall have made a good faith effort to provide such notice.

(b) Notice of the sale as served on or mailed to the mortgagor shall include, for owner-occupied dwellings of 4 or fewer dwelling units:

(1) The address of the mortgagee for service of process and the name of the mortgagee's agent for service of process; and

(2) Contact information for the New Hampshire banking department, along with the statement: "For information on getting help with housing and foreclosure issues, please call the foreclosure information hotline at _____ (insert toll-free telephone number). The hotline is a service of the New Hampshire banking department. There is no charge for this call." The banking department shall maintain a toll-free telephone number for this purpose, which shall be disseminated and kept up-to-date through a bulletin on the department's website.

(c) Notice of the sale as served on or mailed to the mortgagor shall also in all cases include the following language:

"You are hereby notified that you have a right to petition the superior court for the county in which the mortgaged premises are situated, with service upon the mortgagee, and upon such bond as the court may require, to enjoin the scheduled foreclosure sale." Failure to institute such petition and complete service upon the foreclosing party, or his or her agent, conducting the sale prior to sale shall thereafter bar any action or right of action of the mortgagor based on the validity of the foreclosure.

2 Effective Date. This act shall take effect January 1, 2016.

2015-1366h

AMENDED ANALYSIS

This bill extends the notice required prior to foreclosure of residential property. The bill also requires a mortgage foreclosure notice to include contact information for the mortgagee and banking department.

Amendment to SB 55

(2015-1605h)

Proposed by the Majority of the Committee on Commerce and Consumer Affairs - r

Amend RSA 275-G:1, III as inserted by section 1 of the bill by replacing it with the following:

III. "Veteran's preference employment policy" means a private employer's policy for hiring or promoting a veteran over another qualified applicant or employee.

Amend RSA 275-G:2, II as inserted by section 1 of the bill by replacing it with the following:

II. Shall be applied uniformly to employment decisions regarding hiring and promotion.

2015-1605h

AMENDED ANALYSIS

This bill permits private employers to establish a policy for granting a preference to veterans in and hiring promotion decisions.

Amendment to SB 57

(2015-1644h)

Proposed by the Committee on Commerce and Consumer Affairs - c

Amend the title of the bill by replacing it with the following:

AN ACT relative to the membership and governance of condominium unit owners' associations.

Amend the bill by replacing all after the enacting clause with the following:

1 Contents of Bylaws. RSA 356-B:35 is repealed and reenacted to read as follows:

356-B:35 Contents of the Bylaws.

I. There shall be recorded simultaneously with the declaration a set of bylaws providing for the self-government of the condominium by an association of all the unit owners. The unit owners' association may be incorporated.

II. The bylaws shall provide the means by which the association shall elect a board of directors. The bylaws shall specify the powers and responsibilities of the same and the number and terms of its members. The bylaws may delegate to such board, among other things, any of the powers and responsibilities assigned by this chapter to the unit owners' association. The bylaws shall also specify which, if any, of its powers and responsibilities the unit owners' association or its board may delegate to a managing agent. The board of directors shall have a fiduciary relationship to members of the unit owners' association.

III. The bylaws shall provide for election by the board of directors or, if the declaration requires, by the association members, of a president, treasurer, secretary, and any other officers of the association the bylaws specify.

IV. The bylaws shall specify the qualifications, powers and duties, terms of office, and manner of electing and removing board members and officers and filling vacancies.

V. The bylaws shall specify the officers who may prepare, execute, certify, and record amendments to the declaration on behalf of the association.

VI. The bylaws shall specify a method for the association members to amend the bylaws.

VII. The bylaws shall provide that the unit owners' association shall act on behalf of each unit owner in condemnation proceedings against the common areas of the condominium.

VIII. The bylaws shall contain any provision necessary to satisfy requirements of this chapter or the declaration concerning meetings, voting, quorums, and other activities of the association.

IX. The bylaws shall provide for any matter required by laws of this state other than this chapter to appear in the bylaws of organizations of the same type as the association.

X. Subject to the declaration and this chapter, the bylaws may provide for any other necessary or appropriate matters, including matters that may be adopted as rules.

XI. In any case where an amendment to the declaration is required by RSA 356-B:18, II, III, or IV, the person or persons required to execute the same shall also prepare and execute, and record simultaneously with such amendment, an amendment to the bylaws. The amendment to the bylaws shall allocate votes in the unit owners' association to new units on the same basis as was used for the allocation of such votes to the units depicted on site plans and floor plans recorded pursuant to RSA 356-B:20, I and II, or shall abolish the votes appertaining to former units, as the case may be. The amendment to the bylaws shall also reallocate rights to future common profits, and liabilities for future common expenses not specially assessed, in proportion to relative voting strengths as reflected by the said amendment.

2 Meetings, Voting Procedures, Executive Board Members and Officers. RSA 356-B:37 through 40 are repealed and reenacted to read as follows:

356-B:37 Meetings.

I. Meetings of the unit owners' association shall be held in accordance with the provisions of the condominium instruments at least once each year after the formation of the association. The bylaws shall specify an officer who shall, at least 21 days in advance of any annual or regularly scheduled meeting, and at least 7 days in advance of any other meeting, provide to each unit owner notice of the time, place, and purpose or purposes of such meeting in conformity with RSA 356-B:37-a. The minimum time to give notice may be reduced or waived for a meeting called to deal with an emergency. Purposes of the meeting shall include any budget changes or proposal to remove an officer or member of the board of directors. The secretary or other duly authorized officer of the unit owners' association, who shall also be a member of the board of directors of the unit owners' association, shall prepare an affidavit which shall be accompanied by a list of the addresses of all unit owners currently on file with the association and shall attest that notice of the association meeting was provided to all unit owners on that list in a manner conforming to RSA 356-B:37-a. A copy of the affidavit and unit owners list shall be available at the noticed meeting for inspection by all owners then in attendance and shall be retained with the minutes of that meeting. The affidavit required in this section shall be available for inspection by unit owners for at least 3 years after the date of the subject meeting.

II. An association shall hold a special meeting of unit owners to address any matter affecting the unit owners or the association if its president, a majority of the board of directors, or unit owners having at least 20 percent, or any lower percentage specified in the bylaws, of the votes in the association request that the secretary call the meeting. If the association does not notify unit owners of a special meeting within 30 days after the requisite number or percentage of unit owners request the secretary to do so, the requesting members may directly notify all the unit owners of an informational meeting, the purpose of which shall be to present the issue to fellow residents and unit owners. Only matters described in the meeting notice required by RSA 356-B:37-a may be considered at a special meeting.

III. Except as otherwise provided in the bylaws, meetings of the association shall be conducted in accordance with the most recent edition of Roberts' Rules of Order Newly Revised.

IV. Unit owners shall be given a reasonable opportunity at any meeting to comment regarding any matter affecting the association.

V. The declaration or bylaws may allow for meetings of unit owners to be conducted by telephonic, video, or other conferencing process, as provided in RSA 356-B:37-b.

VI. The board of directors shall make copies of the minutes of all meetings available to the unit owners within 60 days of the meeting or 15 days of the date such minutes are approved by the board, whichever occurs first. The association may opt to provide the minutes electronically or publish them on the association website, in which case the owners shall be informed of the web address.

356-B:37-a Notice to Unit Owners. An association shall deliver any notice required to be given by the association under this chapter to any mailing or electronic mail address a unit owner designates. If the unit owner does not designate an address, the association shall deliver notices by hand delivery, United States mail postage paid, or commercially reasonable delivery service to the mailing address of each unit.

356-B:37-b Meetings by Telephonic, Video, or Other Conferencing Process. When the declaration or bylaws provides, the association, committees thereof, and the board of directors may meet by telephonic, video, or other conferencing process if:

I. The meeting notice states the conferencing process to be used and provides information explaining how unit owners may participate in the conference directly or by meeting at a central location or conference connection.

II. The process provides all unit owners the opportunity to hear the discussion and to comment.

356-B:37-c Meetings of the Board of Directors and Committees of the Association. The following requirements apply to meetings of the board of directors and committees of the association authorized to act for the association:

I. Meetings shall be open to the unit owners except during executive sessions.

II. For purposes of this section, a gathering of board members at which the board members do not conduct association business is not a meeting of the board of directors. The board of directors and its members may not use incidental or social gatherings of board members or any other method to evade the open meeting requirements of this section.

III. At each board meeting, the board of directors shall provide a reasonable opportunity for unit owners to comment regarding any matter affecting the association.

IV. Unless the meeting is included in a schedule given to the unit owners or the meeting is called to deal with an emergency, the secretary or other officer specified in the bylaws shall give notice of each meeting of the board of directors to each board member and to the unit owners. The notice shall be given at least 10 days before the meeting and shall state the time, date, place, and agenda of the meeting.

V. If any materials are distributed to the board of directors before the meeting, the board of directors at the same time shall make copies of those materials reasonably available to unit owners, except that the board of directors need not make available copies of unapproved minutes or matters that are to be considered in executive session.

VI. In the case of self-managed community associations, meetings of the board of directors or committees expressly for purposes of implementation of decisions made in open meetings shall be exempt from the requirements of RSA 356-B:37, 356-B:37-a, and this section.

356-B:37-d Executive Session. The board of directors and association committees may hold an executive session only during a regular or special meeting of the board or a committee. No final vote or action may be taken during an executive session. An executive session may be held only to:

I. Consult with the association's attorney.

II. Discuss existing or potential litigation or mediation, arbitration, or administrative proceedings.

III. Discuss labor or personnel matters.

IV. Discuss contracts, leases, and other commercial transactions to purchase or provide goods or services currently being negotiated, including the review of bids or proposals, if premature general knowledge of those matters would place the association at a disadvantage or prevent public knowledge of the matter to be discussed if the board of directors or a committee determines that public knowledge would violate the privacy of any person.

356-B:38 Quorums.

I. Unless the condominium instruments otherwise provide, a quorum shall be deemed to be present throughout any meeting of the unit owners' association until adjourned if persons entitled to cast more than 33 1/3 percent of the votes are present at the beginning of such meeting. The bylaws may provide for a smaller percentage, not less than 25 percent, or for a larger percentage for associations having fewer than 25 units.

II. Unless the condominium instruments specify a larger majority, a quorum shall be deemed to be present throughout any meeting of the board of directors if persons entitled to cast more than 1/2 of the votes in that body are present at the beginning of such meeting.

III. If a quorum is not met for an annual meeting, the board shall reschedule the meeting within 60 days and provide proper notice and proxies.

356-B:39 Voting.

I. The bylaws may allocate to each unit depicted on site plans and floor plans that comply with RSA 356-B:20, I and II, a number of votes in the unit owners' association proportionate to the undivided interest in the common areas appertaining to each such unit.

II. Otherwise, the bylaws shall allocate to each such unit an equal number of votes in the unit owners' association, subject to the following exception: each convertible space so depicted shall be allocated a number of votes in the unit owners' association proportionate to the size of each such space, vis-a-vis the aggregate size of all units so depicted, while the remaining votes in the unit owners' association shall be allocated equally to the other units so depicted.

III. Since a unit owner may be more than one person, if only one of such persons is present at a meeting of the unit owners' association, that person shall be entitled to cast the votes appertaining to that unit. But if more than one of such persons is present, the vote appertaining to that unit shall be cast only in accordance with agreement of a majority in interest of the owners unless the condominium instruments expressly provide otherwise, and such consent shall be conclusively presumed if any one of them purports to cast the votes appertaining to that unit without protest being made forthwith by any of the others to the person presiding over the meeting. Since a person need not be a natural person, the word "person" shall be deemed for the purposes of this paragraph to include, without limitation, any natural person having authority to execute deeds on behalf of any person, excluding natural persons, which is, either alone or in conjunction with another person or persons, a unit owner.

IV.(a) The votes appertaining to any unit may be cast pursuant to a proxy or proxies duly executed by or on behalf of the unit owner, or, in cases where the unit owner is more than one person, by or on behalf of all such persons. A person may not cast undirected proxies representing more than 10 percent of the votes in the association. The proxy or proxies shall list the name of the person who is to vote. No such proxy shall be revocable except by actual notice to the person presiding over the meeting, by the unit owner or by any of such persons, that it be revoked. Any proxy shall be void if it is not dated or if it purports to be revocable without the required notice. The proxy of any person shall be void if not signed by a person having authority, at the time of the execution thereof, to execute deeds on behalf of that person. Any proxy shall terminate automatically upon the adjournment of the first meeting held on or after the date of that proxy. The board of directors shall deliver to the unit owners, together with their notice of meeting and agenda, proxy forms bearing a control number which the board of directors shall correlate to the list of all unit owners then entitled to vote. At the noticed meeting, the board of directors shall recover all proxies and compare them to the control list maintained for that purpose. Any proxies which are on a form other than that provided by the board of directors or which do not correlate with the control list maintained by the board of directors shall be disregarded for purposes of determining whether a quorum was present at the meeting and for purposes of casting any vote at that meeting.

(b) The board of directors shall retain all proxies delivered to the board of directors and all independent written confirmation of any such proxies for inspection by the unit owners for a period of not less than 3 years from the date of the unit owners' association meeting.

V. If 50 percent or more of the votes in the unit owners' association appertain to 25 percent or less of the units, then in any case where a majority vote is required by the condominium instruments or by this chapter, the requirement for such a majority shall be deemed to include, in addition to the specified majority of the votes, assent by the unit owners of a like majority of the units.

VI. If more than 50 percent of the votes are acquired by a single person after developer control is terminated, a 2/3 majority shall be required to change bylaws, budgets, and any contracted property management.

356-B:39-a Voting Without a Meeting. Unless prohibited or limited by the declaration or bylaws, an association may conduct a vote without a meeting. In that event, the following requirements apply:

I. The association shall notify the unit owners that the vote will be taken by ballot in the manner prescribed by RSA 356-B:37-a, and deliver a paper or electronic ballot to every unit owner entitled to vote on the matter.

II. The ballot shall:

(a) Set forth each proposed action and provide an opportunity to vote for or against the action.

(b) Indicate the number of responses needed to meet the quorum requirements.

(c) State the percent of votes necessary to approve each matter other than election of directors.

(d) Specify the time and date by which a ballot must be delivered to the association to be counted, which time and date may not be fewer than 10 days after the date the association delivers the ballot.

(e) Describe the time, date, and manner by which unit owners wishing to deliver information to all unit owners regarding the subject of the vote may do so.

III. Except as otherwise provided in the declaration or bylaws, a ballot is not revoked after delivery to the association by death or disability or attempted revocation by the person that cast that vote.

IV. Approval by ballot pursuant to this section is valid only if the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action.

356-B:40 Members of the Board of Directors and Officers.

I. Except as provided in the declaration, the bylaws, paragraph II, or other provisions of this chapter, the board of directors acts on behalf of the association. In the performance of their duties, officers and members of the board of directors appointed by the declarant shall exercise the degree of care and loyalty to the association required of a trustee. Officers and members of the board of directors not appointed by the

declarant shall exercise the degree of care and loyalty to the association required of an officer or director of a corporation organized under RSA 292, and are subject to the conflict of interest rules governing directors and officers under RSA 292. The standards of care and loyalty described in this paragraph apply regardless of the form in which the association is organized.

II. The board of directors shall not:

- (a) Amend the declaration except as otherwise provided in this chapter.
- (b) Amend the bylaws.
- (c) Terminate the unit owners' association.
- (d) Elect members of the board of directors but may fill vacancies in its membership for the unexpired portion of any term or, if earlier, until the next regularly scheduled election of executive board members.
- (e) Determine the qualifications, powers, and duties, or terms of office of members of the board of directors.

II-a. An officer shall not directly receive any salary or compensation from the association for the performance of duties as an officer or board member and shall not in any other way benefit financially from service to the association.

II-b. If annually approved by a 2/3 majority of the voting interests present at a properly called meeting of the association, the association may waive the requirements of paragraph II-a.

III. The board of directors shall adopt budgets as provided in RSA 356-B:40-c.

IV. Subject to the provisions of paragraph V, the declaration may provide for a period of declarant control of the association, during which a declarant, or persons designated by the declarant, may appoint and remove the officers and members of the board of directors. A declarant may voluntarily surrender the right to appoint and remove officers and members of the board of directors before the period ends. In that event, the declarant may require during the remainder of the period that specified actions of the association or board of directors, as described in a recorded instrument executed by the declarant, be approved by the declarant before they become effective. Regardless of the period provided in the declaration, and except as provided in RSA 356-B:36, a period of declarant control terminates no later than the earliest of:

- (a) Sixty days after conveyance of 60 percent of the units that may be created to unit owners other than a declarant;
- (b) Two years after all declarants have ceased to offer units for sale in the ordinary course of business;
- (c) Two years after any right to add new units was last exercised; or
- (d) The date the declarant, after giving notice in a record to unit owners, records an instrument voluntarily surrendering all rights to control activities of the association.

V. Not later than 60 days after conveyance of 1/4 of the units that may be created to unit owners other than a declarant, at least one member and not less than 25 percent of the members of the board of directors shall be elected by unit owners other than the declarant. Not later than 60 days after conveyance of 1/2 of the units that may be created to unit owners other than a declarant, not less than 1/2 of the members of the board of directors shall be elected by unit owners other than the declarant.

VI. Not later than the termination of any period of declarant control, the unit owners shall elect a board of directors with at least 3 members, a majority of whom shall be unit owners. Unless the declaration provides for the election of officers by the unit owners, the board of directors shall elect the officers. The members of the board of directors and officers shall take office upon election or appointment.

VII. If the condominium instruments provide that any officer or officers must be unit owners, then any such officer who disposes of all of his or her units in fee or for a term or terms of more than one year shall be deemed disqualified from continuing in office unless the condominium instruments otherwise provide, or unless the officer acquires or contracts to acquire another unit in the condominium under terms giving the officer a right of occupancy thereto effective on or before the termination of the right of occupancy under such disposition or dispositions.

VIII. If the condominium instruments provide that any officer or officers must be unit owners, then notwithstanding the provisions of RSA 356-B:12, I, the term "unit owner" in such context shall, unless the condominium instruments otherwise provide, be deemed to include, without limitation, any director, officer, partner in, or trustee of any person which is, either alone or in conjunction with another person or persons, a unit owner. Any officer who would not be eligible to serve as such were he or she not director, officer, partner in, or trustee of such a person shall be deemed disqualified from continuing in office if the officer ceases to have any such affiliation with that person, or if that person would itself have been deemed to have disqualified itself from continuing in such office under paragraph I were it a natural person holding such office.

IX. Any officer is a suitable person to receive service of process in any proceeding against the association.

X. For the purpose of receipt of notification by a municipality of a local land use board hearing, the officers shall be responsible for serving as agents of the unit owners' association.

356-B:40-a Disclosure of Fees by Managing Agent and Contractors.

I. If the unit owners' association or the board of directors has delegated certain powers and duties to a managing agent, the managing agent shall disclose any referral fees received from contract work performed on behalf of the association to the board of directors prior to the next regularly scheduled board meeting, unless the terms of any referral fees are disclosed in the managing agent's contract with the unit owners' association, in which case disclosure of fees actually received shall not be required.

II. The managing agent also shall disclose to the board of directors the amount and purpose of any fees, other than maintenance fees, received from a unit owner, unless the terms of any such fees are disclosed in the managing agent's contract with the unit owners' association, in which case disclosure of fees actually received shall not be required.

III. Any contractor licensed by the state of New Hampshire who performs work for a unit owner shall disclose on the bill any referral fee charged by the contractor.

356-B:40-b Removal of Officers and Directors.

I. Notwithstanding any provision of the declaration or bylaws to the contrary, unit owners present in person or by proxy at any meeting of the unit owners at which a quorum is present, may remove any member of the board of directors and any officer elected by the unit owners, with or without cause, if the number of votes cast in favor of removal exceeds the number of votes cast in opposition to removal, provided that:

(a) A member appointed by the declarant may not be removed by a unit owner vote during the period of declarant control.

(b) The unit owners may not consider whether to remove a member of the board of directors or an officer elected by the unit owners at a meeting of the unit owners unless that subject was listed in the notice of the meeting.

II. At any meeting at which a vote to remove a member of the board of directors or an officer is to be taken, the member or officer being considered for removal shall have a reasonable opportunity to speak before the vote.

356-B:40-c Adoption of Budgets and Special Assessments.

I. The board of directors, at least annually, shall adopt a proposed budget for the unit owners' association for consideration by the unit owners. Not later than 30 days after adoption of a proposed budget, the board of directors shall provide to all the unit owners a summary of the budget, including any reserves, and a statement of the basis on which any reserves are calculated and funded. Simultaneously, the board shall set a date not less than 10 days or more than 60 days after providing the summary for a meeting of the unit owners to consider ratification of the budget. Unless at that meeting 2/3 of all unit owners or any larger number specified in the declaration reject the budget, the budget is ratified, whether or not a quorum is present. If a proposed budget is rejected, the budget last ratified by the unit owners continues until the unit owners ratify a subsequent budget.

II. The board of directors, at any time, may propose a special assessment. Except as otherwise provided in paragraph III, the assessment is effective only if the board of directors follows the procedures for ratification of a budget described in paragraph I and the unit owners do not reject the proposed assessment.

III. If the board of directors determines by a 2/3 vote that a special assessment is necessary to respond to an emergency:

(a) The special assessment becomes effective immediately in accordance with the terms of the vote.

(b) Notice of the special assessment shall be provided promptly to all unit owners.

(c) The board of directors may spend the funds paid on account of the special assessment only for the purposes described in the vote.

3 Insurance; Reference Change; Insurance or Bond Required. Amend RSA 356-B:43, II to read as follows:

II. When any policy of insurance has been obtained by or on behalf of the unit owners' association, written notice of the obtainment thereof and of any subsequent changes therein or termination thereof shall be promptly furnished to each unit owner by the officer required to send notices of meetings of the unit owners' association. Such notices shall be sent in accordance with ~~[the provisions of the last sentence of RSA 356-B:37]~~ **RSA 356-B:37-a.**

4 Applicability. A unit owners association shall have 2 years from the effective date of this act to amend or revise its bylaws and condominium instruments to comply with the requirements of this act. Any bylaws, condominium instruments, or amendments thereto, adopted after January 1, 2016 shall comply with the requirements of this act.

5 Effective Date. This act shall take effect January 1, 2016.

2015-1644h

AMENDED ANALYSIS

This bill revises statutes governing the contents of condominium bylaws, meetings of the unit owners' association, and the qualifications and duties of board members.

**Amendment to SB 63
(2015-1457h)**

Proposed by the Committee on Transportation - r

Amend RSA 238-A:4, I as inserted by section 1 of the bill by replacing it with the following:

I. The governing body of the authority shall be a board of directors. The board of directors shall receive input from the public and from the authority advisory board established under paragraph IV. The board of directors shall have the following 9 members:

- (a) The commissioner of the department of transportation, or designee.
- (b) The commissioner of the department of resources and economic development, or designee.
- (c) An individual knowledgeable in the operations and construction of railroads, appointed by the governor and approved by the council.
- (d) An individual knowledgeable in labor and human relations, appointed by the governor and approved by the council.
- (e) A member of the authority advisory board elected by the board.
- (f) A business owner, appointed by the governor and approved by the council.
- (g) A public member, appointed by the governor and approved by the council.
- (h) The chairperson of the house transportation committee, or designee.
- (i) The ranking minority member of the house transportation committee, or designee.

Amend RSA 238-A:4, IV(b) as inserted by section 1 of the bill by replacing it with the following:

- (b) Elect a member to serve as a voting member of the board of directors.

Amend RSA 238-A:4, V as inserted by section 1 of the bill by inserting after subparagraph (q) the following new subparagraph:

- (r) The mayor of the city of Rochester, or designee.

**Amendment to SB 93-FN-A
(2015-1232h)**

Proposed by the Committee on Commerce and Consumer Affairs - c

Amend the bill by replacing all after the enacting clause with the following:

1 Beverage. Amend RSA 175:1, VIII to read as follows:

VIII. "Beverage" means any beer, wine, similar fermented malt or vinous liquors and fruit juices, and any other liquid intended for human consumption as a beverage having an alcoholic content of not less than 1/2 of one percent by volume and not more than 6 percent alcohol by volume at 60 degrees Fahrenheit and specialty beer as defined in RSA 175:1, LXIV-a. The commission may approve any *fermented malt beverage greater than 6 percent but not to exceed 8 percent or any* cider greater than 6 percent.

2 Effective Date. This act shall take effect upon its passage.

**Amendment to SB 99
(2015-1683h)**

Proposed by the Committee on Commerce and Consumer Affairs - c

Amend the title of the bill by replacing it with the following:

AN ACT establishing a committee to study allowing the sampling of beer or wine at farmer's markets, establishing a committee to study powdered or crystalline alcohol, and relative to the definition of alcohol.

Amend paragraph I(b) as inserted by section 2 of the bill by replacing it with the following:

(b) Four members of the house of representatives, 2 of whom shall be members of the commerce and consumer affairs committee, appointed by the speaker of the house of representatives.

Amend the bill by replacing all after section 5 with the following:

6 Committee Established. There is established a committee to study powdered or crystalline alcohol.

I. The members of the committee shall be as follows:

(a) Four members of the house of representatives, 2 of whom shall be members of the commerce and consumer affairs committee, appointed by the speaker of the house of representatives.

(b) One member of the senate, appointed by the president of the senate.

II. Members of the committee shall receive mileage at the legislative rate when attending to the duties of the committee.

III. The committee shall study powdered or crystalline alcohol. The committee's study shall include, but not be limited to, considering whether the sale of powdered or crystalline alcohol should be banned in New Hampshire or if not the regulations that should be in place before the sale of powdered or crystalline alcohol may begin in New Hampshire. The committee shall review legislation relative to powdered or crystalline alcohol established in other states.

IV. The committee shall solicit information from any person or entity the committee deems relevant to its study.

V. The members of the study committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the first-named house member. The first meeting of the committee shall be held within 45 days of the effective date of this section. Three members of the committee shall constitute a quorum.

VI. The committee shall report its findings and any recommendations for proposed legislation to the speaker of the house of representatives, the president of the senate, the house clerk, the senate clerk, the governor, and the state library on or before November 1, 2015.

7 Alcohol; Definition. Amend RSA 175:1, III to read as follows:

III. "Alcohol" means that substance known as ethyl alcohol or hydrated oxide of ethyl alcohol which is commonly produced by the fermentation or distillation of grain, starch, molasses, sugar, potatoes or other substances, including all **solids, powders, crystals**, dilutions and mixtures of these substances.

8 Effective Date. This act shall take effect upon its passage.

2015-1683h

AMENDED ANALYSIS

This bill establishes a committee to study allowing the sampling of beer or wine at farmer's markets.

This bill establishes a committee to study powdered or crystalline alcohol.

This bill also adds solids, powders, and crystals to the definition of alcohol.

Amendment to SB 112

(2015-1946h)

Proposed by the Committee on Finance - c

Amend the bill by replacing all after the enacting clause with the following:

1 New Section; Medicaid Coverage of Telehealth Services. Amend RSA 167 by inserting after section 4-c the following new section:

167:4-d Medicaid Coverage of Telehealth Services.

I. In this section, "telehealth services" shall comply with 42 C.F.R. section 410.78. The use of the term "telemedicine" shall comply with the Centers for Medicare and Medicaid Services requirements governing the aforementioned telehealth services.

II.(a) Coverage under this section shall include the use of telehealth or telemedicine for Medicaid-covered services provided within the scope of practice of a physician or non-physician practitioner as a method of delivery of medical care:

(1) Which is an appropriate application of telehealth services provided by medical specialists only, excluding primary care, as determined by the department based on the Centers for Medicare and Medicaid Services regulations; and

(2) By which an individual shall receive medical services from a physician or non-physician practitioner who is an enrolled Medicaid provider without in-person contact with that provider.

(b) Nothing in this section shall be construed to prohibit the Medicaid program from providing coverage for only those services that are medically necessary and subject to all other terms and conditions of the coverage.

III. This section shall be conditioned upon review and approval of a state plan amendment submitted by the department to the Centers for Medicare and Medicaid Services.

2 New Subparagraph; Telecommunications Planning and Development Advisory Committee; Implementation of Medicaid Coverage of Telehealth Services; Duty Added. Amend RSA 12-A:46, IV by inserting after subparagraph (h) the following new subparagraph:

(i) Advising and assisting the department of health and human services in the implementation of Medicaid coverage of telehealth services as required under RSA 167:4-d. This shall include, but not be limited to, assisting in the development of a detailed work plan for implementation of Medicaid coverage of telehealth services and identifying funding or other tangible resources for consultative services drawing on the expertise in the telehealth community and or academic institutions.

3 Applicability. The department of health and human Services shall develop a telehealth services program which shall commence on July 1, 2016, and which shall not result in increased costs to the Medicaid program. The program shall not commence without approval of the fiscal committee of the general court which shall occur by February 1, 2016.

4 Department of Health and Human Services; Implementation of Medicaid Coverage of Telehealth Services; Report Required. The department of health and human services shall report to the house and senate finance committees and the oversight committee on health and human services, established in RSA 126-A:13, on the financial impact of the program for the period July 1, 2016 through December 31, 2016. The report shall be submitted on or before March 1, 2017, and shall not include the financial impact of telehealth services coverage of newly-eligible adults from 0-133 percent of the federal poverty level (FPL) who are eligible for medical assistance under section 1902(a)(10)(A)(i)(VIII) of the Social Security Act of 1935, as amended, 42 U.S.C. section 1396a(a)(10)(A)(i) ("newly eligible adults") and their spouse and dependents if applicable.

5 Effective Date. This act shall take effect upon its passage

2015-1946h
AMENDED ANALYSIS

This bill requires the Medicaid program to cover telehealth services upon approval by the legislative fiscal committee.

**Amendment to SB 119
(2015-1343h)**

Proposed by the Committee on Commerce and Consumer Affairs - c

Amend the title of the bill by replacing it with the following:

AN ACT relative to the regulation of consumer guaranty contracts by the insurance department and guaranteed asset protection waivers by the banking department.

Amend the bill by replacing sections 2 and 3 with the following:

2 New Section; Retail Installment Sales of Motor Vehicles. Amend RSA 361-A by inserting after section 7-a the following new section:

361-A:7-b Guaranteed Asset Protection Waivers. Persons subject to or licensed under this chapter may offer, sell, and provide guaranteed asset protection waivers (GAP waivers), as defined in RSA 361-E:2, I(f), in accordance with RSA 361-E. Any violation of RSA 361-E is a violation of this chapter.

3 Consumer Guaranty Contracts; Prohibited Acts and Terms. Amend RSA 415-C:7, III(c) to read as follows:

(c) The consumer does not have the right to bring an action to enforce the terms of the contract or otherwise challenge the denial of a claim which the consumer believes is wrongful~~[- subject to the provisions or any alternative dispute resolution procedure specified in the consumer guaranty contract]~~. ***Consumer guaranty contracts may include provisions requiring the parties to submit to alternative dispute resolution, including a provision requiring binding arbitration that would expressly limit the right of the consumer to bring an action in a court of law, if such provision complies with and does not impede the rights of the consumer as provided under RSA 542. All arbitration provisions shall state that they are subject to RSA 542; or***

Amend the bill by replacing all after section 4 with the following:

5 Requirements and Prohibitions as to Retail Installment Contracts. Amend RSA 361-A:7, II(d) to read as follows:

(d) The amount, if any, included for insurance, ***guaranteed asset protection waiver***, and other benefits, specifying the types of coverage and benefits, stating separately by rate or in terms of dollars the amount charged for credit sickness, accident and life insurance, whether issued under a group policy or not;

6 New Subparagraph; Consumer Guaranty Contracts; Definitions. Amend RSA 415-C:1, III(c) by inserting after subparagraph (6) the following new subparagraph:

(7) Debt cancellation or debt suspension contracts between a creditor and a borrower for the cancellation or suspension of the debt.

7 New Chapter; Guaranteed Asset Protection Waivers. Amend RSA by inserting after chapter 361-D the following new chapter:

CHAPTER 361-E
GUARANTEED ASSET PROTECTION WAIVERS

361-E:1 Scope.

I. The purpose of this chapter is to provide a framework within which retail sellers and sales finance companies may offer guaranteed asset protection waivers in New Hampshire.

II. This chapter shall not apply to:

(a) An insurance policy offered by an insurer under the insurance laws of this state; or

(b) A debt cancellation or debt suspension contract being offered in compliance with 12 C.F.R. part 37, 12 C.F.R. part 721, or other federal law.

361-E:2 Definitions.

I. In this chapter:

(a) "Administrator" means a person, other than an insurer or creditor that performs administrative or operational functions pursuant to guaranteed asset protection waiver programs.

(b) "Borrower" means any retail buyer, as defined in RSA 361-A:1, IX.

(c) "Creditor" means:

(1) Any retail seller, as defined in RSA 361-A:1, XII; or

(2) Any sales finance company, as defined in RSA 361-A:1, XIII; or

(3) The assignees of any of the foregoing to whom the credit obligation is payable.

(d) "Finance agreement" means a retail installment contract for the purchase of a motor vehicle governed by RSA 361-A.

(e) "Free look period" means the period of time from the effective date of the guaranteed asset protection (GAP) waiver until the date the borrower may cancel the contract without penalty, fees, or costs to the borrower.

(f) "Guaranteed asset protection waiver" or "GAP waiver" means a contractual agreement wherein a creditor agrees for a separate charge to cancel or waive all or part of amounts due on a borrower's finance agreement in the event of a total physical damage loss or unrecovered theft of the motor vehicle, which agreement shall be part of, or a separate addendum to, the finance agreement.

(g) "Insurer" means an insurance company licensed, registered, or otherwise authorized to do business under the insurance laws of this state.

(h) "Motor vehicle" means a motor vehicle, as defined in RSA 361-A:1, VII.

(i) "Person" includes an individual, company, association, organization, partnership, business trust, corporation, limited liability company, and every other form of legal entity.

II. The terms defined in this section are not intended to provide actual terms required in guaranteed asset protection waivers.

361-E:3 Requirements for Offering Guaranteed Asset Protection Waivers.

I. GAP waivers may, at the option of the creditor, be sold for a single payment or may be offered with a monthly or periodic payment option.

II. Any cost to the borrower for a guaranteed asset protection waiver entered into in compliance with the Truth in Lending Act, 15 U.S.C. section 1601 et seq., and the regulations adopted thereunder, as amended from time to time, shall be separately stated and shall not be considered a finance charge or interest.

III. The GAP waiver shall remain a part of the finance agreement upon the assignment, sale, or transfer of such finance agreement by the creditor.

IV. Neither the extension of credit, the term of credit, nor the term of the related motor vehicle sale shall be conditioned upon the purchase of a GAP waiver.

V. Funds received or held by a creditor or administrator and belonging to an insurer, creditor or administrator pursuant to the terms of a written agreement shall be held by such creditor or administrator in a fiduciary capacity.

361-E:4 Disclosures. Guaranteed asset protection waivers shall disclose, as applicable, in writing and in clear, understandable language that is easy to read, the following:

I. The name and address of the initial creditor and the borrower at the time of sale, the identity of any administrator if different from the creditor, and a statement that the initial creditor may assign the GAP waiver with the finance agreement to a sales finance company or other assignee.

II. The purchase price and the terms of the GAP waiver, including the requirements for protection, conditions, or exclusions associated with the GAP waiver.

III. That the borrower may cancel the GAP waiver within a free look period as specified in the waiver, and shall be entitled to a full refund of the purchase price, if no benefits have been provided.

IV. The procedure the borrower shall follow, if any, to obtain GAP waiver benefits under the terms and conditions of the waiver, including a telephone number and address where the borrower may apply for waiver benefits.

V. Whether or not the GAP waiver is cancellable after the free look period and the conditions under which it may be cancelled or terminated, including the procedures for requesting any refund due.

VI. That in order to receive any refund due in the event of a borrower's cancellation of the GAP waiver agreement or early termination of the finance agreement after the free look period of the GAP waiver, the borrower, in accordance with terms of the waiver, shall provide a written request to cancel to the creditor, administrator or such other party. If the GAP waiver is being cancelled due to the termination of the finance agreement, a written notice to cancel shall be sent to the creditor, administrator or other such party within 90 days of the occurrence of the event terminating the finance agreement.

VII. The methodology for calculating any refund of the unearned purchase price of the GAP waiver due, in the event of cancellation of the GAP waiver or early termination of the finance agreement.

VIII. That neither the extension of credit, the terms of the credit, nor the terms of the related motor vehicle sale, shall be conditioned upon the purchase of the GAP waiver.

361-E:5 Cancellation.

I. Guaranteed asset protection waiver agreements may be cancellable or noncancellable after the free look period. GAP waivers shall provide that if a borrower cancels a waiver within the free look period, the borrower shall be entitled to a full refund of the purchase price, if no benefits have been provided. The free look period shall not be less than 30 days.

II. In the event of a borrower's cancellation of the GAP waiver after the agreement has been in effect beyond the free look period, the borrower may be entitled to a refund of any unearned portion of the purchase price of the GAP waiver unless the GAP waiver provides otherwise. In order to receive a refund, the borrower shall, in accordance with the terms of the waiver, provide a written request to cancel to the creditor, administrator, or other such party. If the GAP waiver is being cancelled due to the early termination of the finance agreement, the borrower shall provide a written request to the creditor, administrator, or other party, within 90 days of the event terminating the finance agreement. No refund shall be paid or credited if benefits have been provided.

III. If the cancellation of a GAP waiver occurs as a result of a default under the finance agreement or the repossession of the motor vehicle associated with the finance agreement, or any other termination of the finance agreement, any refund due may be paid directly to the creditor or administrator and applied as set forth in paragraph IV.

IV. Any cancellation refund under paragraphs I, II, or III, may be applied by the creditor as a reduction of the amount owed under the finance agreement, unless the borrower can show that the finance agreement has been paid in full.

8 Repeal. RSA 415-C:1, III(b)(3), relative to debt cancellation or debt suspension contracts, is repealed.

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

Amendment to SB 120-FN

(2015-1279h)

Proposed by the Committee on Ways and Means - c

Amend the bill by replacing section 1 with the following:

1 New Paragraph; Secondary Game Operator License Application; Specific Requirements. Amend RSA 287-D:10 by inserting after paragraph V the following new paragraph:

VI. Upon receipt of a completed application under this section, and at the request of the applicant, the commission may issue a provisional license, valid for up to 45 days, under rules adopted by the commission under RSA 541-A. If the commission denies the license, the provisional license shall expire upon the applicant's receipt of such denial. If the applicant requests a provisional license under this paragraph, he or she shall submit a fee of \$10 to the commission, in addition to the application fee for the license, at the time of such request.

Amendment to SB 124-FN

(2015-1824h)

Proposed by the Committee on Judiciary - r

Amend RSA 592-B:2, I as inserted by section 2 of the bill by replacing it with the following:

I. Beginning January 1, 2016, the felonies first project shall become effective in the Cheshire county and Strafford county superior courts. Beginning July 1, 2016, the felonies first project shall become effective in Belknap county superior court.

Amend RSA 592-B, II as inserted by section 2 of the bill by replacing it with the following:

(b) Carroll county superior court.

Amend RSA 592-B:2, VI as inserted by section 2 of the bill by replacing it with the following:

VI. Prior to the implementation of this chapter in counties other than Cheshire county, Strafford county, and Belknap county, the judicial council shall issue a report on the implementation of this chapter to the senate president, the speaker of the house of representatives, and the chairpersons of the senate and house judiciary committees. The judicial council shall survey the municipalities and counties affected by the felonies first project in order to obtain cost and effectiveness opinions. The judicial council shall evaluate the number of probable cause hearings requested, waived, denied, and held, and the final disposition of each probable cause hearing held. The judicial council shall also evaluate the number of discovery depositions requested, denied, and approved. Beginning July 1, 2017 and ending in January 2020, the judicial council shall issue an annual report on its recommendations and the implementation of this chapter to the senate president, the speaker of the house of representatives, and the chairpersons of the senate and house judiciary committees. Amend RSA 592-B:6 as inserted by section 2 of the bill by replacing it with the following:

592-B:6 Discovery.

I. Prior to indictment, the accused shall have the same rights to discovery and deposition as the accused has subsequent to indictment, provided that all judicial proceedings with respect thereto shall be within the jurisdiction of the superior court, and notice of petition and hearing shall be given to the county attorney, or to the attorney general if the attorney general shall have entered the case.

II. For incarcerated defendants, the state shall provide or make available to defense counsel, or directly to the defendant if he or she is not represented by an attorney, copies of all discovery in its possession, no more than 10 calendar days after the arraignment of the defendant, unless otherwise ordered by the court. For non-incarcerated defendants, the state shall provide or make available to defense counsel, or directly to the defendant if he or she is not represented by an attorney, copies of all discovery in its possession, no more than 20 calendar days after the arraignment of the defendant, unless otherwise ordered by the court. The state may request an extension of the discovery deadlines for complex case types.

III. The court may, upon motion, authorize the delay of the provision of discovery materials to the defense. Under such circumstances, the court shall make findings in support of its order and shall set a new date for the provision of such materials to the defense.

IV. If the court has determined that discovery has not been provided pursuant to the timeline established in RSA 592-B:6, II or III, and the defendant has not been indicted, the court shall schedule a probable cause hearing without unreasonable delay as a matter of right.

V. The state shall have a continuing obligation to provide discovery to defendants as it becomes available. Amend RSA 592-B:7, II as inserted by section 2 of the bill by replacing it with the following:

II. Upon review of the motion, the court shall determine whether a hearing is necessary to assist the court in its determination of probable cause. The court shall not unreasonably deny a request for a hearing. If a hearing is scheduled, it shall be held as soon as the court docket permits, but in any event within 10 days of the filing of the motion if the defendant is incarcerated and within 20 days of the filing of the motion if the defendant is not incarcerated.

Amend RSA 592-B:7, IV as inserted by section 2 of the bill by replacing it with the following:

IV. If a hearing is held, the state shall bear the burden of proving there is probable cause to believe that a felony has been committed and that the person charged has committed it. At the hearing, the defendant may call witnesses, cross-examine witnesses, and present evidence.

Amend RSA 592-B as inserted by section 2 of the bill by inserting after section 7 the following:

592-B:8 Dispositional Conference. Upon entry of a plea of not guilty, the case shall be scheduled for a dispositional conference in accordance with superior court rules.

Amend the bill by replacing section 17 with the following:

17 Application; Contingency. This act shall take effect on January 1, 2016 in Cheshire county and Strafford county and on July 1, 2016 in Belknap county. This act shall take effect in the remaining counties as of the date set forth in an order of the supreme court as provided for in RSA 592-B:2, II, which order shall be issued at least 90 days prior to the effective date of the act in a particular county. The repeals in section 16 of this act shall take effect on the date on which this act is effective for all counties. In addition to such other notice as the supreme court deems necessary, the court shall send copies of its orders implementing this act in counties other than Cheshire, Strafford, and Belknap to the secretary of state and the director of legislative services.

Amendment to SB 133-FN

(2015-1936h)

Proposed by the Majority of the Committee on Labor, Industrial and Rehabilitative Services - r

Amend the title of the bill by replacing it with the following:

AN ACT relative to medical costs paid under workers' compensation.

Amend the bill by replacing all after the enacting clause with the following:

1 Statement of Purpose. After considering the work of the governor's commission to recommend reforms to reduce workers' compensation medical costs, the workers' compensation advisory council, and analysis by the insurance department, the general court has determined that overall workers' compensation costs in New Hampshire are among the highest in the country and further, that medical costs under workers' compensation are high in comparison to workers' compensation medical costs in the region and countrywide, and to health care costs in New Hampshire. Therefore, as a result of this determination, the general court hereby develops a process to reduce these costs.

2 Workers' Compensation; Payment for Reasonable Value of Services. RSA 281-A:24, I is repealed and reenacted to read as follows:

I.(a) The employer or the employer's insurance carrier shall pay the reasonable value of medical services provided under this chapter.

(b) The insurance commissioner shall develop and publish a schedule representing the maximum reasonable value of medical services using the methodology shown in RSA 281-A:24, VI.

(c) An employer or the employer's insurance carrier may enter into agreements with medical health care providers to determine the value of medical services. Values as determined by such agreements satisfy the reasonable value of medical services standard set forth in this paragraph.

(d) Effort shall be made to resolve any dispute as to the reasonable value of service prior to applying to the commissioner for resolution of such a dispute. Whenever an injured employee receives medical and hospital service or other remedial care under the provisions of this chapter and a dispute arises between the employer or the employer's insurance carrier and the person, firm, or corporation rendering such service or care as to the reasonable value of the service or care, the commissioner shall have exclusive jurisdiction to determine the reasonable value of such service or care. The commissioner shall consider the maximum value of medical services standard as set forth in subparagraph (b) and shall consider catastrophic injury, practice type, and geographic location as appropriate when making a finding as to the reasonable value of medical services under this paragraph. The health care provider shall have the burden of establishing that the amount it accepts for payment for any medical service is reasonable by a preponderance of the evidence.

(e) Any interested party may petition for a hearing and all interested parties shall be entitled to notice and hearing if it is determined that all reasonable efforts to resolve the dispute have failed. The commissioner or the commissioner's authorized representative shall make a finding as to the reasonable value of such services or care rendered. Any party aggrieved by such a finding may appeal to the compensation appeals board under RSA 281-A:43.

3 Workers' Compensation; Payment for Reasonable Value of Services. Amend RSA 281-A:24, VI to read as follows:

V. The commissioner shall assess a civil penalty not to exceed \$2,500 **on any health care provider** for violations of this section which are willful or which demonstrate a pattern of improperly charging or overcharging employers or workers' compensation insurers.

4 New Paragraph; Workers' Compensation; Reasonable Value of Medical Services; Schedule. Amend RSA 281-A:24 by inserting after paragraph V the following new paragraph:

VI. The maximum reasonable value of medical services under this section shall be determined as follows:

(a) Annually by November 1, the insurance department shall establish a list of current procedural terminology (CPT) or other applicable codes representing approximately 85 percent of the total number of medical services provided under workers' compensation insurance in the previous service year. This list shall be developed using insurer workers' compensation medical payment data by physician, hospital, and ambulatory surgical center categories but excluding hospital inpatient, as reported in the National Council on Compensation Insurance (NCCI) Medical Data Report.

(b) For each of the codes on the list established under subparagraph (a), the insurance department shall develop and publish, by December 31, a value for the maximum reasonable value of that medical service, based on an average of the following:

(1) The average health care allowed claim amount for that code developed by using the comprehensive health care information system established in RSA 420-G:11-a. The health care allowed claim amount is equal to the plan paid amount plus the member sharing components that include co-pays, coinsurance, and deductibles.

(2) The average payment for that code made under workers' compensation insurance in New Hampshire as reported by NCCI.

(3) The average payment for that code made under workers' compensation insurance in the New England region as reported by NCCI.

(4) The average payment for that code made under workers' compensation insurance countrywide as reported by NCCI.

(c) The maximum reasonable value of service for any code shall not be less than 125 percent of the average health care allowed claim amount for that code or the category differential developed under subparagraph (b), whichever is greater. The maximum reasonable value of service for any code shall not be greater than 175 percent of the average health care allowed claim amount for that code. However, in no case shall the maximum reasonable value of services for any code exceed the average under subparagraph (b)(2).

(d) The insurance commissioner shall adjust the maximum reasonable values if the advisory council on workers' compensation has determined that access to medical services has been negatively affected through its annual review established under subparagraph (i).

(e) The insurance department shall further establish and publish, concurrently with the schedule established in subparagraph (b), a factor representing the differential between average health care allowed claims amounts and workers' compensation maximum reasonable value of medical services amounts as established under subparagraph (b), to be used for those medical services not included in the list of physician, hospital, and ambulatory surgical center codes established under subparagraph (a).

(f) The commissioner and the insurance commissioner shall adopt rules under RSA 541-A as may be necessary to properly administer this paragraph.

(g) Regardless of the date of injury, payment for medical services shall be based on the payment rates in this paragraph in effect on the date on which the medical service is provided.

(h) The amount the provider accepts for payment shall be equivalent for each type of medical service regardless of whether the payer is an insurer or a self-insured.

(i) The advisory council on workers' compensation, established under RSA 281-A:62, shall include in its annual review of the performance of the workers' compensation system an assessment of worker access to providers. If worker access to providers has been negatively affected, the advisory council on workers' compensation will make the recommendation to the insurance commissioner to raise the maximum reasonable values.

5 Insurance; Comprehensive Health Care Information System. Amend RSA 420-G:11-a, I to read as follows:

I. The department and the department of health and human services shall enter into a memorandum of understanding for collaboration in the development of a comprehensive health care information system. The memorandum of understanding shall include a description of the data sets that will be included in the comprehensive health care information system, the criteria and procedures for the development of limited use data sets, the criteria and procedures to ensure that Health Insurance Portability and Accountability Act of 1996 (HIPAA) compliant limited use data sets are accessible, and a proposed time frame for the creation of a comprehensive health care information system. To the extent allowed by HIPAA, the data shall be available as a resource for insurers, employers, providers, purchasers of health care, and state agencies to continuously review health care utilization, expenditures, and performance in New Hampshire and to enhance the ability of New Hampshire consumers and employers to make informed and cost-effective health care **and workers' compensation** choices. **The data shall be available as a resource to the depart-**

ment in complying with RSA 281-A:24. In presenting data for public access, comparative considerations shall be made regarding geography, demographics, general economic factors, and institutional size. Notwithstanding HIPAA or any other provision of law, the comprehensive health care information system shall not include or disclose any data that contains direct personal identifiers. For the purposes of this section, “direct personal identifiers” include information relating to an individual that contains primary or obvious identifiers, such as the individual’s name, street address, e-mail address, telephone number, and social security number.

6 Committee Established.

I. There is established a committee to study ways to reduce paperwork or otherwise improve the administrative processes used in the processing of workers’ compensation claims. The members of the committee shall be as follows:

(a) Two members of the house of representatives, appointed by the speaker of the house of representatives.

(b) One member of the senate, appointed by the president of the senate.

II. Members of the committee shall receive mileage at the legislative rate when attending to the duties of the committee.

III. The committee shall study methods, including electronic submission, to reduce the paperwork and other administrative burdens inherent on health care providers, employers, insurers and self-insureds in the current process for the administration of workers’ compensation claims.

IV. The members of the study committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the first-named house member. The first meeting of the committee shall be held within 45 days of the effective date of this section.

V. The committee shall report its findings and any recommendations for proposed legislation to the speaker of the house of representatives, the president of the senate, the house clerk, the senate clerk, the governor, and the state library on or before November 1, 2016.

7 Effective Date. This act shall take effect July 1, 2015.

2015-1936h

AMENDED ANALYSIS

This bill requires the insurance department to develop and publish a schedule representing the maximum reasonable value of medical services to achieve savings under the workers’ compensation law.

Amendment to SB 151-FN

(2015-1948h)

Proposed by the Majority of the Committee on Finance - r

Amend RSA 198:38, I(b) as inserted by section 1 of the bill by replacing it with the following:

(b) For the purpose of calculating ADMA, each pupil who is home educated in compliance with RSA 193-A and who is enrolled in a school board approved public high school academic course shall count as an additional 0.15 pupil for each such academic course taken in a public high school. The department of education shall only make grant payments for such pupils to the extent of available appropriations. In this subparagraph, “public high school” shall have the same meaning as “high school” as defined in RSA 194:23.

2015-1948h

AMENDED ANALYSIS

This bill allows school districts to count home educated pupils for the purpose of calculating the average daily membership in attendance and makes grant payments for such pupils contingent on available appropriations.

Amendment to SB 169

(2015-1724h)

Proposed by the Committee on Health, Human Services and Elderly Affairs - c

Amend the title of the bill by replacing it with the following:

AN ACT relative to the use of electronic benefits transfer (EBT) cards.

Amend the bill by replacing all after the enacting clause with the following:

1 New Subparagraphs; Prohibited Use of Electronic Benefit Transfer Card. Amend RSA 167:7-b, II by inserting after subparagraph (d) the following new subparagraphs:

(e) Business establishments primarily engaged in the practice of body piercing, branding, or tattooing.

(f) Cigar stores and stands, pipe stores, smoke shops, and tobacco shops using merchant category code 5993 identified in the Internal Revenue Bulletin 2004-31 Revenue Procedure 2004-43 and any subsequent Internal Revenue Service publication thereto.

(g) Marijuana dispensaries, excluding an alternative treatment center as defined in RSA 126-X:1, I.

2 New Hampshire Department of Health and Human Services; Restrictions on the Use of Electronic Benefit Transfer (EBT) Cards; Education Program. On or before November 1, 2015, the department of health and human services shall develop an education program for cash assistance recipients and retail establishments that accept EBT cards. The program shall provide information regarding the permitted and prohibited use of cash assistance under RSA 167:7-b, including penalties for misuse by businesses and program participants.

3 New Hampshire Department of Health and Human Services; Restrictions on the Use of Electronic Benefit Transfer (EBT) Cards; Electronic Blocking at Prohibited Locations; Reporting Requirement. On or before November 1, 2015, the department of health and human services shall provide an interim report with a final report on or before July 1, 2016 to the health and human services oversight committee established under RSA 126-A:13 on the use and effectiveness of electronically blocking the use of EBT cards at prohibited locations identified under RSA 167:7-b, II.

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

2015-1724h

AMENDED ANALYSIS

This bill prohibits the use of EBT cards in business that primarily engage in body piercing, branding, or tattooing; cigar stores and smoke shops; and marijuana dispensaries. The bill also requires the department of health and human services to establish an education program relative to the use of EBT cards and requires the department to report on the effectiveness of electronic blocking of EBT cards at prohibited locations.

Amendment to SB 179

(2015-1944h)

Proposed by the Majority of the Committee on Election Law - r

Amend the title of the bill by replacing it with the following:

AN ACT relative to eligibility to vote and relative to availability of voter information.

Amend the bill by replacing all after the enacting clause with the following:

1 Voter; Domicile. Amend RSA 654:1, I to read as follows:

I. **(a)** Every inhabitant ~~[of the state]~~, having ~~[a single]~~ established domicile ~~[for voting purposes]~~ ***in this state for no less than 30 consecutive days before any election where the inhabitant offers to vote,*** being a citizen of the United States, of the age provided for in Article 11 of Part First of the Constitution of New Hampshire, shall have a right at any meeting or election, to vote in the town, ward, or unincorporated place in which he or she is domiciled.

(b)(1) An inhabitant's domicile for voting purposes [is that one place where a person, more than any other place, has established a physical presence and manifests an intent to maintain a single continuous presence for domestic, social, and civil purposes relevant to participating in democratic self-government.] shall be the principal or primary home or place of abode of a person. Principal or primary home or place of abode is that home or place in which his or her habitation is fixed and to which a person, whenever he or she is temporarily absent, has the intention of returning after a departure or absence therefrom, including when the person is absent because of military service or temporarily absent as described in RSA 654:2.

(2) In determining what is a principal or primary place of abode of a person, without limitation the following factors or evidence relating to such person may be taken into account: civic and community participation, the place where a person spends most nights of the year, the location from which a person would apply for a passport or other federal identification, residence for income or other tax purposes, eligibility for a resident hunting and fishing license, and a New Hampshire driver's license.

(3) A qualified voter who has left his or her home and gone into another state or town of this state for a temporary purpose only shall not be considered to have lost his or her domicile as described in RSA 654:2.

(4) A person shall not be considered to have gained a domicile in any town or ward of this state into which he or she comes for temporary purposes only, without the intention of making it his or her home but with the intention of leaving it when he or she has accomplished the purpose that brought him or her there. Evidence that a person who, prior to arriving in New Hampshire, was domiciled in another state and is temporarily present in New Hampshire for any purpose including, but not limited to vacation, short-term temporary work, volunteering for social or civic purposes, or volunteering or working on political campaigns is not sufficient evidence that the person has established a domicile in New Hampshire.

(5) If a qualified voter moves to another state, with the intention of making it his or her permanent home, he or she shall be considered to have lost his or her domicile in this state.

(c) A person has the right to change domicile at any time, however a mere intention to change domicile in the future does not, of itself, terminate an established domicile before the person actually moves.

I understand that if I have not been domiciled in New Hampshire for at least 30 consecutive days prior to an election but have completed this form, I have not met the registration requirements for said election but will be registered for the first election that I am eligible to vote in.

I understand that a person can claim only one state and one city/town as his or her domicile at a time. A domicile is that place, to which upon temporary absence, a person has the intention of returning. By registering or voting today, I am acknowledging that I am not domiciled or voting in any other state or any other city/town.

~~[In declaring New Hampshire as my domicile, I am subject to the laws of the state of New Hampshire which apply to all residents, including laws requiring a driver to register a motor vehicle and apply for a New Hampshire's driver's license within 60 days of becoming a resident.]~~

In declaring New Hampshire as my domicile, I realize that I am not qualified to vote in the state or federal elections in another state.

If I have any questions as to whether I am entitled to vote in this city/town, I am aware that a supervisor of the checklist is available to address my questions or concerns.

I acknowledge that I have read and understand the above qualifications for voting and do hereby swear, under the penalties for voting fraud set forth below, that I am qualified to vote in the above-stated city/town, and, if registering on election day, that I have not voted and will not vote at any other polling place this election.

Date

Signature of Applicant

In accordance with RSA 659:34, the penalty for knowingly or purposefully providing false information when registering to vote or voting is a class A misdemeanor with a maximum sentence of imprisonment not to exceed one year and a fine not to exceed \$2,000. Fraudulently registering to vote or voting is subject to a civil penalty not to exceed \$5,000.

(c) The secretary of state shall prescribe the form of the voter registration form to be used only for voter registrations, ***transfers, or updates*** at the polling place on the date of a state general election, which shall be in substantially the following form:

____ ***NEW REGISTRATION I am not registered to vote in New Hampshire***

____ ***TRANSFER I am registered to vote in New Hampshire and have moved my voting domicile to a new town or ward in New Hampshire***

____ ***NAME CHANGE/ADDRESS UPDATE I am registered to vote in this town/ward and have changed my name/address***

Date _____

VOTER REGISTRATION FORM

FOR USE AT THE POLLING PLACE ON THE DATE OF THE STATE GENERAL ELECTION

(Please print or type)

1. Name _____

Last

(suffix) First

Full Middle Name

2. Domicile Address _____

Street

Ward Number

Town or City

Zip Code

3. Mailing Address if different than in 2 _____

Street

Town or City

Zip Code

4. Place and Date of Birth _____

Town or City

State

Date _____

5. Are you a citizen of the United States? Yes ____ No ____

If a naturalized citizen, give name of court where and date when naturalized _____

6. Place last registered to vote _____

Street

Ward Number

7. Name under which previously registered, if different from above _____

8. Party Affiliation (if any) _____

9. Driver's License Number _____ State _____

If you do not have a valid driver's license, provide the last four digits of your social security number _____

My name is _____. I am today registering to vote in the city/town of _____, New Hampshire.

I understand that to vote in this [city/town] **ward/town**, I must be at least 18 years of age, I must be a United States citizen, and I must be domiciled in this [city/town] **ward/town**. **Furthermore, I understand that I must have been domiciled in New Hampshire for no less than 30 consecutive days before the first election in which I intend to vote.**

I understand that if I have not been domiciled in New Hampshire for at least 30 consecutive days prior to an election but have completed this form, I have not met the registration requirements for said election but will be registered for the first election that I am eligible to vote in.

I understand that a person can claim only one state and one city/town as his or her domicile at a time. A domicile is that place, to which upon temporary absence, a person has the intention of returning. By registering or voting today, I am acknowledging that I am not domiciled or voting in any other state or any other city/town.

~~[In declaring New Hampshire as my domicile, I am subject to the laws of the state of New Hampshire which apply to all residents, including laws requiring a driver to register a motor vehicle and apply for a New Hampshire's driver's license within 60 days of becoming a resident.]~~

In declaring New Hampshire as my domicile, I realize that I am not qualified to vote in the state or federal elections in another state.

If I have any questions as to whether I am entitled to vote in this city/town, I am aware that a supervisor of the checklist is available to address my questions or concerns.

I acknowledge that I have read and understand the above qualifications for voting and do hereby swear, under the penalties for voting fraud set forth below, that I am qualified to vote in the above-stated city/town, and, if registering on election day, that I have not voted and will not vote at any other polling place this election.

Date	Signature of Applicant
If this form is used in place of proof of identity, age, citizenship, or domicile, I hereby swear that such information is true and accurate to the best of my knowledge.	
This form was executed for purposes of proving (applicant shall circle yes or no and initial each item):	
Identity yes/no	_____
	(initials)
Citizenship yes/no	_____
	(initials)
Age yes/no	_____
	(initials)
Domicile yes/no	_____
	(initials)
Applicant	Election Official

Notary Public/Justice of the Peace/Official Authorized by RSA 659:30

In accordance with RSA 659:34, the penalty for knowingly or purposefully providing false information when registering to vote or voting is a class A misdemeanor with a maximum sentence of imprisonment not to exceed one year and a fine not to exceed \$2,000. Fraudulently registering to vote or voting is subject to a civil penalty not to exceed \$5,000.

4 Right to Know Exemption. Amend RSA 654:31-a to read as follows:

654:31-a Right to Know Exemption. The information contained on the checklist of a town or city, specifically, the name, domicile address, mailing address, town or city, and party affiliation, if any, of registered voters, except as otherwise provided by statute, is public information subject to RSA 91-A. All other information on the voter registration form, absentee registration affidavit, qualified voter and domicile affidavits, affidavit of religious exemption, and application for absentee ballot shall be treated as confidential information and the records containing this information shall be exempt from the public disclosure provisions of RSA 91-A, except as provided by statutes other than RSA 91-A. **However, otherwise confidential information on registration forms, absentee registration affidavits, qualified voter affidavits, challenged voter affidavits, domicile affidavits, affidavits of religious exemption, and applications for absentee ballot shall be made available to the legislature in an aggregated or statistical data format that conceals the identities of individual voters. Said aggregated or statistical data may be presented in public legislative hearings.** Notwithstanding the foregoing, qualified voter and domicile affidavits are public records subject to RSA 91-A for the sole purpose of challenging an individual registering to vote or voting, challenging ballots to be recounted, to the extent that such ballot challenges are specifically authorized by law, or determining the accuracy of any qualified voter or domicile affidavit. Election officials and law enforcement personnel in furtherance of their official duties may access and may disclose information from the voter registration form, qualified voter and domicile affidavits, affidavits of religious exemption, absentee

registration affidavits, and applications for absentee ballots, if necessary to resolve a challenge to an individual registering to vote or voting, or if necessary to investigate or prosecute election law violations or any crime. Law enforcement access and use of such records for the investigation or prosecution of crimes unrelated to election law violations shall be limited to the records of the specific individuals who are the subject of the investigation or prosecution.

5 Effective Date. This act shall take effect December 1, 2015.

2015-1944h
AMENDED ANALYSIS

This bill:

I. Expands the definition of domicile for voting purposes and requires that a voter be a resident of the state for at least 30 days.

II. Modifies the voter registration form.

III. Allows otherwise confidential voter information to be made available to the legislature in an aggregated or statistical data format.

**Amendment to SB 190-FN
(2015-1945h)**

Proposed by the Majority of the Committee on Finance - r

Amend the title of the bill by replacing it with the following:

AN ACT relative to payment of costs for career and technical education center programs and administration by the department of education, and providing that school districts shall not be required to adopt the common core standards.

Amend the bill by replacing all after section 13 with the following:

14 State Board of Education; Rulemaking Authority. Amend RSA 186:8, I to read as follows:

I. Minimum curriculum and educational standards for all grades of the public schools; ***provided that the state board shall adopt no rule pursuant to RSA 541-A nor shall the state board formally or informally adopt a policy or guideline that requires a school district or any public school to implement or participate in the common core state standards. If a school board elects not to implement or participate in the common core state standards or any other minimum educational standards adopted by the state board pursuant to RSA 541-A or as adopted through state board policy or guidelines for all grades in public schools, the school board shall adopt and implement standards that meet or exceed those standards.***

15 Effective Date.

I. Section 14 of this act shall take effect 60 days after its passage.

II. The remainder of this act shall take effect July 1, 2015.

2015-1945h
AMENDED ANALYSIS

This bill modifies the determination of financial responsibility for tuition for career and technical education center programs and the administration of CTE programs by the department of education.

This bill also prohibits the state board of education from adopting a rule requiring a school district or any public school to implement the common core state standards. The bill also requires a school board that elects not to implement or participate in the common core state standards or other minimum educational standards to adopt and implement educational standards that meet or exceed those standards.

**Amendment to SB 191-FN
(2015-1899h)**

Proposed by the Committee on Finance - r

Amend RSA 9-D:2, I(b) as inserted by section 4 of the bill by replacing it with the following:

(b) Amounts which represent the added rebate benefit attributable to the consolidation of calculations under contracts allowing for the independent participation of the legislative or judicial branches, or the independent participation of non-state entities under RSA 21-I:17, I-a(a) shall be paid by the card issuer directly to the branches or non-state entities which independently participated in the purchases.

Amend RSA 9-D:3, III(b) as inserted by section 4 of the bill by replacing it with the following:

(b) After deducting the foregoing amounts, making such payments, if any, that the department of administrative services concludes are appropriately payable:

(1) By an entity which is part of the state to any credit, payment, or procurement card issuer under contracts secured by the division of procurement and support services pursuant to RSA 21-I, including but not limited to payments for purchases and payments which must be made in order for the state to obtain available rebates, or to avoid incurring, or to pay, interest, penalties, or other costs imposed on the state by issues of credit, payment, or procurement cards.

(2) To the state's general fund or any federal, highway, turnpike, or liquor fund, as a share of rebates obtained on credit card contracts under RSA 9-D:2. The department of administrative services shall pay any remaining rebate amounts to the general fund.

Amend the bill by deleting section 6 and renumbering the original section 7 to read as 6.

Amendment to SB 192-FN

(2015-1703h)

Proposed by the Committee on Finance - c

Amend RSA 21-J:6-d as inserted by section 3 of the bill by replacing it with the following:

21-J:6-d Tax Policy Analyst.

I. There is established within the department the unclassified position of tax policy analyst who shall be responsible for:

(a) Advising the commissioner and assistant commissioner of recommended changes in state statutes, rules, and administrative policies and procedures;

(b) Coordinating all matters of legislative and tax policy assigned to the department; and

(c) Representing the department before the general court.

II. The commissioner shall appoint the unclassified position of tax policy analyst who shall serve at the pleasure of the commissioner.

III. The salary of the tax policy analyst shall be as specified in RSA 94:1-a.

Amendment to SB 218-FN

(2015-1831h)

Proposed by the Minority of the Committee on Commerce and Consumer Affairs - r

Amend the title of the bill by replacing it with the following:

AN ACT prohibiting the use of false or deceptive caller identification information.

Amend the bill by replacing all after the enacting clause with the following:

1 Telemarketing; Caller Identification; Blocking and Misleading Information Prohibited. RSA 359-E:5-a is repealed and reenacted to read as follows:

359-E:5-a Caller Identification; Blocking and Misleading Information Prohibited. No person using an automated telephone dialing system or any other method for solicitation shall use any method, including per-call blocking or per-line blocking, to prevent caller identification information from being received by the called party station. The caller identification information shall contain a telephone number at which the telephone solicitor may receive telephone calls and shall not contain misleading, inaccurate, or deceptive information.

2 Effective Date. This act shall take effect January 1, 2016.

2015-1831h

AMENDED ANALYSIS

This bill prohibits a person engaged in solicitation from preventing caller identification information from being received by the called party station. The bill also prohibits such person from using false or deceptive caller identification information.

Amendment to SB 221-FN

(2015-1926h)

Proposed by the Committee on Science, Technology and Energy - r

Amend RSA 369-B:1, XVI as inserted by section 1 of the bill by replacing it with the following:

XVI. It is in the public interest for the commission to issue a finance order that is subject to the requirements of this chapter and that securitizes any stranded costs resulting from the divestiture of all or some of PSNH's generation assets, if the commission approves the 2015 settlement proposal or otherwise orders divestiture of all or some of PSNH's generation assets.

Amend RSA 369-B:2, XIV(g) as inserted by section 3 of the bill by replacing it with the following:

(g) Expenditures incurred to implement the 2015 settlement proposal or other divestiture of all or some of PSNH's generation assets as ordered by the commission.

Amend RSA 369-B:3, IV(c) as inserted by section 8 of the bill by replacing it with the following:

(c) Authorize the issuance of rate reduction bonds in an amount sufficient to fund stranded costs, deferrals, transaction costs, tax liabilities, employee protections, payments in lieu of taxes, and other expenditures as contemplated in the 2015 settlement proposal, if approved by the commission, or if the commission orders divestiture of all or some of PSNH's generation assets. The net benefits of accumulated deferred income taxes relating to amounts that will be recovered through any such issuance of rate reduction bonds shall be credited to retail customers by reducing the amount of such rate reduction bonds that would otherwise be issued by the net present value of the related tax cash flows, using a discount rate equal to the expected interest rate on such rate reduction bonds. This authorization is in addition to any amount authorized in subparagraph (a) or (b).

Amend RSA 369-B:3-a as inserted by section 10 of the bill by replacing it with the following:

369-B:3-a Divestiture of PSNH Generation Assets; Review of 2015 Settlement Proposal.

I. The general court finds that divestiture of PSNH's generation plants and securitization of any resulting stranded costs pursuant to RSA 369-B:3, IV(c) is in the public interest, subject to the provisions of paragraph III.

II. As part of an expedited proceeding, the commission shall review the 2015 settlement proposal and determine whether its terms and conditions are in the public interest. Notwithstanding RSA 374-F:3, VI, the commission may incorporate rate designs that fairly allocate the costs of divestiture of PSNH's generation plants among customer classes. As part of its review of the 2015 settlement proposal, the commission shall take into account the impact on all PSNH customer classes, and shall consider the impacts on the economy in PSNH's service territory, the ability to attract and retain employment across industries, and whether the proposed rate design fairly allocates the costs of divestiture of PSNH's generation plants among customer classes. The commission may approve or reject the 2015 settlement proposal, or condition its approval on any modification of the terms and conditions that it determines to be necessary to meet the public interest standard, so long as any order to divest provides for recovery of stranded costs and such other costs of divestiture as may be approved by the commission. If the commission conditions its approval, the settling parties may amend or terminate the 2015 settlement proposal.

III. Notwithstanding paragraphs I and II, if the commission rejects the 2015 settlement proposal or approves it with conditions that are not acceptable to the settling parties as provided in paragraph II, the commission, as part of the pending expedited proceeding in Docket DE 14-238, Determination Regarding PSNH's Generation Assets, shall order divestiture of all or some of PSNH's generation assets if the commission finds that it is in the economic interest of retail customers of PSNH to do so. If it orders divestiture, the commission shall determine the manner in which any assets should be divested; provide for the cost recovery of such divestiture, which cost recovery may include rate reduction bonds as provided in RSA 369-B:3, IV(c); and, notwithstanding RSA 374-F:3, VI, may incorporate rate designs that fairly allocate the costs of divestiture of some or all of PSNH's generation assets among customer classes. In considering rate designs, the commission shall consider the impacts on the economy in PSNH's service territory and the ability to attract and retain employment across industries.

IV. Prior to any divestiture of its generation assets, PSNH may modify or retire such generation assets if the commission finds that it is in the economic interest of retail customers of PSNH to do so and provides for the cost recovery of such modification or retirement.

V. On or before October 15, 2015, the commission shall submit to the legislative oversight committee on electric utility restructuring established under RSA 374-F:5 a progress report concerning the status of the proceedings referred to in this section.

Amend the bill by replacing section 14 with the following:

14 Public Utilities Commission; Restructuring of PSNH Ownership of Generation Assets; Recovery of Costs. Notwithstanding RSA 374-F:3, V(c), the commission may approve recovery of net over-market costs of purchased power agreements entered into pursuant to RSA 362-F:9 through a stranded cost charge as part of a comprehensive restructuring of PSNH's ownership of generation assets.

2015-1926h

AMENDED ANALYSIS

This bill permits the public utility commission to issue finance orders that authorize the issuance of certain rate reduction bonds in accordance with the 2015 settlement proposal, or if the commission orders divestiture, regarding cost recovery of the Merrimack Station scrubber and divestiture of PSNH's remaining generation plants.

The bill also clarifies employee protections in the event of the divestiture or retirement of PSNH generation assets.

Amendment to SB 235

(2015-1505h)

Proposed by the Committee on Municipal and County Government - c

Amend the bill by replacing all after the enacting clause with the following:

1 Condominium Act; Application for Registration Fee; Financial Statements. Amend RSA 356-B:51, I(u) to read as follows:

(u) Any other information including any current financial statement, which the attorney general by [his] rules reasonably requires for the protection of purchasers. ***If the declarant is a corporation, limited liability company, or other entity, personal financial statements from all principals holding more than a 25 percent ownership interest in the declarant, certified as true and complete by the individual principals, accompanied by federal income tax returns for the 2 most recent full calendar years, may be submitted in lieu of financial statements for the declarant.*** Financial information filed with the attorney general shall not be disclosed publicly except in connection with a hearing, civil action, or criminal action involving the party who submitted the information.

2 Condominium Act; Inquiry and Investigation; Reasonable Assurance. Amend RSA 356-B:53, I(b) to read as follows:

(b) That there is reasonable assurance that all uncompleted improvements and amenities will be completed as represented. ***Reasonable assurance includes, but is not limited to, institutional financing in the form of a revolving line of credit in an amount equal to one-fourth of the total cost of constructing the units being registered, so long as (i) the loan documents provide (a) that funds may be re-advanced during the term of the loan to construct the units, and (b) that the institutional lender shall notify the attorney general in the event that the revolving line of credit is cancelled and (ii) in addition to the funds allocated to unit construction, the applicant shall provide evidence of adequate funds to complete any infrastructure, such as roads and utilities, necessary to service the units being registered. This subparagraph shall not prohibit the attorney general from finding other forms of financing to provide reasonable assurance. If the attorney general determines that a revolving line of credit has been cancelled, or is no longer adequate to pay for the cost of constructing the units that have been registered, the attorney general may issue a temporary cease and desist order pursuant to RSA 356-B:61;***

3 Land Sales Full Disclosure Act; Application for Registration; Financial Statement. Amend RSA 356-A:5, I(v) to read as follows:

(v) Any other information, including any current financial statement, which the attorney general by [his] reasonable rules requires for the protection of purchasers. ***If the subdivider is a limited liability company, corporation, or other entity, personal financial statements from all principals holding more than a 25 percent ownership interest in the subdivider, certified as true and complete by the individual principals, accompanied by federal income tax returns for the 2 most recent full calendar years, may be submitted in lieu of financial statements for the subdivider.*** Financial information filed with the attorney general shall not be disclosed publicly except in connection with a hearing, civil action, or criminal action involving the party who submitted the information.

4 Land Sales Full Disclosure Act; Inquiry and Examination; Reasonable Assurance. Amend RSA 356-A:7, I(b) to read as follows:

(b) That there is reasonable assurance that all proposed improvements will be completed as represented. ***Reasonable assurance includes, but is not limited to, institutional financing in the form of a revolving line of credit in an amount equal to one-fourth of the total cost of constructing the residential units being registered, so long as (i) the loan documents provide (a) that funds may be re-advanced during the term of the loan to construct the residential units, and (b) that the institutional lender shall notify the attorney general in the event that the revolving line of credit is cancelled and (ii) in addition to the funds allocated to residential unit construction, the applicant shall provide evidence of adequate funds to complete any infrastructure, such as roads and utilities, necessary to service the units being registered. This subparagraph shall not prohibit the attorney general from finding other forms of financing to provide reasonable assurance. If the attorney general determines that a revolving line of credit has been cancelled, or is no longer adequate to pay for the cost of constructing the units that have been registered, the attorney general may issue a temporary cease and desist order pursuant to RSA 356-A:12;***

5 Effective Date. This act shall take effect January 1, 2016.

2015-1505h AMENDED ANALYSIS

This bill defines the financial statements required if the declarant or subdivider is not a natural person. The bill also describes the type of financial information required to provide reasonable assurance that all proposed improvements and amenities will be completed.

Amendment to SB 242-LOCAL (2015-1510h)

Proposed by the Committee on Municipal and County Government - c

Amend the title of the bill by replacing it with the following:

AN ACT establishing a committee to study methods of adopting a budget in towns that have adopted official ballot voting.

1 Committee Established. There is established a committee to study methods of adopting of a final budget in towns that have adopted official ballot voting.

2 Membership and Compensation.

I. The members of the committee shall be as follows:

(a) Three members of the house of representatives, appointed by the speaker of the house of representatives.

(b) One member of the senate, appointed by the president of the senate.

II. Members of the committee shall receive mileage at the legislative rate when attending to the duties of the committee.

3 Duties. The committee shall study:

I. Methods of adopting a final and default budget in official ballot towns.

II. Methods of voting on the budget and budget amendments on the official ballot.

4 Chairperson. The members of the study committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the first-named house member. The first meeting of the committee shall be held within 45 days of the effective date of this section.

5 Report. The committee shall report its findings and any recommendations for proposed legislation to the speaker of the house of representatives, the president of the senate, the house clerk, the senate clerk, the governor, and the state library on or before November 1, 2015.

6 Effective Date. This act shall take effect upon its passage.

2015-1510h

AMENDED ANALYSIS

This bill establishes a committee to study methods of adopting a budget in towns that have adopted official ballot voting.

Amendment to SB 254

(2015-1523h)

Proposed by the Committee on Commerce and Consumer Affairs - c

Amend the title of the bill by replacing it with the following:

AN ACT establishing a committee to study the provision of services to the public by Uber and existing taxi services.

Amend the bill by replacing section 1 with the following:

1 Committee Established. There is established a committee to study the adequacy and safety of services to the public through Uber and existing taxi services.

Amend the bill by replacing section 3 with the following:

3 Duties.

I. The committee shall study:

(a) The adequacy of services provided by Uber and existing taxi services, including safety to the public.

(b) Current taxi regulations in cities and towns in New Hampshire.

(c) Whether such businesses are over or under regulated.

(d) Whether appropriate safeguards are provided by these services and whether regulations and oversight measures should be established by the state.

(e) How other states and municipalities are addressing this issue.

II. The committee may solicit input from state agencies, comparable businesses, and other vested entities.

2015-1523h

AMENDED ANALYSIS

This bill establishes a committee to study the provision of services to the public by Uber and existing taxi services.

Amendment to SB 255

(2015-1958h)

Proposed by the Majority of the Committee on Labor, Industrial and Rehabilitative Services - r

Amend the title of the bill by replacing it with the following:

AN ACT establishing a committee to study low-wage workers and their effect on the New Hampshire economy.

Amend the bill by replacing all after the enacting clause with the following:

1 Committee Established. There is established a committee to study low-wage employees and their effect on the New Hampshire economy.

2 Membership and Compensation.

I. The members of the committee shall be as follows:

(a) Three members of the house of representatives, appointed by the speaker of the house of representatives.

(b) Two members of the senate, appointed by the president of the senate.

II. Members of the committee shall receive mileage at the legislative rate when attending to the duties of the committee.

3 Duties. The committee's study shall include, but shall not be limited to, the growth and nature of the low-wage service sector as compared to the growth of other sectors in New Hampshire, the costs of state services used by low-wage workers and the effects of low-wage jobs on the local economy.

4 Chairperson; Quorum. The members of the study committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the first-named house member. The first meeting of the committee shall be held within 45 days of the effective date of this section. Three members of the committee shall constitute a quorum.

5 Report. The committee shall report its findings and any recommendations for proposed legislation to the speaker of the house of representatives, the president of the senate, the house clerk, the senate clerk, the governor, and the state library on or before November 1, 2015.

6 Effective Date. This act shall take effect upon its passage.

2015-1958h

AMENDED ANALYSIS

This bill establishes committee to study low-wage workers and their effect on the New Hampshire economy.

Amendment to SB 266-FN

(2015-1743h)

Proposed by the Majority of the Committee on Commerce and Consumer Affairs - r

Amend the bill by replacing all after the enacting clause with the following:

1 New Hampshire Uniform Securities Act. RSA 421-B is repealed and reenacted to read as follows:

UNIFORM SECURITIES ACT

Article 1

General Provisions

421-B:1-101 Short Title. This chapter may be cited as the New Hampshire Uniform Securities Act.

421-B:1-102 Definitions. In this chapter, unless the context otherwise requires:

(1) "Advertisement" means any notice, circular, letter, or other written communication that is given to more than one person or any other announcement in any publication, by radio, television, or other electronic media, that offers:

(A) Any analysis, report, or publication concerning securities or which is to be used in making any determination as when to buy or sell securities; or

(B) Any graph, chart, formula, or other device to be used in making any determination concerning when to buy or sell any security, or which security to buy or sell.

(2) "Affiliate" means any person directly or indirectly controlling, controlled by, or under common control with another person.

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

(4) "Bank" means any of the following:

(A) a banking institution organized under the laws of the United States;

(B) a member bank of the Federal Reserve System;

(C) a bank organized under the laws of the state of New Hampshire;

(D) a trust company;

(E) any other banking institution, whether incorporated or not, doing business under the laws of a State or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to be exercised by national banks under the authority of the Comptroller of the Currency pursuant to section 1 of Public Law 87-722 12 U.S.C. section 92a, and which is supervised and examined by a state or federal agency having supervision over banks, and which is not operated for the purpose of evading this chapter; and

(F) a receiver, conservator, or other liquidating agent of any institution or firm included in subsection (1)(A), (1)(B), (1)(C), (1)(D), or (1)(E).

(5)(A) "Branch office" means:

(i) With regard to an investment adviser, any location other than the main office, identified by any means to broker-dealers, other investment advisers, the public, customers, or clients as a location at which an investment adviser conducts an investment advisory business.

(ii) With regard to a broker-dealer, any location where one or more agents regularly conducts the business of effecting any transactions in, or inducing or attempting to induce the purchase or sale of, any security, or is held out as such, excluding:

(a) Any location that is established solely for one or both of customer service and back-office-type functions where no sales activities are conducted and that is not held out to the public as a branch office;

(b) Any location that is the agent's primary residence; provided that:

(1) Only one agent, or multiple agents who reside at that location and are members of the same immediate family, conduct business at the location;

(2) The location is not held out to the public as an office and the agent does not meet with customers at the location;

(3) Neither customer funds nor securities are handled at that location;

(4) The agent is assigned to a designated branch office, and such designated branch office is reflected on all business cards, stationery, advertisements, and other communications to the public by such agent;

(5) The agent's correspondence and communications with the public are subject to the broker-dealer's supervision;

(6) Electronic communications, such as e-mail are made through the electronic system of the broker dealer;

(7) All orders for securities are entered through the designated branch office or an electronic system established by the broker-dealer that is reviewable at the branch office;

(8) Written supervisory procedures pertaining to supervision of activities conducted at the residence are maintained by the broker-dealer; and

(9) A list of the residence locations are maintained by the broker-dealer;

(c) Any location, other than a primary residence, that is used for securities business for less than 30 business days in any one calendar year, provided the broker-dealer complies with the provisions of subsections (5)(A)(ii)(b)(2) through (8);

(d) Any office of convenience, where associated persons occasionally and exclusively by appointment meet with customers, which is not held out to the public as an office;

(e) Any location that is used primarily to engage in non-securities activities and from which the agent effects no more than 25 securities transactions in any one calendar year; provided that any advertisement or sales literature identifying such location also sets forth the address and telephone number of the location from which the agent conducting business at the non-branch locations is directly supervised;

(f) The floor of a registered national securities exchange where a broker-dealer conducts a direct access business with public customers;

(g) A temporary location established in response to the implementation of a business continuity plan; or

(h) Any other location not within the intent of subsection (5) as the secretary of state may determine.

(B) Notwithstanding the exclusions provided in subsection (5)(A)(ii), any location that is responsible for supervising the activities of agents of the broker dealer at one or more non-branch locations of the broker-dealer shall be a branch office.

(C) "Business day" as used in subsection (5) shall not include any partial day provided that the agent or investment adviser representative spends at least 4 hours of such day at his or her designated branch office during the hours that such office is normally open for business.

(6) "Broker-dealer" means a person engaged in the business of effecting transactions in securities for the account of others or for the person's own account. The term does not include:

(A) an agent;

(B) an issuer;

(C) a bank;

(D) an international banking institution; or.

(E) a person excluded by order issued under this chapter.

(7) "Common enterprise" means an enterprise in which the fortunes of the investor are interwoven with those of either the person offering the investment, a third party, or one or more investors. This definition is met if (a) the investor joins with the promoter or some third party to accomplish a common goal, such as earning a profit for the investor, whether the promoter or third party shares in the profits or is merely paid a commission or fee for his or her services, or (b) 2 or more investors join together in a common goal of making a profit.

(8) "Complaint" means a written statement submitted after an incident complained of by the secretary of state or any other person that sets forth specific allegations of wrongdoing and requests administrative action by the secretary of state.

(9) "CRD" means the Central Registration Depository maintained by FINRA.

(10) "Department" means the department of state.

(11) "Depository institution" means:

(A) a bank; or

(B) a savings institution, trust company, credit union or similar institution, whether incorporated or not, doing business under the laws of a state or of the United States, a substantial portion of the business of which consists of receiving deposits or share accounts insured to the maximum amount authorized by statute by the Federal Deposit Insurance Corporation, National Credit Union Share Insurance Fund or a successor authorized by federal law and which is supervised and examined by a state or federal agency having supervision over such institutions, and which is not operated for the purpose of evading this chapter. The term does not include:

- (i) an insurance company or other organization primarily engaged in the business of insurance;
- (ii) a Morris Plan bank; or

(iii) an industrial loan company that is not an “insured depository institution” as defined in the Federal Deposit Insurance Act, 12 U.S.C. section 1813(c)(2), or any successor federal statute.

(C) The inclusion of an institution in this definition shall not be construed as a grant of power or authority for such institution to engage in activities under this chapter that are not permitted under the laws governing such institution.

(12) “Ex parte communication” means the transmittal of information or argument concerning the merits of the subject matter of any adjudicatory proceeding to or from a decision maker in that proceeding without proper notice to and opportunity to participate in by all parties.

(13) “Federal covered investment adviser” means a person registered under the Investment Advisers Act of 1940.

(14) “Federal covered security” means a security that is, or upon completion of a transaction will be, a covered security under section 18(b) of the Securities Act of 1933 15 U.S.C. section 77r(b).

(15) “Filing” means the receipt under this chapter of a record by the secretary of state.

(16) “FINRA” means the Financial Industry Regulatory Authority.

(17) “Fraud,” “deceit,” and “defraud” are not limited to common law deceit.

(18) “Guaranteed” means guaranteed as to payment of all principal and all interest.

(19) “Hearing” means the receipt and consideration by the department of evidence or argument, or both, in accordance with this chapter and other applicable law, and includes:

- (A) Conducting trial-type evidentiary hearings;
- (B) Directing the filing of exhibits, affidavits, memoranda or briefs;
- (C) Directing the delivery of oral argument; or
- (D) Any combination of these or similar methods.

(20) “IARD” means the Investment Adviser Registration Depository maintained by FINRA.

(21) “Industrial bond,” “industrial revenue bond,” or “industrial development bond” means any obligation issued by a governmental unit (including the United States, any state, any political subdivision of a state, or any agency, or corporate or other instrumentality, of one or more of them) other than a general obligation of a governmental unit having power to tax property or of an agency of the state of New Hampshire:

(A) Which is issued as part of an issue, all or a major portion of the proceeds of which are to be used directly or indirectly in any trade or business, and

(B) The payment of the principal or interest on which (under the terms of such obligation or any underlying arrangement) is, in whole or in major part:

(i) Secured by any interest in property used or to be used in a trade or business or in payment in respect of such property, or

(ii) To be derived from payments in respect of property or borrowed money, used or to be used in a trade or business.

(22) “Institutional investor” means any of the following, whether acting for itself or for others in a fiduciary capacity:

- (A) a depository institution, trust company, or international banking institution;
- (B) an insurance company;
- (C) a separate account of an insurance company;
- (D) an investment company as defined in the Investment Company Act of 1940;
- (E) a broker-dealer registered under the Securities Exchange Act of 1934;

(F) an employee pension, profit-sharing, or benefit plan if the plan has total assets in excess of \$10,000,000 or its investment decisions are made by a named fiduciary, as defined in the Employee Retirement Income Security Act of 1974, that is a broker-dealer registered under the Securities Exchange Act of 1934, an investment adviser registered or exempt from registration under the Investment Advisers Act of 1940, an investment adviser registered under this chapter, a depository institution, a trust company, or an insurance company;

(G) a plan established and maintained by a state, a political subdivision of a state, or an agency or instrumentality of a state or a political subdivision of a state for the benefit of its employees, if the plan has total assets in excess of \$10,000,000 or its investment decisions are made by a duly designated public official or by a named fiduciary, as defined in the Employee Retirement Income Security Act of 1974, that is a broker-dealer registered under the Securities Exchange Act of 1934, an investment adviser registered or exempt from registration under the Investment Advisers Act of 1940, an investment adviser registered under this chapter, a depository institution, a trust company, or an insurance company;

(H) a trust, if it has total assets in excess of \$10,000,000, its trustee is a depository institution or trust company, and its participants are exclusively plans of the types identified in subsection (22)(F) or (22)(G), regardless of the size of their assets, except a trust that includes as participants self-directed individual retirement accounts or similar self-directed plans;

(I) an organization described in 26 U.S.C. section 501(c)(3), corporation, Massachusetts trust or similar business trust, limited liability company, or partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of \$10,000,000;

(J) a small business investment company licensed by the Small Business Administration under the Small Business Investment Act of 1958, 15 U.S.C. section 681(c) with total assets in excess of \$10,000,000;

(K) a private business development company as defined in section 202(a)(22) of the Investment Advisers Act of 1940, 15 U.S.C. section 80b-2(a)(22), with total assets in excess of \$10,000,000;

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

(M) a "qualified institutional buyer" as defined in Rule 144A(a)(1), other than Rule 144A(a)(1)(i)(H), adopted under the Securities Act of 1933, 17 C.F.R. 230.144A;

(N) a "major U.S. institutional investor" as defined in Rule 15a-6(b)(4)(i) adopted under the Securities Exchange Act of 1934, 17 C.F.R. 240.15a-6;

(O) any other person, other than an individual, of institutional character with total assets in excess of \$25,000,000 not organized for the specific purpose of evading this chapter; or

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

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

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

(25) "International banking institution" means an international financial institution of which the United States is a member and whose securities are exempt from registration under the Securities Act of 1933.

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

(A) an investment adviser representative;

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

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

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

(E) a federal covered investment adviser;

(F) a bank;

(G) any other person that is excluded by the Investment Advisers Act of 1940 from the definition of investment adviser;

(H) a person whose advice, analyses or reports relate only to securities exempted under RSA 421-B:2-201(1);

(I) a person who has no place of business in this state if the person's only clients in this state are other investment advisers, federal covered advisers, broker-dealers, banks, trust companies, insurance companies, investment companies as defined under the Investment Company Act of 1940, pension or profit-sharing trusts, small business investment companies as defined under the Small Business Investment Act of 1958, or other financial institution or institutional buyer, whether acting for itself or in a fiduciary capacity;

(J) a person who transacts business in the field of insurance, provided such business is solely and exclusively in the field of insurance;

(K) a real estate broker, with regards to his or her real estate investment advice, who does not promote or sell any interest in any limited partnership;

(L) a person who has no place of business in this state and who, during the preceding 12-month period, has not had more than 5 clients, other than those listed in subsection (26)(I), who are residents of this state; and

(M) any other person excluded by order issued under this chapter.

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

(A) performs only clerical or ministerial acts;

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

(C) is employed by or associated with a federal covered investment adviser, unless the individual has a “place of business” in this state as that term is defined by rule adopted under section 203A of the Investment Advisers Act of 1940, 15 U.S.C. section 80b-3a, and is

(i) an “investment adviser representative” as defined by rule adopted under the Investment Advisers Act of 1940, 15 U.S.C. section 80b-3a; or

(ii) not a “supervised person” as defined in the Investment Advisers Act of 1940, 15 U.S.C. section 80b-2(a)(25); or

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

(28) “Investment advisory contract” means any contract or agreement whereby a person agrees to act as an investment adviser or to manage any investment or trading account for a person other than an investment adviser as defined in subsection (26).

(29)(A) “Investment contract” means either:

(i) an investment in a common enterprise with the expectation of profits to be primarily from the efforts of the promoter or some third party; or

(ii) an investment by which an offeree furnishes initial value to an offeror, and a portion of this value is subject to the risks of the enterprise, and the furnishing of the initial value is induced by the offeror’s promises or representations which give rise to a reasonable understanding that a material valuable benefit of some kind over and above the initial value will accrue to the offeree as a result of the operation of the enterprise, and the offeree does not receive the right to exercise practical and actual control over the management of the enterprise.

(B) Notwithstanding subsection (29)(A), a business that pre-sells its products or services to consumers for future use or consumption is not offering an investment contract. However, a business that pre-sells its products or services to purchasers who are primarily motivated by an investment purpose, rather than future use or consumption, would be offering an investment contract.

(C) For the purposes of subsection (29)(A), the following shall apply:

(i) The investment may take the form of money actually paid to; securities or other real or personal property actually delivered to; the right to use such securities and other property granted to; or services actually performed for, the common enterprise or some other entity designated by the promoter or common enterprise to receive the investment.

(ii) “Profits” shall include the promise to pay money, deliver securities, or deliver kind goods;

(iii) The third party providing the efforts may or may not be an affiliate or associated with the promoter or the common enterprise. Such efforts are those day-to-day management efforts which affect the success or failure of the enterprise, and do not include physical or mechanical efforts or extraordinary efforts such as the removal of the management of the common enterprise.

(iv) “Benefits” shall mean any bargained-for benefit to the investor or to a person designated by the investor; or any bargained-for legal detriment to the common enterprise, the promoter, or some entity identified by the investor.

(C) The following interests are securities if they meet either of the 2 tests for investment contracts, whether or not they are also covered by any other part of the definition of a security:

(i) General partnership interest whether in a general partnership, a joint venture, a limited partnership, a limited liability partnership, or a limited liability limited partnership.

(ii) An investment in a viatical or life settlement or similar agreement.

(30) “Investment metal” means any object that contains:

(A) Gold, silver, or platinum, or

(B) Any other metal that the secretary of state may specify by an order showing that the other metal is being purchased and sold by the public as an investment.

(31) “Investment gem” means any gem that the secretary of state may specify by an order showing that the gem is being purchased and sold by the public as an investment.

(32) “Investment metal contract” or “investment gem contract”:

(A) means:

(i) A sale of an investment metal or investment gem in which the seller or an affiliate of the seller retains physical possession of the investment metal or investment gem;

(ii) A contract of purchase or sale which provides for the future delivery of an investment metal or investment gem, or any option to purchase or option to sell such a contract; or

(iii) A sale of an investment metal or investment gem pursuant to a contract known to the trade as a margin account, margin contract, leverage account, or leverage contract provided, however, that, for the purposes of this subsection (32), the term “leverage contract” includes any contract for the purchase or sale of any investment metal or investment gem, whereby the seller, or an agent, affiliate or representative of the seller, directly or indirectly arranges, or offers to arrange, for the financing of any portion of the total amount of the purchase or sale of the investment metal or investment gem.

(B) But shall not include:

(i) The sale of an investment metal or investment gem where the seller has reasonable grounds to believe that the investment metal or investment gem is being acquired for manufacturing, commercial or industrial purposes;

(ii) The sale, or contract for the future purchase or sale, of jewelry, art objects or other manufactured or crafted goods other than bullion or bulk sales of coins; or

(iii) The sale of an investment metal or investment gem where full payment is made to the seller and physical delivery is made to the purchaser personally, and not to an agent, within 20 days of the date of purchase provided that a purchaser may designate a bank or licensed broker-dealer, within this state only, and not within any other state, to accept physical delivery on his or her behalf if such bank or licensed broker-dealer maintains such investment metal or investment gem in safekeeping and as the specifically identifiable property of the purchaser;

(iv) Any futures contracts traded on a commodities exchange registered under the Federal Commodity Futures Trading Commission Act of 1974.

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

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

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

(C) The issuer of a fractional undivided interest in an oil, gas, or other mineral lease or in payments out of production under a lease, right, or royalty is the owner of an interest in the lease or in payments out of production under a lease, right, or royalty, whether whole or fractional, that creates fractional interests for the purpose of sale.

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

(35) "Offer to purchase" includes an attempt or offer to obtain, or solicitation of an offer to sell, a security or interest in a security for value. The term does not include a tender offer that is subject to the Securities Exchange Act of 1934, 15 U.S.C. section 78n(d).

(36) "Open end mutual fund" means an open end management company as defined in the Investment Company Act of 1940.

(37) "Order" means an order issued pursuant to this chapter.

(38) "Other investment company" means a closed end management company, face amount certificate company, or unit investment trust as such terms are defined in the Investment Company Act of 1940.

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

(40) "Petition" means a written request for action by the secretary of state including a staff petition for relief and any petition for rehearing pursuant to RSA 541.

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

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

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

(42) "Predecessor act" means this chapter as in effect prior to January 1, 2016.

(43) "Presiding officer" means a person to whom the secretary of state has delegated the authority to preside over some or all of an administrative hearing.

(44) "Price amendment" means the amendment to a registration statement filed under the Securities Act of 1933 or, if an amendment is not filed, the prospectus or prospectus supplement filed under the Securities Act of 1933 that includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price.

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

(46) "Purchasing for investment" means a purchase made for investment and not for the purpose of resale. In determining whether securities have been purchased for investment, the length of the period for which the securities are held shall be one of the factors considered. Securities held for one year after their purchase shall be conclusively deemed to have been purchased for investment.

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

(48) "Revocation" means the recall and cancellation of a license, registration or privilege for either a definite or indefinite period of time.

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

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

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

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

(50) "Sanction" means any penalty imposed or authorized for imposition by the secretary of state, pursuant to this chapter, including license suspension or revocation, order to cease and desist or monetary penalties.

(51) "Secretary of state" means the New Hampshire secretary of state or his or her designee.

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

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

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

(ii) does not include 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 time; and

(iii) does not include an interest in a contributory or noncontributory pension or welfare plan subject to the Employee Retirement Income Security Act of 1974.

(B) Notwithstanding subsection (53)(A), a membership interest in a limited liability company or a partnership interest in a registered limited liability partnership is not a security if:

(i) the secretary of state, by order, determines that it is not a security;

(ii) the limited liability company is a professional limited liability company or foreign professional limited liability company under RSA 304-D; or

(iii) the registered limited liability partnership or foreign registered limited liability partnership:

(a) is licensed, registered, certified, or otherwise authorized under the provisions of RSA 309-B, RSA 310-A, RSA 311, RSA 315, RSA 316, RSA 317-A, RSA 318, RSA 326-B, RSA 327, RSA 329, RSA 330-A, or RSA 332-B to render professional services, as defined in RSA 304-D:1, VI, including necessary related services, or

(b) is related to a registered limited liability partnership or foreign registered limited liability partnership licensed, registered, certified, or otherwise authorized under the provisions of RSA 309-B, RSA 310-A, RSA 311, RSA 315, RSA 316, RSA 317-A, RSA 318, RSA 326-B, RSA 327, RSA 329, RSA 330-A, or RSA 332-B to render professional services, as defined in RSA 304-D:1, VI.

(C) For purposes of subsection (53)(B)(iii), a registered limited liability partnership or foreign registered limited liability partnership is related to a registered limited liability partnership or foreign registered limited liability partnership engaged in the rendering of professional services if:

(i) such registered limited liability partnership or foreign registered limited liability partnership provides services related or complementary to the professional services rendered by, or provides services or facilities to, the registered limited liability partnership or foreign registered limited liability partnership engaged in the rendering of professional services; and

(ii) either:

(a) At least a majority of the partners in one partnership are partners in the other partnership;

(b) At least a majority of partners in each partnership also hold interests or are members in another person, and each partnership renders services pursuant to an agreement with such other person, or

(c) The partnerships are affiliates.

(D) In connection with the issuance of a cease and desist order issued by the secretary of state, and any hearings conducted, under RSA 421-B:6-604, the secretary of state may presume that a membership interest in a limited liability company or a partnership interest in a registered limited liability partnership is a security, and the person relying on subsection (53)(B) has the burden of proving that the interest is not a security under subsection (53)(B).

(54) "Self-regulatory organization" means a national securities exchange registered under the Securities Exchange Act of 1934, a national securities association of broker-dealers registered under the Securities Exchange Act of 1934, a clearing agency registered under the Securities Exchange Act of 1934, or the Municipal Securities Rulemaking Board established under the Securities Exchange Act of 1934.

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

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

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

(56) "Solicitor" means an investment adviser, or investment adviser representative that:

(A) Is licensed under this chapter;

(B) Conducts an investment advisory business solely for the purpose of soliciting, directly or indirectly, any client for, or referring any client to, an investment adviser licensed under this chapter;

(C) Receives a cash fee for such solicitation or referral; and

(D) Operates pursuant to a written agreement with the investment adviser that:

(i) Describes the solicitation activities to be engaged in on behalf of the investment adviser and the compensation to be received therefor;

(ii) Contains an undertaking to perform the duties under the agreement in a manner consistent with the instructions of the investment adviser and the provisions of this chapter; and

(iii) Requires that at the time of any solicitation activities for which compensation is paid or to be paid by the investment adviser, that the client be provided with a current copy of the investment adviser's written disclosure statement that describes the solicitation arrangement.

(57) "Staff" means the employees of the department including classified employees, contract employees, and includes students involved in paid or unpaid programs.

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

(59) "Suspension" means the temporary recall or denial of any license, registration or privilege granted for a specified period of time. Such license, registration or privilege shall be reinstated and returned to the person when he or she otherwise qualifies without the necessity of a new application or fee, provided any suspended license, registration, or privilege has not expired in the interim.

(60) "Trust company" means a trust company or family trust company that is organized under the laws of this state or any other jurisdiction and is authorized to engage in trust business in this state.

(61) "UETA" means New Hampshire's Uniform Electronic Transactions Act RSA 294-E and the rules and regulations adopted under that chapter, as in effect on the date of this chapter, or as later amended.

(62) The words "include" and "including" shall be construed as introducing a non-exhaustive list. Those words shall not be construed as restrictive.

421-B:1-103 References to Federal Statutes. "Securities Act of 1933" (15 U.S.C. section 77a et seq.), "Securities Exchange Act of 1934" (15 U.S.C. section 78a et seq.), "Public Utility Holding Company Act of 1935" (15 U.S.C. section 79 et seq.), "Investment Company Act of 1940" (15 U.S.C. section 80a-1 et seq.), "Investment Advisers Act of 1940" (15 U.S.C. section 80b-1 et seq.), "Employee Retirement Income Security Act of 1974" (29 U.S.C. section 1001 et seq.), "National Housing Act" (12 U.S.C. section 1701 et seq.), "Commodity Exchange Act" (7 U.S.C. section 1 et seq.), "Internal Revenue Code" (26 U.S.C. section 1 et seq.), "Securities Investor Protection Act of 1970" (15 U.S.C. section 78aaa et seq.), "Securities Litigation Uniform Standards Act of 1998" (112 Stat. 3227), "Small Business Investment Act of 1958" (15 U.S.C. section 661 et seq.), and "Electronic Signatures in Global and National Commerce Act" (15 U.S.C. section 7001 et seq.) mean those statutes and the rules and regulations adopted under those statutes, as in effect on the date of enactment of this chapter.

421-B:1-104 References to Federal Agencies. A reference in this chapter to an agency or department of the United States is also a reference to a successor agency or department.

421-B:1-105 Electronic Records and Signatures. This chapter is subject to UETA. This chapter authorizes the filing of records and signatures, when specified by provisions of this chapter or by an order issued under this chapter, in a manner consistent with UETA.

ARTICLE 2

Exemptions from Registration of Securities

421-B:2-201 Exempt Securities. The following securities are exempt from the requirements of RSA 421-B:3-301 through RSA 421-B:3-306 and RSA 421-B:5-504:

(1) a security, including a revenue obligation or a separate security as defined in Rule 131 adopted under the Securities Act of 1933, 17 C.F.R. 230.131, issued, insured, or guaranteed by the United States; by a state; by a political subdivision of a state; by a public authority, agency, or instrumentality of one or more

states; by a political subdivision of one or more states; by a person controlled or supervised by and acting as an instrumentality of the United States under authority granted by the Congress; or a certificate of deposit for any of the foregoing; provided that this exemption shall not include any industrial development bond or industrial revenue bond;

(2) a security issued, insured, or guaranteed by a foreign government with which the United States maintains diplomatic relations, or any of its political subdivisions, if the security is recognized as a valid obligation by the issuer, insurer, or guarantor;

(3) a security issued by and representing or that will represent an interest in or a direct obligation of, or be guaranteed by:

(A) an international banking institution; or

(B) a bank or depository institution;

(4) a security issued by and representing an interest in, or a debt of, or insured or guaranteed by, an insurance company authorized to do business in this state and not in formation; provided that this exemption shall not include any viatical contract;

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

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

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

(C) a public utility holding company registered under the Public Utility Holding Company Act of 1935 or a subsidiary of such a registered holding company within the meaning of that act;

(6) a federal covered security specified in section 18(b)(1) of the Securities Act of 1933, 15 U.S.C. section 77r(b)(1), or a security listed or approved for listing on another securities market specified by order of the secretary of state under this chapter; a put or a call option contract; a warrant; a subscription right on or with respect to such securities; or an option or similar derivative security on a security or an index of securities or foreign currencies issued by a clearing agency registered under the Securities Exchange Act of 1934 and listed or designated for trading on a national securities exchange, a facility of a national securities exchange, or a facility of a national securities association registered under the Securities Exchange Act of 1934 or an offer or sale of the underlying security in connection with the offer, sale, or exercise of an option or other security that was exempt when the option or other security was written or issued; or an option or a derivative security designated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, 15 U.S.C. section 78i(b);

(7) a security issued by a person organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, social, athletic, or reformatory purposes, or as a chamber of commerce or trade or professional association, and not for pecuniary profit, no part of the net earnings of which inures to the benefit of a private stockholder or other person, or a security of a company that is excluded from the definition of an investment company under section 3(c)(10)(B) of the Investment Company Act of 1940; provided that such issuer shall have filed with the secretary of state a notice, on a form prescribed by the secretary of state, together with a copy of all offering material used in such offering of such security, at least 30 days before the first issuance under such offering. With respect to the offer or sale of a security offered under this exemption, upon the receipt of such notice of such an offering, the secretary of state may require that the availability of this exemption be limited by classifying securities, persons, and transactions, imposing different requirements for different classes, specifying the scope of the exemption and the grounds for denial or suspension, and requiring the issuer to file a notice specifying the material terms of the proposed offer and sale and copies of any proposed sales and advertising literature to be used. The exemption shall become effective if the secretary of state does not disallow the exemption within 30 days of the filing of such notice and other required information.

(8) an equipment trust certificate with respect to equipment leased or conditionally sold to a person, if any security issued by the person would be exempt under this section or would be a federal covered security under section 18(b)(1) of the Securities Act of 1933, 15 U.S.C. section 77r(b)(1);

(9) Any interest in a common trust fund or similar fund maintained by a state bank organized and operating under the laws of New Hampshire, or a national bank wherever located, for the collective investment and reinvestment of funds contributed to such common trust fund or similar fund by the bank in its capacity as trustee, executor, administrator, or guardian; and any interest in a collective investment fund or similar fund maintained by the bank, or in a separate account maintained by an insurance company, for the collective investment and reinvestment of funds contributed to such collective investment fund or similar fund by the bank, or insurance company in its capacity as trustee or agent, which interest is issued in connection with an employee's savings, pension, profit sharing, or similar benefit, or a self-employed person's retirement plan.

421-B:2-202 Exempt Transactions. The following transactions are exempt from the requirements of RSA 421-B:3-301 through RSA 421-B:3-306 and RSA 421-B:5-504:

(1) an isolated nonissuer transaction, whether effected by or through a broker-dealer or not, provided that no person shall make sales to more than 5 purchasers (as determined in accordance with RSA 421-B:2-202-A(1)), in total, of securities of the same issuer, in all jurisdictions combined, during any period of 12 consecutive months;

(2) a nonissuer transaction by or through a broker-dealer registered, or exempt from registration, under this chapter, and a resale transaction by a sponsor of a unit investment trust registered under the Investment Company Act of 1940, in a security of a class that has been outstanding in the hands of the public for at least 90 days, if, at the date of the transaction:

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

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

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

(D) a nationally recognized securities manual or its electronic equivalent designated by order issued under this chapter or a record filed with the Securities and Exchange Commission that is publicly available contains:

(i) a description of the business and operations of the issuer;

(ii) the names of the issuer's executive officers and the names of the issuer's directors, if any;

(iii) an audited balance sheet of the issuer as of a date within 18 months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had an audited balance sheet, a pro forma balance sheet for the combined organization; and

(iv) an audited income statement for each of the issuer's 2 immediately previous fiscal years or for the period of existence of the issuer, whichever is shorter, or, in the case of a reorganization or merger when each party to the reorganization or merger had audited income statements, a pro forma income statement; and

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

(i) the issuer of the security has a class of equity securities listed on a national securities exchange registered under section 6 of the Securities Exchange Act of 1934 or designated for trading on the Nasdaq Stock Market;

(ii) the issuer of the security is a unit investment trust registered under the Investment Company Act of 1940;

(iii) the issuer of the security, including its predecessors, has been engaged in continuous business for at least 3 years; or

(iv) the issuer of the security has total assets of at least \$2,000,000 based on an audited balance sheet as of a date within 18 months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had such an audited balance sheet, a pro forma balance sheet for the combined organization;

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

(4) a nonissuer transaction by or through a broker-dealer registered, or exempt from registration, under this chapter in an outstanding security if the guarantor of the security files reports with the Securities and Exchange Commission under the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. section 78m or 78o(d);

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

(A) is rated at the time of the transaction by a nationally recognized statistical rating organization in one of its 4 highest rating categories; or

(B) has a fixed maturity or a fixed interest or dividend, if:

(i) a default has not occurred during the current fiscal year or within the 3 previous fiscal years or during the existence of the issuer and any predecessor if less than 3 fiscal years, in the payment of principal, interest, or dividends on the security; and

(ii) the issuer is engaged in business, is not in the organizational stage or in bankruptcy or receivership, and is not and has not been within the previous 12 months a blank check, blind pool, or shell company that has no specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person;

(6) a nonissuer transaction by or through a broker-dealer registered, or exempt from registration, under this chapter effecting an unsolicited order or offer to purchase;

(7) a nonissuer transaction executed by a bona fide pledgee without the purpose of evading this chapter;

(8) a nonissuer transaction involving an offer or sale to a federal covered investment adviser with investments under management in excess of \$100,000,000 acting in the exercise of discretionary authority in a signed record for the account of others;

(9) a transaction in a security, whether or not the security or transaction is otherwise exempt, in exchange for one or more bona fide outstanding securities, claims, or property interests, or partly in such exchange and partly for cash, if the terms and conditions of the issuance and exchange or the delivery and exchange and the fairness of the terms and conditions have been approved by the secretary of state after a hearing conducted pursuant to RSA 421-B:6-605;

(10) a transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or a transaction among underwriters;

(11) a nonissuer sale of notes or bonds secured by a mortgage to no more than 5 persons, in total, in all jurisdictions combined;

(12) a judicial sale, exchange, or issuance of securities made pursuant to an order of a court of competent jurisdiction, including without limitation a bankruptcy court, or a transaction by an executor, administrator of an estate, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator;

(13) a sale or offer to sell to:

(A) an institutional investor;

(B) a federal covered investment adviser; or

(C) any other person exempted by order issued by the secretary of state under this chapter;

(14) a sale or an offer to sell securities of an issuer, if the transaction is part of a single offering (as determined in accordance with RSA 421-B:2-202-A(2)) in which:

(A) sales are not made to more than 25 purchasers (as determined in accordance with RSA 421-B:2-202-A(1)), in all jurisdictions combined, during any 12 consecutive months, other than sales designated in subsection (13) and subsection (21);

(B) a general solicitation or general advertising is not made in connection with the offer to sell or sale of the securities;

(C) a commission or other remuneration is not paid or given, directly or indirectly, to a person other than a broker-dealer registered under this chapter or an agent registered under this chapter for soliciting a prospective purchaser in this state; and

(D) the issuer reasonably believes that all the purchasers in this state, other than those designated in subsection (13), are purchasing for investment;

(15) a transaction under an offer to bona fide existing security holders of the issuer, including persons that at the date of the transaction are holders of convertible securities, options, or warrants, if a commission or other remuneration, other than a standby commission, is not paid or given, directly or indirectly, for soliciting a security holder in this state;

(16) an offer to sell, but not a sale, of a security not exempt from registration under the Securities Act of 1933 if:

(A) a registration or offering statement or similar record as required under the Securities Act of 1933 has been filed, but is not effective, or the offer is made in compliance with Rule 165 adopted under the Securities Act of 1933, 17 C.F.R. 230.165; and

(B) a stop order of which the offeror is aware has not been issued against the offeror by the secretary of state or the Securities and Exchange Commission, and an audit, inspection, or proceeding that is public and that may culminate in a stop order is not known by the offeror to be pending;

(17) an offer to sell, but not a sale, of a security exempt from registration under the Securities Act of 1933 if:

(A) a registration statement has been filed under this chapter, but is not effective;

(B) a solicitation of interest is provided in a record to offerees in compliance with an order adopted by the secretary of state under this chapter; and

(C) a stop order of which the offeror is aware has not been issued by the secretary of state under this chapter and an audit, inspection, or proceeding that may culminate in a stop order is not known by the offeror to be pending;

(18) a transaction involving the distribution of the securities of an issuer to the security holders of another person in connection with a merger, consolidation, exchange of securities, sale of assets, or other reorganization to which the issuer, or its parent or subsidiary and the other person, or its parent or subsidiary, are parties;

(19) a rescission offer, sale, or purchase under RSA 421-B:5-510, provided that the terms of such offer, sale or purchase and material disclosures are approved in advance by the secretary of state pursuant to RSA 421-B:5-510(5);

(20) an offer or sale of a security to a person not a resident of this state and not present in this state if the offer or sale does not constitute a violation of the laws of the state or foreign jurisdiction in which the offeree or purchaser is present and is not part of an unlawful plan or scheme to evade this chapter;

(21) an employees' stock purchase, savings, stock option, restricted stock, profit-sharing, pension, or similar employees' benefit plan, including any securities, plan interests, and guarantees issued under a compensatory benefit plan or compensation contract, contained in a record, established by the issuer, its parents, its majority-owned subsidiaries, or the majority-owned subsidiaries of the issuer's parent for the participation of their employees including offers or sales of such securities to:

(A) directors; general partners; trustees, if the issuer is a business trust; officers; consultants; and advisors;

(B) family members who acquire such securities from those persons through gifts or domestic relations orders;

(C) former employees, directors, general partners, trustees, officers, consultants, and advisors if those individuals were employed by or providing services to the issuer when the securities were initially offered to such person; and

(D) insurance agents who are exclusive insurance agents of the issuer, or the issuer's subsidiaries or parents, or who derive more than 50 percent of their annual income from those organizations;

(22) a transaction involving:

(A) a stock dividend or equivalent equity distribution, whether the corporation or other business organization distributing the dividend or equivalent equity distribution is the issuer or not, if nothing of value is given by stockholders or other equity holders for the dividend or equivalent equity distribution other than the surrender of a right to a cash or property dividend if each stockholder or other equity holder may elect to take the dividend or equivalent equity distribution in cash, property, or stock;

(B) an act incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims, or property interests, or partly in such exchange and partly for cash; or

(C) the solicitation of tenders of securities by an offeror in a tender offer in compliance with Rule 162 adopted under the Securities Act of 1933, 17 C.F.R. 230.162;

(23) a nonissuer transaction in a outstanding security by or through a broker dealer registered or exempt from registration under this chapter, if the issuer is a reporting issuer in a foreign jurisdiction designated by subsection (23) or by order issued under this chapter by the secretary of state; has been subject to continuous reporting requirements in the foreign jurisdiction for not less than 180 days before the transaction; and the security is listed on the foreign jurisdiction's securities exchange that has been designated by subsection (23) or by order issued under this chapter by the secretary of state, or is a security of the same issuer that is of senior or substantially equal rank to the listed security or is a warrant or right to purchase or subscribe to any of the foregoing. For purposes of subsection (23), Canada, together with its provinces and territories, is a designated foreign jurisdiction and The Toronto Stock Exchange, Inc., is a designated securities exchange. After an administrative hearing in compliance with RSA 421-B:6-605, the secretary of state, by order issued under this chapter, may revoke the designation of a securities exchange under subsection (23), if the secretary of state finds that revocation is necessary or appropriate in the public interest and for the protection of investors; or

(24) an offer or sale by a cooperative association organized and operated as a nonprofit entity under the laws of any state of its securities only if (A) such securities are either (i) offered and sold in connection with establishing bona fide membership in such association or (ii) issued as a patronage dividend to its bona fide members, (B) in the case of a purchase, the purchase of such securities is necessary or incidental to establishing membership in such association, and (iii) the primary purpose of membership in such association is to obtain or derive one or both of goods and services.

421-B:2-202-A Implementing Provisions.

(1) Counting of purchasers. The following principles shall be used to calculate the number of purchasers to whom sales of the issuer's securities are made pursuant to RSA 421-B:2-202(1) and RSA 421-B:2-202(14):

(A) Exclusions. The following purchasers shall be excluded:

(i) Any relative, spouse, or relative of the spouse of a purchaser who has the same principal residence as such purchaser;

(ii) Any individual retirement account for the benefit of a purchaser;

(iii) Any trust or estate in which a purchaser or any of the persons related to such purchaser specified in subsection (1)(C) collectively have more than 50 percent of the beneficial interest (excluding contingent interests); and

(iv) Any corporation, partnership, limited partnership, limited liability company, limited liability partnership, business trust or other business entity in which a purchaser or any of the persons related to the purchaser specified in subsection (1)(C) collectively are the beneficial owners of more than 50 percent of the equity securities or equity interests.

(B) Inclusions. A purchaser shall be included in the calculation of the number of purchasers if such purchaser purchases a security which the issuer claims qualifies as a federal covered security under section 18(b)(4) (E) of the Securities Act of 1933 but in actuality does not so qualify.

(C) Entity as purchaser. A corporation, partnership, limited partnership, limited liability company, limited liability partnership, business trust, or other business entity shall be counted as one purchaser. However, if such entity is organized for the specific purpose of acquiring the securities offered and is not an investor specified in RSA 421-B:2-202(13), then each beneficial owner of equity interests or equity securities in such entity shall count as a separate purchaser.

(D) Employee benefit plan as purchaser. A non-contributory employee benefit plan, within the meaning of title I of the Employee Retirement Income Security Act of 1974, shall be counted as one purchaser if the trustee makes all investment decisions for the plan.

(E) Sales to certain clients or customers. Sales to clients of an investment adviser, broker-dealer, or trust administered solely by a bank having fiduciary power, or persons with similar relationships, shall be considered as separate sales, regardless of the amount of discretion given to the investment adviser, broker-dealer, bank, or other person to act on behalf of the client, customer or trust.

(F) Joint or common ownership. Sales to persons who acquire the securities as joint tenants, tenants in common, or tenants by the entirety shall be counted as a single purchaser.

(2) Integration of Offerings. Offers and sales of securities that are made more than 6 months before the start of an offering or are made more than 6 months after completion of an offering will not be considered part of that offering, so long as during those 6-month periods there are no offers or sales of securities by or for the issuer that are of the same or a similar class as those offered and sold in such offering, other than offers or sales of securities under an employee benefit plan. The determination of whether separate sales of securities are part of the same offering and are considered integrated depends on the particular facts and circumstances. The following factors should be considered in determining whether offers and sales should be integrated for purposes of the exemption under RSA 421-B:2-202(14):

- (A) Whether the sales are part of a single plan of financing;
- (B) Whether the sales involve issuance of the same class of securities;
- (C) Whether the sales have been made at or about the same time;
- (D) Whether the same type of consideration is being received; and
- (E) Whether the sales are made for the same general purpose.

(3) In connection with an offer and sale of exempt securities or in an exempt transaction, other than in connection with an offer and sale of federal covered securities, additional disclosures shall be made in offering documents, or an application for registration or a filing for exemption from registration shall be denied, or further conditions for an exemption may be imposed by the secretary of state, if any partner, officer, director, or a person having a similar status or performing a similar function:

(A) has filed a registration statement which is the subject of a currently-effective stop order entered pursuant to any state's securities laws within the previous 5 years;

(B) has been convicted within the previous 5 years of any felony or misdemeanor in connection with the offer, purchase or sale of any security;

(C) has been convicted within the previous 5 years of any felony involving fraud or deceit, including forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud;

(D) is the subject of a material administrative enforcement order or judgment entered by a state's securities administrator within the previous 5 years or has been the subject to any state's administrative enforcement order or judgment in which fraud or deceit, including but not limited to, making untrue statements of material facts and omitting to state material facts, was found and the order or judgment was entered within the previous 5 years;

(E) is subject to a material administrative enforcement order or judgment which prohibits, denies or revokes the use of any exemption from registration in connection with the offer, purchase, or sale of securities; or

(F) is currently subject to any order, judgment, or decree of any court of competent jurisdiction temporarily, preliminarily, or permanently restraining, or enjoining such person from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any false filing with the state entered within the previous 5 years.

421-B:2-203 Additional Exemptions and Waivers. An order issued by the secretary of state under this chapter may exempt a security, transaction, or offer; an order by the secretary of state under this chapter may exempt a class of securities, transactions, or offers from any or all of the requirements of RSA 421-B:3-301 through RSA 421-B:3-306 and RSA 421-B:5-504; and an order by the secretary of state under this chapter may waive, in whole or in part, any or all of the conditions for an exemption or offer under RSA 421-B:2-201 and RSA 421-B:2-202.

421-B:2-204 Denial, Suspension, Revocation, Conditions, or Limitation of Exemptions.

(a) Enforcement related powers. Except with respect to securities or a transaction preempted by section 18(b) of the Securities Act of 1933, an order by the secretary of state under this chapter may deny, suspend application of, condition, limit, or revoke an exemption created under RSA 421-B:2-201(3)(C) or RSA 421-B:2-202 or an exemption or waiver created under RSA 421-B:2-203 with respect to a specific security, transaction, or offer. An order under this section may be issued only pursuant to the procedures in RSA 421-B:3-306(d) or RSA 421-B:6-604 and only prospectively.

(b) Knowledge of order required. A person does not violate RSA 421-B:3-301, RSA 421-B:3-303 through RSA 421-B:3-306, RSA 421-B:5-504, or RSA 421-B:5-510 by an offer to sell, offer to purchase, sale, or purchase effected after the entry of an order issued under this section if the person did not know, and in the exercise of reasonable care could not have known, of the order. For purposes of subsection (b), a person will be conclusively presumed to have knowledge of an order which is mailed to the last address specified by such person to the secretary of state, if any, or which is published in a newspaper of statewide circulation.

ARTICLE 3

Registration of Securities and Notice Filing of Federal Covered Securities

421-B:3-301 Securities Registration Requirement. It is unlawful for a person to offer or sell a security in this state unless:

- (1) the security is a federal covered security;
- (2) the security, transaction, or offer is exempted from registration under RSA 421-B:2-201 through RSA 421-B:2-203; or
- (3) the security is registered under this chapter.

421-B:3-302 Notice Filing.

(a) Required filing of records. Any person offering a federal covered security, that is not a security described in section 18(b)(4)(D) of the Securities Act of 1933, 15 U.S.C. section 77r(b)(4)(D), and is not exempt under RSA 421-B:2-201 through RSA 421-B:2-203, shall file all of the following records:

(1) before the initial offer of a federal covered security in this state, all records that are part of a federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933, a consent to service of process complying with RSA 421-B:6-611 signed by the issuer, and the payment of a fee for each class of shares, regardless of whether offered through separate or combined prospectuses;

(2) after the initial offer of the federal covered security in this state, all records that are part of an amendment to a federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933; and

(3) to the extent necessary or appropriate to compute fees, a report of the value of the federal covered securities sold or offered to persons present in this state, if the sales data are not included in records filed with the Securities and Exchange Commission and payment of a fee for each class of shares, regardless of whether offered through separate or combined prospectuses.

(b) Notice filing effectiveness and renewal. A notice filing under subsection (a) is effective for one year commencing on the later of the notice filing or the effectiveness of the offering filed with the Securities and Exchange Commission. On or before expiration, the issuer may renew a notice filing by filing a copy of those records filed by the issuer with the Securities and Exchange Commission and by paying a renewal fee. A previously filed consent to service of process complying with RSA 421-B:6-611 may be incorporated by reference in a renewal. A renewed notice filing becomes effective upon the expiration of the filing being renewed.

(c) Notice filings for federal covered securities described in section 18(b)(4)(D) of the Securities Act of 1933. Any person selling a security that is a federal covered security described in section 18(b)(4)(D) of the Securities Act of 1933, 15 U.S.C. section 77r(b)(4)(D), shall file a notice filing to include a copy of Form D, including the Appendix, as promulgated by the Securities and Exchange Commission, a consent to service of process complying with RSA 421-B:6-611 signed by the issuer not later than 15 days after the first sale of the federal covered security in this state, and the payment of a fee including any late filing fee, under RSA 421-B:6-614.

(d) Stop orders. Except with respect to a federal security described in section 181(b)(1) of the Securities Act of 1933, 15 U.S.C. section 77r(b)(1), if the secretary of state finds that there is a failure to comply with a notice or fee requirement of this section, including any late filing fee requirements, the secretary of state may issue a stop order suspending the offer and sale of a federal covered security in this state. If the deficiency is corrected, the stop order is void as of the time of its issuance and no penalty may be imposed by the secretary of state. Nothing in this chapter shall prevent the secretary of state from investigating and issuing a stop order suspending the offer and sale of a federal covered security for violation of RSA 421-B:5-501.

421-B:3-303 Securities Registration by Coordination.

(a) Registration permitted. A security for which a registration statement has been filed under the Securities Act of 1933 in connection with the same offering may be registered by coordination under this section.

(b) Required records. A registration statement and accompanying records under this section must contain or be accompanied by the following records in addition to the information specified in RSA 421-B:3-305 and a consent to service of process complying with RSA 421-B:6-611:

- (1) a copy of the latest form of prospectus filed under the Securities Act of 1933;
- (2) a copy of the articles of incorporation and bylaws or their substantial equivalents currently in effect; a copy of any agreement with or among underwriters; a copy of any indenture or other instrument governing the issuance of the security to be registered; and a specimen, copy, or description of the security that is required by order issued under this chapter;

(3) copies of any other information or any other records filed by the issuer under the Securities Act of 1933 requested by the secretary of state;

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

(5) a Form U-4 for each agent of the issuer; and

(6) copies of disclosures, which shall be included in the offering documents, consistent with policies, guidelines, and standards, including suitability standards, promulgated by the North American Securities Administrators Association, in order to provide full and fair disclosure for the benefit of investors.

(c) Conditions for effectiveness of registration statement. A registration statement under this section becomes effective simultaneously with or subsequent to the federal registration statement when all the following conditions are satisfied:

(1) a stop order under subsection (d) or RSA 421-B:3-306 or issued by the Securities and Exchange Commission is not in effect and a proceeding is not pending against the issuer under RSA 421-B:4-412; and

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

(d) Notice of federal registration statement effectiveness. The registrant shall promptly notify the secretary of state in a record of the date when the federal registration statement becomes effective and the content of any price amendment and shall promptly file a record containing the price amendment. If the notice is not timely received, the secretary of state may issue a stop order, without prior notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with this section. The secretary of state shall promptly notify the registrant of an order by telegram, telephone, or electronic means and promptly confirm this notice by a record. If the registrant subsequently complies with the notice requirements of this section, the stop order is void as of the date of its issuance.

(e) Effectiveness of registration statement. If the federal registration statement becomes effective before each of the conditions in this section is satisfied or is waived by the secretary of state, the registration statement is automatically effective under this chapter when all the conditions are satisfied or waived. If the registrant notifies the secretary of state of the date when the federal registration statement is expected to become effective, the secretary of state shall promptly notify the registrant by telegram, telephone, or electronic means and promptly confirm this notice by a record, indicating whether all the conditions are satisfied or waived and whether the secretary of state intends the institution of a proceeding under RSA 421-B:3-306. The notice by the secretary of state does not preclude the institution of such a proceeding.

421-B:3-304 Securities Registration and Qualification.

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

(b) Required records. A registration statement under this section must contain the information or records specified in RSA 421-B:3-305, a consent to service of process complying with RSA 421-B:6-611, and the following information or records, which may be satisfied if included in the materials provided pursuant to subsection (b)(13):

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

(2) with respect to each director and officer of the issuer, and other person having a similar status or performing similar functions, the person's name, address, and principal occupation for the previous 5 years; the amount of securities of the issuer held by the person as of the 30th day before the filing of the registration statement; the amount of the securities covered by the registration statement to which the person has indicated an intention to subscribe; and a description of any material interest of the person in any material transaction with the issuer or a significant subsidiary effected within the previous 3 years or proposed to be effected;

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

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

(5) with respect to a promoter, if the issuer was organized within the previous 3 years, the information or records specified in subsection (b)(2), any amount paid to the promoter within that period or intended to be paid to the promoter, and the consideration for the payment;

(6) with respect to a person on whose behalf any part of the offering is to be made in a nonissuer distribution, the person's name and address; the amount of securities of the issuer held by the person as of the date of the filing of the registration statement; a description of any material interest of the person in any material transaction with the issuer or any significant subsidiary effected within the previous 3 years or proposed to be effected; and a statement of the reasons for making the offering;

(7) the capitalization and long-term debt, on both a current and pro forma basis, of the issuer and any significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration, whether in the form of cash, physical assets, services, patents, goodwill, or anything else of value, for which the issuer or any subsidiary has issued its securities within the previous 2 years or is obligated to issue its securities;

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

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

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

(11) the dates of, parties to, and general effect concisely stated of each managerial or other material contract made or to be made otherwise than in the ordinary course of business to be performed in whole or in part at or after the filing of the registration statement or that was made within the previous 2 years, and a copy of the contract;

(12) a description of any pending litigation, action, or proceeding to which the issuer is a party and that materially affects its business or assets, and any litigation, action, or proceeding known to be contemplated by governmental authorities;

(13) a copy of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature intended as of the effective date to be used in connection with the offering and any solicitation of interest used in compliance with RSA 421-B:2-202(17)(B);

(14) a specimen or copy of the security being registered, unless the security is uncertificated; a copy of the issuer's articles of incorporation and bylaws or their substantial equivalents, in effect; and a copy of any indenture or other instrument covering the security to be registered;

(15) a signed or conformed copy of an opinion of counsel concerning the legality of the security being registered, with an English translation if it is in a language other than English, which states whether the security when sold will be validly issued, fully paid, and nonassessable and, if a debt security, a binding obligation of the issuer;

(16) a signed or conformed copy of a consent of any accountant, engineer, appraiser, or other person whose profession gives authority for a statement made by the person, if the person is named as having prepared or certified a report or valuation, other than an official record, that is public, which is used in connection with the registration statement;

(17) a balance sheet of the issuer as of a date within 4 months before the filing of the registration statement; a statement of income and changes in financial position for each of the 3 fiscal years preceding the date of the balance sheet and for any period between the close of the immediately previous fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessor's existence if less than 3 years; and, if any part of the proceeds of the offering is to be applied to the purchase of a business, the financial statements that would be required if that business were the registrant; and

(18) any additional information or records required by order issued under this chapter.

(c) Conditions for effectiveness of registration statement. A registration statement under this section becomes effective 30 days, or any shorter period provided by order issued under this chapter, after the date the registration statement or the last amendment other than a price amendment is filed, if:

- (1) a stop order is not in effect and a proceeding is not pending under RSA 421-B:3-306;
- (2) the secretary of state has not issued an order under RSA 421-B:3-306 delaying effectiveness; and
- (3) the applicant or registrant has not requested that effectiveness be delayed.

(d) Delay of effectiveness of registration statement. The secretary of state may delay effectiveness once for not more than 90 days if the secretary of state determines the registration statement is not complete in all material respects and promptly notifies the applicant or registrant of that determination. The secretary of state may also delay effectiveness for a further period of not more than 30 days if the secretary of state determines that the delay is necessary or appropriate.

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

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

(2) the confirmation of a sale made by or for the account of the person;

(3) payment pursuant to such a sale; or

(4) delivery of the security pursuant to such a sale.

421-B:3-305 Securities Registration Filings.

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

(b) Filing fee. A person filing a registration statement shall pay a filing fee. If a registration statement is withdrawn before the effective date or a preeffective stop order is issued under RSA 421-B:3-306, the secretary of state shall retain such portion of the fee that the secretary of state deems equitable under the circumstances.

(c) Status of offering. A registration statement filed under RSA 421-B:3-303 or RSA 421-B:3-304 must specify:

(1) the amount of securities to be offered in this state;

(2) the states in which a registration statement or similar record in connection with the offering has been or is to be filed; and

(3) any adverse order, judgment, or decree issued in connection with the offering by a state securities regulator, the Securities and Exchange Commission, or a court.

(d) Incorporation by reference. A record filed under this chapter or the predecessor act within 5 years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the record is currently accurate.

(e) Nonissuer distribution. In the case of a nonissuer distribution, information or a record may not be required under subsection (i) or RSA 421-B:3-304, unless it is known to the person filing the registration statement or to the person on whose behalf the distribution is to be made or unless it can be furnished by those persons without unreasonable effort or expense.

(f) Escrow and impoundment. An order issued under this chapter may require as a condition of registration that a security issued within the previous 5 years or to be issued to a promoter for a consideration substantially less than the public offering price or to a person for a consideration other than cash be deposited in escrow; and that the proceeds from the sale of the registered security in this state be impounded until the issuer receives a specified amount from the sale of the security either in this state or elsewhere. The conditions of any escrow or impoundment required under subsection (f) may be established by order issued under this chapter, but the secretary of state may not reject a depository institution or trust company solely because of its location in another state.

(g) Form of subscription. An order issued under this chapter may require as a condition of registration that a security registered under this chapter be sold only on a specified form of subscription or sale contract and that a signed or conformed copy of each contract be filed under this chapter or preserved for a period specified by the rule or order, which may not be longer than 5 years.

(h) Effective period. Except while a stop order is in effect under RSA 421-B:3-306, a registration statement is effective for one year after its effective date, or for any longer period designated in an order under this chapter during which the security is being offered or distributed in a nonexempted transaction by or for the account of the issuer or other person on whose behalf the offering is being made or by an underwriter or broker-dealer that is still offering part of an unsold allotment or subscription taken as a participant in the distribution. For the purposes of a nonissuer transaction, all outstanding securities of the same class identified in the registration statement as a security registered under this chapter are considered to be registered while the registration statement is effective. If any securities of the same class are outstanding, a registration statement may not be withdrawn until one year after its effective date. A registration statement may be withdrawn only with the approval of the secretary of state.

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

(j) Posteffective amendments. A registration statement may be amended after its effective date. The posteffective amendment becomes effective when the secretary of state so orders. If a posteffective amendment is made to increase the number of securities specified to be offered or sold, the person filing the amendment shall pay a registration fee. A posteffective amendment relates back to the date of the offering of the additional securities being registered if, within one year after the date of the sale, the amendment is filed and the additional registration fee is paid.

421-B:3-306 Denial, Suspension, and Revocation of Securities Registration.

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

(1) the registration statement as of its effective date or before the effective date in the case of an order denying effectiveness, an amendment under RSA 421-B:3-305(j) as of its effective date, or a report under RSA 421-B:3-305(i) is incomplete in a material respect or contains a statement that, in the light of the circumstances under which it was made, was false or misleading with respect to a material fact;

(2) this chapter or an order issued under this chapter or a condition imposed under this chapter has been willfully violated, in connection with the offering, by the person filing the registration statement; by the issuer, a partner, officer, or director of the issuer or a person having a similar status or performing a similar function; a promoter of the issuer; or a person directly or indirectly controlling or controlled by the issuer, but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer; or by an underwriter;

(3) the security registered or sought to be registered is the subject of a permanent or temporary injunction of a court of competent jurisdiction or an administrative stop order or similar order issued under any federal, foreign, or state law other than this chapter applicable to the offering, but the secretary of state may not issue an order under subsection (a)(3) on the basis of an order or injunction issued under the securities act of another state unless the order or injunction was based on conduct that would constitute, as of the date of the order, a ground for a stop order under this section;

(4) the issuer's enterprise or method of business includes or would include activities that are unlawful where performed;

(5) with respect to a security sought to be registered under RSA 421-B:3-303, there has been a failure to comply with the undertaking required by RSA 421-B:3-303(b)(4);

(6) the applicant or registrant has not paid the filing fee, but the secretary of state shall void the order if the deficiency is corrected;

(7) the offering:

(A) will work or tend to work a fraud upon purchasers or would so operate; or

(B) has been or would be made with unreasonable amounts of underwriters' and sellers' discounts, commissions, or other compensation, or promoters' profits or participations, or unreasonable amounts or kinds of options; or

(8) the issuer or a partner, officer, or director of the issuer or a person having a similar status or performing a similar function has been convicted of a felony or misdemeanor in connection with the offer, purchase, or sale of a security or of a felony involving fraud or deceit, including forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud.

(b) Enforcement of subsection (a)(7). To the extent practicable, the secretary of state by order issued under this chapter shall publish standards that provide notice of conduct that violates subsection (a)(7).

(c) Institution of stop order. The secretary of state may not institute a stop order proceeding against an effective registration statement on the basis of conduct or a transaction known to the secretary of state when the registration statement became effective unless the proceeding is instituted within 60 days after the registration statement became effective.

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

(e) Procedural requirements for stop order. A stop order may not be issued under this section without:

- (1) appropriate notice to the applicant or registrant, the issuer, and the person on whose behalf the securities are to be or have been offered;
- (2) an opportunity for hearing; and
- (3) findings of fact and conclusions of law in a record in accordance with RSA 421-B:6-604(c).

(f) Modification or vacation of stop order. The secretary of state may modify or vacate a stop order issued under this section if the secretary of state finds that the conditions that caused its issuance have changed or that it is necessary or appropriate in the public interest or for the protection of investors.

421-B:3-307 Waiver and Modification. The secretary of state may waive or modify, in whole or in part, any or all of the requirements of RSA 421-B:3-302, RSA 421-B:3-303, and RSA 421-B:3-304(b) or the requirement of any information or record in a registration statement or in a periodic report filed pursuant to RSA 421-B:3-305(i).

Article 4

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

421-B:4-401 Broker-Dealer Registration Requirements and Exemptions.

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

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

(1) a broker-dealer without a place of business in this state if its only transactions effected in this state are with:

- (A) the issuer of the securities involved in the transactions;
- (B) a person registered as a broker-dealer under this chapter or not required to be registered as a broker-dealer under this chapter;
- (C) an institutional investor; or
- (D) a bona fide preexisting customer whose principal place of residence is not in this state and the person is registered as a broker-dealer under the Securities Exchange Act of 1934 or not required to be registered under the Securities Exchange Act of 1934 and is registered under the securities act of the state in which the customer maintains a principal place of residence;

(2) a person that deals solely in United States government securities and is supervised as a dealer in government securities by the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation.

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

(d) Limited registration. The secretary of state may register a broker-dealer in a limited capacity determined by the secretary of state if that broker-dealer's activities are limited by FINRA.

(e) Canadian broker-dealers.

(1) A broker-dealer that is resident in Canada and has no office or other physical presence in this state may, provided the broker-dealer is licensed in accordance with this subsection (e), effect transactions in securities with or for, or induce or attempt to induce the purchase or sale of any security by:

(A) A person from Canada who is temporarily resident in this state, with whom the Canadian broker-dealer had a bona fide broker-dealer-client relationship before the person entered the United States; or

(B) A person from Canada who is resident in this state, whose transactions are in a self-directed tax advantaged retirement plan in Canada of which the person is the holder or contributor.

(2) An agent representing a Canadian broker-dealer licensed under this section may, provided the agent is licensed in accordance with this section, effect transactions in securities in this state as permitted for the broker-dealer in subsection (e)(1).

(3) A Canadian broker-dealer may become licensed under subsection (e), provided that the broker-dealer:

- (A) Files an application in the form required by the jurisdiction in which it has its head office;
- (B) Files a consent to service of process;

(C) Is registered as a broker or dealer in good standing in the jurisdiction from which it is effecting transactions into this state and files evidence thereof; and

(D) Is a member of a self-regulatory organization or stock exchange in Canada.

(4) An agent representing a Canadian broker-dealer licensed under this subsection (e) in effecting transactions in securities in this state may become licensed under this section, provided that the agent:

(A) Files an application in the form required by the jurisdiction in which the broker-dealer has its head office;

(B) Files a consent to service of process; and

(C) Is registered in good standing in the jurisdiction from which he or she is effecting transactions into this state and files evidence thereof.

(5) If no denial order is in effect and no proceeding is pending under this chapter, the license becomes effective on the thirtieth day after an application is filed unless earlier made effective.

(6) A Canadian broker-dealer licensed under subsection (e) shall:

(A) Maintain its provincial or territorial registration and its membership in a self-regulatory organization or stock exchange in good standing;

(B) Provide the secretary of state upon request with its books and records relating to its business in this state as a broker-dealer;

(C) Inform the secretary of state forthwith of any criminal action taken against the broker-dealer or its agent or of any finding or sanction imposed on the broker-dealer as a result of any self-regulatory or regulatory action involving fraud, theft, deceit, misrepresentation, or similar conduct; and

(D) Disclose to its clients in the state that the broker-dealer and its agents are not subject to the full regulatory requirements in this chapter.

(7) An agent of a Canadian broker-dealer licensed under subsection (e) shall:

(A) Maintain his or her provincial or territorial registration in good standing;

(B) Inform the secretary of state forthwith of any criminal action, taken against him or her, or of any finding or sanction imposed on the agent as a result of any self-regulatory or regulatory action involving fraud, theft, deceit, misrepresentation, or similar conduct.

(8) Renewal applications for Canadian broker-dealers and agents under subsection (e) shall be filed before December 1 each year and may be made by filing the most recent renewal application, if any, filed in the jurisdiction in which the broker-dealer has its head office, or if no such renewal application is required, the most recent application filed pursuant to subsection (e)(3)(A) or subsection (e)(4)(A), as the case may be.

(9) Every applicant for a license or renewal of a license under subsection (a) shall pay the fee for broker-dealers and agents as required under RSA 421-B:6-614.

(10) A Canadian broker-dealer or agent licensed under subsection (e) shall only effect transactions in this state:

(A) As permitted in subsection (e)(1) or (e)(2);

(B) With or through (i) the issuers of the securities involved in the transactions, (ii) other broker-dealers, and (iii) banks, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts or other financial institutions or institutional buyers, whether acting for themselves or as trustees; and

(C) As otherwise permitted by this chapter.

(11) A Canadian broker-dealer or agent licensed under subsection (e) and acting in accordance with the limitations set out in subsection (e)(10) is exempt from all of the requirements of this chapter, except the anti-fraud provisions and the requirements set out in subsection (e). Such Canadian broker-dealer or agent may only have its license under this section denied, suspended or revoked for a breach of the anti-fraud provisions of this chapter or the requirements in subsection (e).

(f) Branch offices.

(1) Prior to opening or closing a branch office in this state, a broker-dealer shall notify the secretary of state of the location of the branch office, telephone number, name of the individual supervising the office, the date of the opening or closing, and any other pertinent information required by the secretary of state.

(2)(A) It is prohibited for any branch office or agent of a broker-dealer to conduct a securities business in this state under any name other than that of the broker-dealer with which the branch office is associated or agent is registered.

(B) If more than one business enterprise is conducted from a branch office location, disclosures shall clearly set forth the name of each business enterprise, what business activity is conducted by each organization, and each registered agent's relationship to each organization; provided, however, that this requirement shall not apply to television, radio, or billboard advertising that pertains exclusively to a non-securities product.

(3)(A) Each broker-dealer branch office within this state shall be supervised by a manager who is a licensed agent in New Hampshire and who shall have qualified as a principal by passing a FINRA principal's examination applicable to the registrant's business conducted at that location.

(B) Each broker-dealer and investment adviser shall establish and maintain supervisory procedures that are reasonably designed to achieve compliance with all applicable securities laws and statutes. The responsibility for such supervisory procedure shall be determined by various factors, including:

- (i) The firm's size, organizational structure, and scope of business activities, and the number and location of offices.
- (ii) The nature and complexity of procedures and services offered.
- (iii) The volume of business conducted.
- (iv) The number of agents and investment advisors assigned to a location.
- (v) Whether a location has an on-site principal.
- (vi) Whether the office is a non-branch location.

421-B:4-402 Agent Registration Requirements and Exemptions.

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

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

- (1) an individual who represents a broker-dealer that is exempt under RSA 421-B:4-401(b) or (c);
- (2) a bona fide officer, director, partner, manager, member or employee of the issuer, with respect to an offer or sale of the issuer's own securities or those of the issuer's parent or any of the issuer's subsidiaries and who is not compensated in connection with the individual's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities; provided that any person who is not a bona fide officer, director, partner, manager, member or employee of the issuer shall not be exempt in connection with any public offering of securities by such issuer, whether or not such person is compensated by the payment of a commission or other transaction-related compensation;
- (3) an individual who represents an issuer and who effects transactions in the issuer's securities exempted by RSA 421-B:2-202, other than RSA 421-B:2-202(14), and who is not compensated by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities;
- (4) an individual who represents an issuer that effects transactions solely in federal covered securities of the issuer, but an individual who effects transactions in a federal covered security described in section 18(b)(3) or 18(b)(4)(D) of the Securities Act of 1933, 15 U.S.C. section 77r(b)(3) or 77r(b)(4)(D), is not exempt if the individual is compensated in connection with the agent's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities;
- (5) an individual who represents a broker-dealer registered in this state under RSA 421-B:4-401(a) or exempt from registration under RSA 421-B:4-401(b) in the offer and sale of securities for an account of a non-affiliated federal covered investment adviser with investments under management in excess of \$100,000,000 acting for the account of others pursuant to discretionary authority in a signed record;
- (6) an individual who represents an issuer with the purchase by the issuer of the issuer's own securities;
- (7) an individual who represents an issuer and who restricts participation to performing clerical or ministerial acts; or
- (8) any other individual exempted by order issued under this chapter.

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

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

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

421-B:4-403 Investment Adviser Registration Requirements and Exemptions.

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

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

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

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

(B) institutional investors; or

(C) any other client exempted by order issued under this chapter;

(2) a person without a place of business in this state if the person has had, during the preceding 12 months, not more than 5 clients that are resident in this state in addition to those specified under subsection (b)(1); or

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

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

(d) Investment adviser representative registration required. It is unlawful for an investment adviser to employ or associate with an individual required to be registered under this chapter as an investment adviser representative who transacts business in this state on behalf of the investment adviser unless the individual is registered under RSA 421-B:4-404(a) or is exempt from registration under RSA 421-B:4-404(b).

(e) Branch offices. Prior to opening or closing a branch office in this state, an investment adviser shall notify the secretary of state of the location of the branch office, telephone number, name of the individual supervising the office, the date of the opening or closing, and any other pertinent information required by the secretary of state.

(f) Name of branch office.

(1) It is prohibited for any branch office or investment adviser representative to conduct an investment advisory business in this state under any name other than that of the investment adviser with which the branch office is associated or investment adviser representative is registered.

(2) If more than one business enterprise is conducted from a branch office location, disclosures shall clearly set forth the name of each business enterprise, what business activity is conducted by each organization, and each registered agent's relationship to each organization; provided, however, that this requirement shall not apply to television, radio, or billboard advertising that pertains exclusively to a non-securities product.

421-B:4-404 Investment Adviser Representative Registration Requirement and Exemptions.

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

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

(1) an individual who is employed by or associated with an investment adviser that is exempt from registration under RSA 421-B:4-403(b) or a federal covered investment adviser that is excluded from the notice filing requirements of RSA 421-B:4-405; and

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

(c) Registration effective only while employed or associated. The registration of an investment adviser representative is not effective while the investment adviser representative is not employed by or associated with an investment adviser registered under this chapter or a federal covered investment adviser that has made or is required to make a notice filing under RSA 421-B:4-405.

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

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

(f) Client solicitors. A person who solicits referrals of investment advisory clients to an investment adviser may apply for a license as a solicitor by filing with the secretary of state an application, including a request for waiver of examination requirements, a copy of the solicitation agreement with such investment adviser and a copy of the disclosure document of the investment adviser disclosing the arrangements between such investment adviser and such solicitor and an undertaking that, prior to entering into any investment advisory

contract with a client, the investment adviser will obtain from such client a signed and dated acknowledgment that the investment advisory contract is being entered into pursuant to a solicitation arrangement with the solicitor as described in the disclosure document.

421-B:4-405 Federal Covered Investment Adviser Notice Filing Requirement.

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

(b) Notice filing requirement not required. The following federal covered investment advisers are not required to comply with subsection (c):

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

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

(B) institutional investors;

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

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

(2) any other person excluded by order issued under this chapter.

(c) Notice filing procedure. A person acting as a federal covered investment adviser, not excluded under subsection (b), shall file a notice, a consent to service of process complying with RSA 421-B:6-611, and such records as have been filed with the Securities and Exchange Commission under the Investment Advisers chapter of 1940 required by order issued under this chapter and pay the fees specified in RSA 421-B:4-410(c). Initial fees shall be paid before business is transacted in this state, and annual fees shall be paid on or before December 31 of the current year for the ensuing year. Federal covered advisers shall submit copies to the secretary of state of all documents filed with the Securities and Exchange Commission pursuant to the federal securities laws within 10 business days of their submission to the Securities and Exchange Commission. Documents and fees that are accepted by IARD may be submitted through IARD. Other documents filed or deemed filed with the Securities and Exchange Commission shall be submitted directly to the secretary of state.

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

421-B:4-406 Registration by Broker-Dealer, Agent, Investment Adviser, and Investment Adviser Representative.

(a) Application for initial registration. A person shall register as a broker-dealer, agent, investment adviser, or investment adviser representative by filing an application on a form prescribed by the secretary of state and a consent to service of process complying with RSA 421-B:6-611, paying the fee specified in RSA 421-B:4-410 and paying any reasonable fees charged by the designee of the secretary of state for processing the filing. The application must contain:

(1) whatever information the secretary of state requires concerning such matters as, but not limited to, the applicant's form and place of organization; the applicant's proposed method of doing business; the qualifications and business history of the applicant; in the case of a broker-dealer or investment adviser, the qualifications and business history of any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser; any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony; and the applicant's financial condition and history; and

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

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

(c) Effectiveness of registration.

(1) If an order is not in effect and a proceeding is not pending under RSA 421-B:4-412, registration becomes effective at noon on the 30th day after a completed application is filed. An order issued under this chapter may set an earlier effective date or may defer the effective date until noon on the 30th day after the filing of any amendment completing the application. Registration may be suspended by an order of the secretary of state, subject to article 6.

(2) The secretary of state may issue a limited registration as determined by the secretary of state to a broker-dealer whose registration is similarly restricted by FINRA or any successor self-regulatory organization.

(3) As an alternative means of registration under subsection (h) or in conjunction with this section, the secretary of state may register agents, broker-dealers, or investment advisers by means of or through the facilities of a national organization which facilitates registration on a nationwide basis.

(d) Registration renewal. A registration is effective until midnight on December 31 of the year for which the application for registration is filed. Unless an order is in effect under RSA 421-B:4-412, a registration may be automatically renewed each year by filing such records within 60 days after the close of its fiscal year (subject

to any extension by order promulgated by the secretary of state) as are required by order issued under this chapter, by paying the fee specified in RSA 421-B:4-410, and by paying costs charged by the secretary of state for processing the filings. In addition, the secretary of state may require at any reasonable time and in any reasonable manner from any person subject to this chapter or any person controlling any such person any statements, reports, financial statements, answers to questionnaires and other information in whatever reasonable form he or she designates, including information from any electronic data processing or storage system.

(e) Certain requirements for broker-dealers.

(1) No person shall be registered as a broker-dealer unless one person occupying a supervisory position has successfully passed a principal examination appropriate for the business conducted by the broker-dealer and has actively engaged in the securities business as a licensed principal in a similar supervisory capacity for a minimum of 3 of the preceding 5 years.

(2) No person shall be issued a broker-dealer license if any control person of such person was an officer, supervisor, or owner of 10 percent or more of the securities of any firm liquidated under the Securities Investor Protection Act of 1970.

(f) Certain requirements for investment advisers.

(1) Registration of investment advisers and investment adviser representatives shall be made through filings through the IARD.

(2) In addition to the filing required in subsection (f)(1), an applicant for registration as an investment adviser shall provide:

(A) specimens of investment advisory contracts.

(B) the qualifications and business history of any employee, which may be submitted on a Form U-4 on the CRD.

(3) Solely for purposes of a filing made through the IARD, a document is considered filed with the secretary of state when all fees are received and the filing is accepted by the IARD on behalf of the state.

(4)(A) Any documents or fees required to be filed with the secretary of state that are not permitted to be filed with or cannot be accepted by the IARD shall be filed directly with the secretary of state. The application shall not be complete until all documents and fees required by this chapter have been submitted through the IARD, where possible, or submitted to and received directly by the secretary of state.

(B) The following documents shall be required to be filed directly with the secretary of state:

(i) A financial statement which shall be audited, or, in the instance where no audited financial statement is in existence, certified by the appropriate person as presenting fairly in all material respects the financial condition of the firm.

(ii) A copy of the applicant's articles of incorporation, if a corporation, or other business formation documents, if the applicant is any other form of business entity.

(5)(A) An investment adviser shall file with the IARD, in accordance with the instructions to Form ADV, any amendments to the investment adviser's Form ADV. An amendment shall be considered to be filed promptly if the amendment is filed within 30 days of the event that requires the filing of the amendment.

(B) An investment adviser representative is under a continuing obligation to update information required by Form U-4 as changes occur. An investment adviser representative and the investment adviser shall file promptly with the IARD any amendments to the representative's Form U-4.

(C) Within 90 days of the end of the investment adviser's fiscal year, an investment adviser shall file an updated Form ADV with the IARD.

(g) Training standards. The secretary of state may by order prescribe standards of qualification with respect to training, experience, and knowledge of the securities business and provide for examinations to be taken by any class of or all applicants for broker-dealers, agents, investment advisers, and investment adviser representatives.

(h) Additional conditions or waivers. An order issued under this chapter may impose such other conditions, consistent with the National Securities Markets Improvement Act of 1996, on any registration under this section. An order issued under this chapter may waive, in whole or in part, specific requirements in connection with registration as are in the public interest and for the protection of investors.

(i) Privilege from defamation. In the absence of malice, no communication required by the secretary of state under this section shall subject the person making it to an action for defamation.

(j) False filings. Any director, officer, partner, manager, agent, or employee of any broker-dealer, investment adviser, or agent who makes or files in any statement or other document with the secretary of state, having actual knowledge that the same includes any material statement which is false, shall be guilty of a misdemeanor if a natural person or guilty of a felony if any other person.

(k) Incorporation of federal, SRO and exchange rules. Persons registered under this article to conduct securities business shall comply with the applicable rules of the Securities and Exchange Commission, FINRA, any national exchange on which they have securities registered and other applicable self-regulatory organization having jurisdiction over the person so registered.

(l) Satisfaction through Adviser Act filings. The secretary of state may require an investment adviser to furnish or disseminate to investors and advisory clients information specified by order of the secretary of state in the public interest and for the protection of investors. If so determined by the secretary of state, information furnished to clients or prospective clients that would be in compliance with the Investment Advisers Act of 1940 may be used in whole or partial satisfaction of such requirement.

421-B:4-407 Succession and Change in Registration of Broker-Dealer or Investment Adviser.

(a) Succession. A broker-dealer or investment adviser may succeed to the current registration of another broker-dealer or investment adviser or a notice filing of a federal covered investment adviser, and a federal covered investment adviser may succeed to the current registration of an investment adviser or notice filing of another federal covered investment adviser, by filing as a successor an application for registration pursuant to RSA 421-B:4-401 or RSA 421-B:4-403 or a notice pursuant to RSA 421-B:4-405 for the unexpired portion of the current registration or notice filing.

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

(c) Name change. A broker-dealer or investment adviser that changes its name may continue its registration by filing an amendment to its registration and paying the fees set forth in RSA 421-B:6-614. The amendment becomes effective when filed or on a date designated by the registrant.

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

421-B:4-408 Termination of Employment or Association of Agent and Investment Adviser Representative and Transfer of Employment or Association.

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

(b) Transfer of employment or association. If an agent registered under this chapter terminates employment by or association with a broker-dealer registered under this chapter and begins employment by or association with another broker-dealer registered under this chapter; or if an investment adviser representative registered under this chapter terminates employment by or association with an investment adviser registered under this chapter or a federal covered investment adviser that has filed a notice under RSA 421-B:4-405 and begins employment by or association with another investment adviser registered under this chapter or a federal covered investment adviser that has filed a notice under RSA 421-B:4-405; then upon the filing by or on behalf of the registrant, within 30 days after the termination, of an application for registration that complies with the requirement of RSA 421-B:4-406(a) and payment of the filing fee required under RSA 421-B:4-410, the registration of the agent or investment adviser representative is:

(1) immediately effective as of the date of the completed filing, if the agent's CRD record or successor record or the investment adviser representative's IARD record or successor record does not contain a new or amended disciplinary disclosure; or

(2) temporarily effective as of the date of the completed filing, if the agent's CRD record or successor record or the investment adviser representative's IARD record or successor record contains a new or amended disciplinary disclosure since the agent's most recent previous registration or licensure application in the state.

(c) Withdrawal of temporary registration. The secretary of state may withdraw a temporary registration if there are or were grounds for discipline as specified in RSA 421-B:4-412 and the secretary of state does so within 30 days after the filing of the application. If the secretary of state does not withdraw the temporary registration within the 30-day period, registration becomes automatically effective on the 31st day after filing.

(d) Power to prevent registration. The secretary of state may prevent the effectiveness of a transfer of an agent or investment adviser representative under subsection (b)(1) or (2) based on the public interest and the protection of investors.

(e) Termination of registration or application for registration. If the secretary of state determines that a registrant or applicant for registration is no longer in existence or has ceased to act as a broker-dealer, agent, investment adviser, or investment adviser representative, or is the subject of an adjudication of incapacity

or is subject to the control of a committee, conservator, or guardian, or cannot reasonably be located, a rule adopted or order issued under this chapter may require the registration be canceled or terminated or the application denied. The secretary of state may reinstate a canceled or terminated registration, with or without hearing, and may make the registration retroactive.

421-B:4-409 Withdrawal of Registration of Broker-Dealer, Agent, Investment Adviser, and Investment Adviser Representative.

(a) The secretary of state may determine by order the requirements and procedures for withdrawal of registration by a broker-dealer, agent, investment adviser, or investment adviser representative. Withdrawal of registration by a broker-dealer, agent, investment adviser, or investment adviser representative becomes effective 60 days after the filing of the application to withdraw or within any shorter period as provided by order issued under this chapter unless a revocation or suspension proceeding is pending when the application is filed. If a proceeding is pending, withdrawal becomes effective when and upon such conditions as required by order issued under this chapter. The secretary of state may institute a revocation or suspension proceeding under RSA 421-B:4-412 within one year after the withdrawal became effective automatically and issue a revocation or suspension order as of the last date on which registration was effective if a proceeding is not pending.

(b) The application for withdrawal of licensure as an investment adviser under the Investment Advisers Act of 1940 shall be completed by following the instructions to Form ADV-W (Notice of Withdrawal from Registration as Investment Adviser) (17 C.F.R. section 279.2) and filed upon Form ADV-W with the IARD.

(c) The application for withdrawal of licensure as an investment adviser representative under the Investment Advisers Act of 1940 shall be completed by following the instructions to Form U-5 (Uniform Termination Notice for Securities Industry Registration) and filed upon Form U-5 with the IARD.

421-B:4-410 Filing Fees.

(a) Broker-dealers. A person shall pay a fee of \$300 when initially filing an application for registration as a broker-dealer and a fee of \$250 when filing a renewal of registration as a broker-dealer. If the filing results in a denial or withdrawal, the secretary of state shall retain \$50 of the fee.

(b) Agents. The fee for an individual is \$130 when filing an application for registration as an agent, a fee of \$100 when filing a renewal of registration as an agent, and a fee of \$25 when filing for a change of registration as an agent. If the filing results in a denial or withdrawal, the secretary of state shall retain \$30 of the fee.

(c) Investment advisers. A person shall pay a fee of \$250 when filing an application for registration as an investment adviser and a fee of \$200 when filing a renewal of registration as an investment adviser. If the filing results in a denial or withdrawal, the secretary of state shall retain \$50 of the fee.

(d) Investment adviser representatives. The fee for an individual is \$125 when filing an application for registration as an investment adviser representative, a fee of \$100 (\$50 per agent; \$50 per license) when filing a renewal of registration as an investment adviser representative, and a fee of \$100 when filing a change of registration as an investment adviser representative. If the filing results in a denial or withdrawal, the secretary of state shall retain \$25 of the fee.

(e) Federal covered investment advisers. A federal covered investment adviser required to file a notice under RSA 421-B:4-405 shall pay an initial fee of \$250 and an annual notice fee of \$200.

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

(g) Dual agent/investment adviser representative. An investment adviser representative who is registered as an agent under RSA 421-B:4-402 and who represents a person that is both registered as a broker-dealer under RSA 421-B:4-401 and registered as an investment adviser under RSA 421-B:4-403 or required as a federal covered investment adviser to make a notice filing under RSA 421-B:4-405 is not required to pay an initial or annual registration fee for registration as an investment adviser representative.

421-B:4-411 Postregistration Requirements.

(a) Financial requirements. Subject to the Securities Exchange Act of 1934, 15 U.S.C. section 78o(h), or the Investment Advisers Act of 1940, 15 U.S.C. section 80b-18a, an order issued under this chapter may establish minimum financial requirements for broker-dealers registered or required to be registered under this chapter and investment advisers registered or required to be registered under this chapter, including without limitation the following:

(1) Each broker-dealer registered or required to be registered under this chapter shall comply with the net capital requirements set forth in Rule 15c3-1 under the Securities and Exchange Act of 1934, 17 C.F.R. 240.15c3-1 and the custody requirements set forth in Rule 15c3-3 under the Securities and Exchange Act of 1934, 17 C.F.R. 240.15c3-3, as may be amended, and shall report to the secretary of state those items requiring reporting under Rules 17a-5, 17a-10 and 17a-11, under the Securities and Exchange Act of 1934, 17 C.F.R. 240.17a-5, 17 C.F.R. 240.17a-10, and 17 C.F.R. 240.17a-11 as may be amended.

(2) Each investment adviser registered or required to be registered under this chapter which has custody of client funds or securities shall maintain at all times a minimum net worth of \$35,000 and every investment adviser registered or required to be registered under this chapter which has discretionary authority over client funds or securities, but does not have custody of client funds or securities, shall maintain at all times a

minimum net worth of \$10,000. The secretary of state shall specify by order the requirements for determining and reporting such net worth to the secretary of state. Any such investment adviser which has its principal place of business in another state shall maintain such minimum net worth as required by the state in which it maintains its principal place of business, provided that the investment adviser is registered or licensed in such state and is in compliance with such state's minimum net worth requirements.

(3) Each investment adviser registered or required to be registered under this chapter which has custody of client funds or securities shall comply with Rule 206(4)-2 under the Investment Advisers Act of 1940, 17 C.F.R. 275.206(4)-2.

(b) Financial reports.

(1) Every broker-dealer or agent doing business in this state unless otherwise directed shall, within 60 days after the close of its fiscal year, make and transmit to the secretary of state a filing under oath of its chief managing officer showing or providing the financial statement, changes in management, changes in ownership, and any significant changes in the method of doing business for the preceding fiscal year, except as provided by section 15(h) of the Securities Exchange Act of 1934 in the case of a broker-dealer, and section 222 of the Investment Advisers Act of 1940 in the case of an investment adviser. The filing shall include statements or periodic reports filed with any regulatory, state, or federal authority or exchange if so directed by order or rule of the secretary of state. Every broker-dealer shall include audited financial statements certified by an independent certified public accountant consisting of a balance sheet, income statement, statement of cash flows, a reconciliation of surplus and appropriate notes prepared in accordance with generally accepted accounting principles.

(2) The secretary of state may extend the time for filing such statement for cause shown for a period of not more than 60 days. A broker dealer failing to file its annual statement as required by subsection (b)(1) shall forfeit to the state \$25 for each day of delinquency; provided, however, that for good cause shown, the secretary of state may abate all or a portion of the delinquency penalty. The secretary of state may refuse to continue, or may suspend or revoke, the license of any broker dealer failing to file its annual statement when due. When the sixtieth day falls on a weekend, or on a New Hampshire state or federal legal holiday, the due date shall be automatically extended to the next business day following such weekend or holiday.

(c) Recordkeeping. Subject to the Securities Exchange Act of 1934, 15 U.S.C. section 78o(h) or the Investment Advisers Act of 1940, 15 U.S.C. section 80b-18a:

(1) a broker-dealer registered or required to be registered under this chapter and an investment adviser registered or required to be registered under this chapter shall make and maintain the accounts, correspondence, memoranda, papers, books, and other records required by order issued under this chapter except as provided by section 15 of the Securities Exchange chapter of 1934 in the case of broker-dealers and section 222 of the Investment Advisers Act of 1940 in the case of investment advisers;

(2) broker-dealer records required to be maintained under subsection (c)(1) may be maintained in any form of data storage acceptable under the Securities Exchange Act of 1934, 15 U.S.C. section 78q(a), if they are readily accessible to the secretary of state; and

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

(4) Every investment adviser registered or required to be registered under this chapter shall make and keep true, accurate and current the following books, ledgers, and records:

(A) A journal or journals, including cash receipts and disbursements records, and any other records of original entry forming the basis of entries in any ledger.

(B) General and auxiliary ledgers or other comparable records, reflecting asset, liability, reserve, capital, income, and expense accounts.

(C) A memorandum of each order given by the investment adviser for the purchase or sale of any security or any instruction received by the investment adviser from the client concerning the purchase, sale, receipt, or delivery of a particular security, and of any modification or cancellation of any such order or instruction. Such memoranda shall show the terms and conditions of the order, instruction, modification, or cancellation; shall identify the person connected with the investment adviser who recommended the transaction to the client and the person who placed such order; and shall show the account for which entered, the date of entry, and the bank or broker-dealer by or through whom executed where appropriate. Orders entered pursuant to the exercise of discretionary power shall be so designated.

(D) All checkbooks, bank statements, canceled checks, and cash reconciliations of the investment adviser.

(E) All bills or statements (or copies thereof), paid or unpaid, relating to the business of the investment adviser as such.

(F) All trial balances, financial statements, and internal audit working papers relating to the business of such investment adviser.

(G) Originals of all written communications received and copies of all written communications sent by such investment adviser relating to (A) any recommendation made, or proposed to be made and any advice given or proposed to be given, (B) any receipt, disbursement or delivery of funds or securities, or (C) the

placing or execution of any order to purchase or sell any security; provided, however, that (i) the investment adviser shall not be required to keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for the investment adviser, and (ii) if the investment adviser sends any notice, circular or other advertisement offering any report, analysis, publication, or other investment advisory service to more than 10 persons, the investment adviser shall not be required to keep a record of the names and addresses of the persons to whom it was sent; except that if such notice, circular or advertisement is distributed to persons named on any list, the investment adviser shall retain with the copy of such notice, circular or advertisement, a memorandum describing the list and the source thereof.

(H) A list or other record of all accounts in which the investment adviser is vested with any discretionary power with respect to the funds, securities, or transactions of any client.

(I) All powers of attorney and other evidences of the granting of any discretionary authority by any client to the investment adviser, or copies thereof.

(J) All written agreements (or copies thereof) entered into by the investment adviser with any client or otherwise relating to the business of such investment adviser as such.

(K) A copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication that the investment adviser circulates or distributes, directly or indirectly, to 10 or more persons (other than persons connected with such investment adviser) and, if such notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication recommends the purchase or sale of a specific security and does not state the reasons for such recommendation, a memorandum of the investment adviser indicating the reasons therefor.

(L)(i) A record of every transaction in a security in which the investment adviser or any advisory representative of such investment adviser has, or by reason of such transaction, acquires any direct or indirect beneficial ownership, except (i) transactions effected in any account over which neither the investment adviser nor any investment adviser representative has any direct or indirect influence or control; and (ii) transactions in securities which are direct obligations of the United States. Such record shall state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale, or other acquisition or disposition); the price at which it was effected; and the name of the broker-dealer or bank with or through whom the transaction was effected. Such record may also contain a statement declaring that the reporting or recording of any such transaction shall not be construed as an admission that the investment adviser or investment adviser representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

(ii) An investment adviser shall not be deemed to have violated subsection (c)(4) because of failure to record securities transactions of any investment adviser representative if the investment adviser establishes that adequate procedures were instituted and reasonable diligence used to obtain promptly reports of all transactions required to be recorded.

(M)(i) Notwithstanding the provisions of subsection (c)(4)(L) where the investment adviser is primarily engaged in a business or businesses other than advising advisory clients, a record shall be maintained of every transaction in a security in which the investment adviser or any investment adviser representative of such investment adviser has, or by reason of such transaction acquires, any direct or indirect beneficial ownership, except (i) transactions effected in any account over which neither the investment adviser nor any investment adviser representative of the investment adviser has any direct or indirect influence or control; and (ii) transactions in securities which are direct obligations of the United States. Such record shall state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale or other acquisition or disposition); the price at which it was effected, and the name of the broker-dealer or bank with or through whom the transaction was effected. Such record may also contain a statement declaring that the reporting or recording of any such transaction shall not be construed as an admission that the investment adviser or investment adviser representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than 10 calendar days after the end of the calendar quarter in which the transaction was effected.

(ii) An investment adviser is "primarily engaged in a business or businesses other than advising advisory clients" when, for each of its most recent 3 fiscal years or for the period of time since organization, whichever is less, the investment adviser derived, on an unconsolidated basis, more than 50 percent of (a) its total sales and revenues, and (b) its income or loss before income taxes and extraordinary items, from such other business or businesses.

(iii) An investment adviser shall not be deemed to have violated subsection (c)(4)(M) because of failure to record securities transactions of any investment adviser representative if the investment adviser establishes that adequate procedures were instituted and reasonable diligence used to obtain promptly reports of all transactions required to be recorded.

(N)(i)(a) A copy of each written statement and each amendment or revision thereof, given or sent to any client or prospective client of such investment adviser;

(b) Any summary of material changes that is required by Part 2 of Form ADV but is not contained in the written statement; and

(c) A record of the dates that each written statement, each amendment or revision thereto, and each summary of material changes was given or offered to any client or to any prospective client who subsequently becomes a client.

(ii) A memorandum describing any legal or disciplinary event listed in Item 8 of Part 2A or Item 3 of Part 2B of Form ADV and presumed to be material, if the event involved the investment adviser or any of its supervised persons and is not disclosed in the written statements described in subsection (c)(13)(A). The memorandum shall explain the investment adviser's determination that the presumption of materiality is overcome, and shall discuss the factors described in those items.

(O) All accounts, books, internal working papers, and any other records or documents that are necessary to form the basis for or demonstrate the calculation of the performance or rate of return of any or all managed accounts or securities recommendations in any notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication that the investment adviser circulates or distributes, directly or indirectly, to 10 or more persons (other than persons connected with, affiliated with or employed by such investment adviser); provided, however, that, with respect to the performance of managed accounts, the retention of all account statements, if they reflect all debts, credits, and other transactions in a client's account for the period of the statement, and all worksheets necessary to demonstrate the calculation of the performance or rate of return of all managed accounts shall be deemed to satisfy the requirements of this subsection.

(P) Copies, with original signatures of the investment adviser's appropriate signatory and the investment adviser representative, of each initial Form U-4 and each amendment to Disclosure Reporting Pages (DRPs U-4) must be retained by the investment adviser (filing on behalf of the investment adviser representative), and shall be made available for inspection upon request by the secretary of state.

(Q) A separate file on all written complaints of customers and action taken by the investment adviser, if any, or a separate record of such complaints and a clear reference to the files containing the correspondence connected with such complaints as maintained in such office. For purposes of subsection (c)(4)(Q), a "complaint" means any written statement of a customer or any person acting on behalf of a customer alleging a grievance involving the activities of those persons under the control of the investment adviser in connection with the solicitation or execution of any transaction or the disposition of securities or funds of that customer.

(R) A litigation file open to inspection by the secretary of state documenting any criminal or civil actions filed in any state or federal court against the investment adviser's branch office or against any of its personnel with respect to a securities transaction and the disposition of any such litigation.

(5) If an investment adviser subject to RSA 421-B:4-411(c)(3) has custody or possession of securities or funds of any client, the records required to be made and kept under subsection (b), shall also include:

(A) A journal or other record showing all purchases, sales, receipts, and deliveries of securities (including certificate numbers) for such accounts, and all other debits and credits to such accounts.

(B) A separate ledger account for each such client showing all purchases, sales, receipts, and deliveries of securities, the date and price of each such purchase and sale, and all debits and credits.

(C) Copies of confirmations of all transactions effected by or for the account of any such client.

(D) A record for each security in which any such client has a position, which record shall show the name of each such client having any interest in each security, the amount or interest of each such client, and the location of each such security.

(6) With respect to the portfolio being supervised or managed and to the extent that the information is reasonably available to or obtainable by the investment adviser, every investment adviser subject to subsection (c) who renders any investment supervisory or management service to any client shall make and keep true, accurate, and current:

(A) Records showing separately for each such client the securities purchased and sold, and the date, amount, and price of each such purchase and sale.

(B) For each security in which any such client has a current position, information from which the investment adviser can promptly furnish the name of each such client, and the current amount or interest of such client.

(7) Any books or records required by this subsection (c) may be maintained by the investment adviser in such manner that the identity of any client to whom the investment adviser renders investment advisory services is indicated by numerical or alphabetical code or some similar designation.

(8)(A) All books and records required to be made under subsections (a), (b), (c), (d), (e)(1), (h), and (i), (except for the books and records required to be made under subsections (c)(11) and (c)(15), shall be maintained and preserved in (i) an easily accessible place for a period of not less than 5 years from the end of the fiscal year during which the last entry was made on those books and records and (ii) during the first 2 years, an appropriate office of the investment adviser.

(B) Partnership articles and any amendments thereto, articles of incorporation, charters, minute books, and stock certificate books of the investment adviser and of any predecessor shall be maintained in the principal office of the investment adviser and preserved until at least 3 years after termination of the enterprise.

(C) Books and records required to be made under subsections (c)(11) and (c)(15) shall be maintained and preserved in an easily accessible place for a period of not less than 5 years, the first 2 years in an appropriate office of the investment adviser, from the end of the fiscal year during which the investment adviser last published or otherwise disseminated, directly or indirectly, any notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication.

(9) Before ceasing to conduct or discontinuing business as an investment adviser, an investment adviser subject to subsection (c), shall arrange for and be responsible for the preservation of the books and records required to be maintained and preserved under subsection (c) for the remainder of the period specified in this subsection, and shall notify the secretary of state in writing of the exact address where such books and records will be maintained during such period.

(10)(A) The records required to be maintained and preserved pursuant to subsection (c) shall be immediately produced or reproduced by photograph, on film, or, as provided in subsection (i), on magnetic disk, tape or other computer storage medium, and shall be maintained and preserved for the required time in that form. If records are produced or reproduced by the photographic film or computer storage medium, the investment adviser shall:

(i) Arrange the records and index the films or computer storage medium so as to permit the immediate location of any particular record.

(ii) Be ready at all times to provide, and promptly provide, any facsimile enlargement of film or computer printout or copy of the computer storage medium which the secretary of state by its examiners or other representatives may request.

(iii) Store separately from the original one other copy of the film or computer storage medium for the time required.

(iv) With respect to records stored on computer storage medium, maintain procedures for maintenance and preservation of, and access to, records so as to reasonably safeguard records from loss, alteration, or destruction.

(v) With respect to records stored on film, at all times have available for the secretary of state's examination its records pursuant to provisions of this chapter, and facilities for immediate, easily readable projection of the film and for producing easily readable facsimile enlargements.

(B) Pursuant to subsection (i) an investment adviser may maintain and preserve, on computer tape or disk or other computer storage medium, records which, in the ordinary course of the adviser's business, are created by the adviser on electronic media or are received by the adviser solely on electronic media or by electronic data transmission.

(11) For purposes of subsection (c), "investment supervisory services" means the giving of continuous advice as to the investment of funds on the basis of the individual needs of each client.

(12) Every investment adviser that has its principal place of business in a state other than this state shall be exempt from the requirements of this section, provided the investment adviser is licensed in such state and is in compliance with such state's recordkeeping requirements.

(13)(A)(i) Unless otherwise provided in this section, an investment adviser registered or required to be registered under this chapter shall, in accordance with the provisions of this section, furnish each advisory client and prospective advisory client with a written disclosure statement which may be a copy of Part 2 of its Form ADV or written documents containing at least the information then so required by Part 2 of Form ADV, and such other information as the secretary of state may require. Each investment adviser shall furnish each advisory client and prospective advisory client with a firm brochure and one or more supplements as required by this section. The brochure and supplements shall contain all information required by Part 2 of Form ADV (17 C.F.R. 279.1), and such other information as the secretary of state may require.

(ii) An investment adviser shall deliver: (a) The current brochure required by this section to a client or prospective client, and (b) The current brochure supplements for each investment adviser representative who will provide advisory services to the client.

(iii) An investment adviser shall deliver the disclosure statement required by this section to an advisory client or prospective advisory client not less than 48 hours prior to entering into any investment advisory contract with such client or prospective client, or at the time of entering into any such contract, if the advisory client has the right to terminate the contract without penalty within 5 business days after entering into the contract.

(B) Any disclosure statement requested in writing by an advisory client pursuant to an offer required by subsection (c)(13)(C) shall be mailed or delivered within 7 days of the receipt of the request.

(C) If the adviser is the general partner of a limited partnership, the manager of a limited liability company, or the trustee of a trust, then for purposes of this section the investment adviser shall treat each of the partnership's limited partners, the company's members, or the trust's beneficial owners as a client. For purposes of subsection (c)(13)(C), a limited liability partnership or limited liability limited partnership is a "limited partnership."

(D) If an investment adviser renders substantially different types of investment advisory services to different advisory clients, the investment adviser may provide them with different disclosure documents or brochures, provided that each client receives all applicable information about services and fees. The brochure delivered to a client may omit any information required by Part 2A of Form ADV if such information is applicable only to a type of investment advisory service or fee that is not rendered or charged, or proposed to be rendered or charged, to that client or prospective client.

(E) The investment adviser shall amend its brochure and any brochure supplements and deliver the amendments to clients promptly when information contained in the brochure or brochure supplements becomes materially inaccurate. The instructions to Part 2 of Form ADV contain updating and delivery instructions that the investment adviser shall follow. An amendment will be considered to be delivered promptly if the amendment is delivered within 30 days of the event that requires the filing of the amendment.

(F) Nothing in this section shall relieve any investment adviser from any obligation pursuant to any provision of this chapter or the rules and regulations thereunder or other federal or state law to disclose any information to its advisory clients or prospective advisory clients not specifically required by this section.

(G)(i) If the investment adviser is a sponsor of a wrap fee program, then the brochure, required to be delivered by subsection (c)(13)(A) to a client or prospective client of the wrap fee program, must be a wrap fee brochure containing all information required by Form ADV. Any additional information in a wrap fee brochure shall be limited to information applicable to wrap fee programs that the investment adviser sponsors.

(ii) The investment adviser does not have to offer or deliver a wrap fee brochure if another sponsor of the wrap fee program offers or delivers to the client or prospective client of the wrap fee program a wrap fee program brochure containing all the information the investment adviser's wrap fee program brochure must contain.

(iii) A wrap fee brochure does not take the place of any brochure supplements that the investment adviser is required to deliver under subsection (c)(13)(G).

(H) All investment advisers registered or required to be registered under this chapter must deliver to each of their clients their current brochure and all required brochure supplements within 30 days from the date of effectiveness of Part 2 of Form ADV.

(I) For the purpose of subsection (c)(13)(G), the following definitions shall apply:

(i) "Current brochure" and "current brochure supplement" mean the most recent revision of the brochure or brochure supplement, including all subsequent amendments (i.e., stickers).

(ii) "Entering into" in reference to an investment advisory contract, does not include an extension or renewal without material change of any such contract which is in effect immediately prior to such extension or renewal.

(iii) "Sponsor" of a wrap fee program means an investment adviser that is compensated under a wrap fee program for sponsoring, organizing, or administering the program, or for selecting, or providing advice to clients regarding the selection of other investment advisers in the program.

(iv) "Wrap fee program" means an advisory program under which a specified fee or fees, not based directly upon transactions in a client's account, is charged for investment advisory services (which may include portfolio management or advice concerning the selection of other investment advisers) and the execution of client transactions.

(14)(A) Every registered investment adviser who has custody of client funds or securities or requires payment of advisory fees 6 months or more in advance and in excess of \$500 per client shall file with the secretary of state an audited balance sheet as of the end of the investment adviser's fiscal year. Each balance sheet filed pursuant to subsection (c)(14)(A) shall be:

(i) Examined in accordance with generally accepted auditing standards and prepared in conformity with generally accepted accounting principles;

(ii) Audited by an independent public accountant or an independent certified public accountant; and

(iii) Accompanied by an opinion of the accountant as to the report of financial position and by a note stating the principles used to prepare it, the basis of included securities, and any other explanations required for clarity.

(B) The financial statements required by this subsection (c)(14) shall be filed with the secretary of state within 90 days following the end of the investment adviser's fiscal year.

(C) Every investment adviser that has its principal place of business in a state other than this state shall maintain such books or records as required by the state in which the investment adviser maintains its principal place of business, provided that the investment adviser:

(i) Is registered or licensed as such in the state in which it maintains its principal place of business; and

(ii) Is in compliance with the applicable books and records requirements of the state in which it maintains its principal place of business.

(15) Every licensed broker-dealer shall comply with minimum financial requirements and financial reporting requirements as follows:

(A) Each broker-dealer licensed or required to be licensed under this chapter shall comply with Rules 15c3-1, 15c3-2, and 15c3-3 under the Securities and Exchange Act of 1934, 17 C.F.R. 240.15c3-1, 17 C.F.R. 240.15c3-2, and 17 C.F.R. 240.15c3-3.

(B) Each broker-dealer licensed or required to be licensed under this chapter shall comply with Rules 17a-11 under the Securities and Exchange Act of 1934, (17 C.F.R. 240.17a-11) and shall file with the secretary of state upon request, or as required by this chapter or orders or rules promulgated thereunder, copies of notices and reports required under Rules 17a-5, 17a-10, and 17a-11 under the Securities and Exchange Act of 1934, 17 C.F.R. 240.17a-5, 17 C.F.R. 240.17a-10, and 17 C.F.R. 240.17a-11.

(C) To the extent that the Securities and Exchange Commission promulgates changes to the rules, described in subsections (c)(15)(A) and (c)(15)(B) broker-dealers in compliance with such rules as amended shall not be subject to enforcement action by the secretary of state for violation of this section to the extent that the violation results solely from the broker-dealer's compliance with the amended rules.

(16) Every licensed investment adviser shall comply with minimum financial requirements and financial reporting requirements as follows:

(A) An investment adviser registered or required to be registered under this chapter who has custody of client funds or securities shall maintain at all times a minimum net worth of \$35,000, and every investment adviser licensed or required to be licensed under this chapter who has discretionary authority over client funds or securities, but does not have custody of client funds or securities, shall maintain at all times a minimum net worth of \$10,000.

(B) Unless otherwise exempted, as a condition of the right to continue to transact business in this state, every investment adviser registered or required to be registered under this chapter shall by the close of business on the next business day notify the secretary of state if such investment adviser's total worth is less than the minimum required. After transmitting such notice, each investment adviser shall file by the close of business on the next business day, a report with the secretary of state of its financial condition, including the following:

- (i) A trial balance of all ledger accounts;
- (ii) A statement of all client funds or securities which are not segregated;
- (iii) A computation of the aggregate amount of client ledger debit balances; and
- (iv) A statement as to the number of client accounts.

(C) For purposes of subsection (c)(16), the term "net worth," means an excess of assets over liabilities, as determined by generally accepted accounting principles, but shall not include as assets: prepaid expenses (except as to items properly classified as current assets under generally accepted accounting principles), deferred charges, goodwill, franchise rights, organizational expenses, patents, copyrights, marketing rights, unamortized debt discount and expense, all other assets of intangible nature; home, home furnishings, automobiles, and any other personal items not readily marketable in the case of an individual; advances or loans to stockbrokers and officers in the case of a corporation; and advances or loans to partners in the case of a partnership.

(D) The secretary of state may require that a current appraisal be submitted in order to establish the worth of any asset.

(E) For purposes of these rules an investment adviser shall not be deemed to be exercising discretion when it places a trade order with a broker-dealer, pursuant to a third party trading agreement if:

(i) The investment adviser has executed a separate investment adviser contract exclusively with its client which acknowledges that a third party trading agreement will be executed to allow the investment adviser to effect securities transactions for the client in the client's broker-dealer account;

(ii) The investment adviser contract specifically states that the client does not grant discretionary authority to the investment adviser, and the investment adviser in fact does not exercise discretion with respect to the account; and

(iii) A third party trading agreement is executed between the client and a broker-dealer which specifically limits the investment adviser's authority in the client's broker-dealer account to the placement of trade orders and deduction of investment adviser fees.

(F) Every investment adviser that has its principal place of business in a state other than this state shall maintain such minimal capital as required by the state in which the investment adviser maintains its principal place of business, provided that the investment adviser is licensed in such state and is in compliance with such state's minimal capital requirements.

(d) Audits or inspections.

(1) The records of a broker-dealer registered or required to be registered under this chapter and of an investment adviser registered or required to be registered under this chapter and of an issuer of securities whose principal office is located in this state are subject to such reasonable periodic, special, or other audits or inspections by a representative of the secretary of state, within or without this state, as the secretary of state considers necessary or appropriate in the public interest and for the protection of investors. An audit or inspection may be made at any time and without prior notice. The secretary of state may copy, and remove for

audit or inspection copies of, all records the secretary of state reasonably considers necessary or appropriate to conduct the audit or inspection. The secretary of state may assess a reasonable charge for conducting an audit or inspection under this subsection (d)(1).

(2) For the purpose of ascertaining compliance with law or relationships and transactions between any person and any broker-dealer, investment adviser, or agent or proposed broker-dealer, investment adviser, or agent and in circumstances where the secretary of state has reasonable grounds to believe there is noncompliance with or violation of any law, rule, or order, the secretary of state may, as often and to the extent he or she deems advisable, examine the accounts, records, documents, and transactions pertaining to or affecting the securities affairs or proposed securities affairs and transactions of:

(A) Any person having a contract under which the person enjoys by terms or in fact the exclusive or dominant right to manage or control the broker-dealer, investment adviser, or agent;

(B) Any person in this state engaged in, proposing to be engaged in, holding himself, herself, or itself out as so engaging, or proposing or assisting in the promotion, formation, or financing of a broker-dealer, investment adviser, or agent, or corporation or other group to finance a broker-dealer, investment adviser, or agent or the production of its business;

(C) Any rating bureau or organization;

(D) Any registrant or other person subject to this chapter; or

(E) If adequate information cannot be obtained, any broker-dealer, agent, investment adviser, holding company or person holding the shares of voting stock or proxies of a broker-dealer, investment adviser, or agent as voting trustee or otherwise, for the purpose of controlling the management thereof.

(3) Whenever the secretary of state decides to examine the affairs of any person, he or she shall designate one or more examiners and instruct them as to the scope of the examination. Upon demand, the examiner shall exhibit his or her official credentials to the person under examination.

(A) The secretary of state shall conduct each examination in an expeditious, fair, and impartial manner.

(B) Upon any such examination the secretary of state, or the examiner if specifically so authorized in writing by the secretary of state, shall have power to administer oaths, and the power to examine under oath any individual as to any matter relevant to the affairs under examination or relevant to the examination.

(C) Every person being examined, and all of the officers, attorneys, employees, agents, and representatives of such person shall make freely available to the secretary of state or his or her examiners the accounts, records, documents, files, information, assets, and matters in their possession or control relating to the subject of the examination and shall facilitate the examination.

(D) If the secretary of state or examiner finds any accounts or records to be inadequate, or kept or posted in a manner not in accordance with commonly accepted securities accounting principles, then the secretary of state may employ experts to reconstruct, rewrite, post or balance them at the expense of the person being examined if such person has failed to maintain, complete or correct such records or accounting after the secretary of state or examiner has given him or her written notice and a reasonable opportunity to do so.

(E) Neither the secretary of state nor any examiner shall remove any record, account, document, file or other property of the person being examined from the offices or place of such person except with the written consent of such person in advance of such removal or pursuant to an order of court duly obtained. Subsection (c)(2)(E) shall not be deemed to affect the making and removal of copies or abstracts of any such record, account, document, or file.

(F) Any individual who refuses without just cause to be examined under oath or who willfully obstructs or interferes with the examiners in the exercise of their authority pursuant to subsection (d) shall be guilty of a misdemeanor.

(4)(A) Upon completion of an examination, the examiner in charge shall make a true report thereof which shall comprise only facts appearing upon the books, records or other documents of the person examined, or as ascertained from the sworn testimony of its officers or agents or other individuals examined concerning its affairs, and such conclusions and recommendations as may reasonably be warranted from such facts. The report of examination shall be verified by the oath of the examiner in charge thereof.

(B) Such a report of examination of a broker-dealer or agent so verified shall be prima facie evidence in any delinquency proceeding against the broker-dealer or agent, its officers, employees, or agents upon the facts stated therein, whether or not the report has been filed as provided in subsection (d)(5)(C).

(5)(A) The secretary of state shall deliver a copy of the examination report to the person examined, together with a notice affording such person 20 days or such additional reasonable period as the secretary of state for good cause may allow, within which to review the report and recommend changes therein.

(B) If so requested by the person examined, then, within the period allowed under subsection (d)(5)(A), or if deemed advisable by the secretary of state without such request, the secretary of state shall hold a closed hearing relative to the report and shall not file the report in the department until after such closed hearing and his or her order thereon; except, that the secretary of state may furnish a copy of the report to the governor, secretary of state or state treasurer pending final decision thereon.

(C) If no such closed hearing has been requested or held, then the examination report, with any modifications, that the secretary of state deems proper, shall be accepted by the secretary of state and filed upon expiration of the review period provided for in subsection (d)(5)(A). The report shall in any event be so accepted and filed within 6 months after final hearing thereon.

(D) The secretary of state shall forward to the person examined a copy of the examination report as filed, together with any recommendations or statements relating thereto which he or she deems proper.

(E) The report when so filed in the department shall be admissible in evidence in accordance with rules of the superior court, in any action or proceeding brought by the secretary of state against the person examined, or against its officers, employees, or agents. In any such action or proceeding, the secretary of state or his or her examiners may, however, at any time testify and offer proper evidence as to information secured or matters discovered during the course of an examination, whether or not a written report of the examination has been either made, furnished, or filed in the department.

(6) All reports pursuant to subsection (d) shall be absolutely privileged and although filed in the department as provided in subsection (d)(5) 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.

(7) The broker-dealer or other person examined pursuant to subsection (d) 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 agents shall be exempt from bearing the expense of examinations conducted pursuant to subsection (d), except for the mileage expenses to and from the examination incurred by the department.

(8) Notwithstanding any other provision of law, the broker-dealer or other person liable for the travel expense of an examination pursuant to subsection (d)(7) shall make such payment either directly to the individual conducting the examination, whether or not such individual is a classified state employee, or to the state of New Hampshire, as may be directed by the secretary of state. The secretary of state may direct that the travel expense allowance be paid directly to the individual conducting the examination. The compensation allowance shall be paid directly to the state. The amounts paid directly to individuals conducting the examination pursuant to subsection (d) may be in excess of any amounts that may be appropriated for such purposes.

(e) Custody and discretionary authority bond or insurance. Subject to the Securities Exchange Act of 1934, 15 U.S.C. section 78o(h), or the Investment Advisers Act of 1940, 15 U.S.C. section 80b-18a, a rule adopted or order issued under this chapter may require a broker-dealer or investment adviser that has custody of or discretionary authority over funds or securities of a customer or client to obtain insurance or post a bond or other satisfactory form of security in an amount not to exceed \$100,000. The secretary of state may determine the requirements of the insurance, bond, or other satisfactory form of security. Insurance or a bond or other satisfactory form of security may not be required of a broker-dealer registered under this chapter whose net capital exceeds, or of an investment adviser registered under this chapter whose minimum financial requirements exceed, the amounts required by rule or order under this chapter. The insurance, bond, or other satisfactory form of security must permit an action by a person to enforce any liability on the insurance, bond, or other satisfactory form of security if instituted within the time limitations in RSA 421-B:5-509(j)(2).

(f) Requirements for custody. Subject to the Securities Exchange Act of 1934, 15 U.S.C. section 78o(h), or the Investment Advisers Act of 1940, 15 U.S.C. section 80b-18a, an agent may not have custody of funds or securities of a customer except under the supervision of a broker-dealer and an investment adviser representative may not have custody of funds or securities of a client except under the supervision of an investment adviser or a federal covered investment adviser. An order issued under this chapter may prohibit, limit, or impose conditions on a broker-dealer regarding custody of funds or securities of a customer and on an investment adviser regarding custody of securities or funds of a client.

(g) Investment adviser brochure rule. Each investment adviser registered or required to be registered under this chapter shall furnish to its customers the information set forth in Part 2 of Form ADV.

(h) Continuing education. An order issued under this chapter may require an individual registered under RSA 421-B:4-402 or RSA 421-B:4-404 to participate in a continuing education program approved by the Securities and Exchange Commission and administered by a self-regulatory organization or, in the absence of such a program, a rule adopted or order issued under this chapter may require continuing education for an individual registered under RSA 421-B:4-404.

(i) Privacy provisions. A broker-dealer registered or required to be registered under this chapter and an investment adviser registered or required to be registered under this chapter shall comply with the privacy provisions of Regulation S-P adopted by the Securities and Exchange Commission.

(j) Requests for Information. The secretary of state may require at any reasonable time and in any reasonable manner from any person or company subject to this chapter:

(1) Statements, reports, including reports audited by independent public accountants, answers to questionnaires and other information, and evidence thereof, in whatever reasonable form he or she designates, and at such reasonable intervals as the secretary of state may choose, or from time to time;

(2) A full explanation of the programming of any data storage or communications systems in use; and

(3) Information from any books, records, electronic data processing systems, computers, or any other information storage system.

(k) Forms for reports. The secretary of state may prescribe forms for the reports under RSA 421-B:4-411(j). The forms shall be consistent, as far as practicable, with those prescribed by other states.

(l) Response to inquiries. Any officer, manager, or agent of any broker-dealer or investment adviser authorized to do or doing securities business in this state, and any person controlling or having a contract under which he or she has a right to control such a broker-dealer or investment adviser, whether exclusively or otherwise, and any person with executive authority over or in charge of any segment of such a broker-dealer's or investment adviser's business, shall reply promptly in writing or in other designated form, to any written inquiry from the secretary of state requesting a reply.

(m) Verification of communications. The secretary of state may require that any communication made to him or her under this section be verified.

(n) Privilege against defamation. In the absence of actual malice, no communication required by the secretary of state under this section shall subject the person making it to an action for damages for defamation.

(o) Privilege. The information obtained pursuant to RSA 421-B:4-411(j) shall be privileged.

(p) False filings. Any director, officer, agent, or employee of any broker-dealer, investment adviser, or agent who subscribes to, makes, or concurs in making or publishing, any annual or other statement required by law, having actual knowledge that the same contains any material statement which is false, shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person.

(q) Updating of information. If the information contained in any document filed with the secretary of state is or becomes inaccurate or incomplete in any material respect, the registrant or federal covered adviser shall file a correcting amendment promptly if the document is filed with respect to a registrant or when such amendment is required to be filed with the Securities and Exchange Commission if the document is filed with respect to a federal covered adviser, unless notification of the correction has been given under article 4.

(r) Incorporation of other securities laws and rules. Persons registered under this chapter to conduct securities business shall abide by the rules of the Securities and Exchange Commission, FINRA or successor organization, national and regional stock exchanges, and other self-regulatory organizations which have jurisdiction over the registrant, which set forth standards of conduct in the securities industry.

(s) Other Information for advisory clients. With respect to investment advisers, the secretary of state may require that certain information be furnished or disseminated as necessary or appropriate in the public interest or for the protection of investors and advisory clients. To the extent determined by the secretary of state, in the secretary of state's discretion, information furnished to clients or prospective clients of an investment adviser that would be in compliance with the Investment Advisers Act of 1940 and the rules thereunder may be used in whole or partial satisfaction of this requirement.

421-B:4-412 Denial, Revocation, Suspension, Withdrawal, Restriction, Condition, or Limitation of Registration.

(a) Disciplinary conditions, applicants. If the secretary of state finds that the order is in the public interest and subsection (d) authorizes the action, an order issued under this chapter may deny an application, or may condition or limit registration: (1) of an applicant to be a broker-dealer, agent, investment adviser, or investment adviser representative, and (2) if the applicant is a broker-dealer or investment adviser, of any partner, officer, director, person having a similar status or performing similar functions, or person directly or indirectly controlling the broker-dealer or investment adviser.

(b) Disciplinary conditions, registrants. If the secretary of state finds that the order is in the public interest and subsection (d) authorizes the action, an order issued under this chapter may revoke, suspend, condition, or limit the registration of a registrant, and if the registrant is a broker-dealer or investment adviser, any partner, officer, or director, any person having a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser. However, the secretary of state, under subsection (d)(5)(A) or (d)(5)(B), may not issue an order on the basis of an order under the state securities act of another state unless the other order was based on conduct for which subsection (d) would authorize the action had the conduct occurred in this state.

(c) Disciplinary penalties, registrants. If the secretary of state finds that the order is in the public interest and subsection (d) other than subsection (d)(7), (d)(11) or (d)(14) authorizes the action, an order under this chapter may censure, impose a bar, or impose a civil penalty in an amount not to exceed a maximum of \$2,500 for each violation on a registrant and if the registrant is (i) a broker-dealer or investment adviser, (ii) any partner, officer, or director, any person having similar functions, or (iii) any person directly or indirectly controlling the broker-dealer or investment adviser.

(d) Grounds for discipline. A person may be disciplined under subsections (a) through (c) if the person:

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

(2) willfully violated or willfully failed to comply with this chapter or the predecessor act or an order issued under this chapter or the predecessor act within the previous 10 years;

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

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

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

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

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

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

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

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

(F) a depository institution regulator suspending or barring a person from the depository institution business;

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

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

(8) refuses to allow or otherwise impedes the secretary of state from conducting an audit or inspection under RSA 421-B:4-411(d) or refuses access to a registrant's office to conduct an audit or inspection under RSA 421-B:4-411(d);

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

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

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

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

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

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

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

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

(14) is not qualified on the basis of factors such as training, experience, and knowledge of the securities business. However, in the case of an application by an agent for a broker-dealer that is a member of a self-regulatory organization or by an individual for registration as an investment adviser representative, a denial order may not be based on subsection (d)(14) if the individual has successfully completed all examinations

required by subsection (e). The secretary of state may require an applicant for registration under RSA 421-B:4-402 or RSA 421-B:4-404 who has not been registered in a state within the 2 years preceding the filing of an application in this state to successfully complete an examination.

(e) Examinations.

(1) Each applicant for individual broker-dealer registration or registration as an agent of a broker-dealer shall provide the secretary of state with proof of obtaining a passing score on the Uniform Securities Agent State Law Examination (Series 63 examination) or the Uniform Combined State Law Examination (Series 66 examination).

(2) Each applicant for individual investment adviser licensure or investment adviser representative registration shall provide the secretary of state with proof of obtaining a passing score on one of the following examination requirements:

(A) The Uniform Investment Adviser Law Examination (Series 65 examination); or

(B) The General Securities Representative Examination (Series 7 examination) and the Uniform Combined State Law Examination (Series 66 examination).

(3)(A) Any individual who was registered or licensed as an investment adviser or investment adviser representative in any jurisdiction in the United States on January 1, 2016 shall not be required to satisfy the examination requirements for investment adviser registration in this state, except that the secretary of state may require additional examinations for any individual found to have violated any state or federal securities law.

(B) Any individual who has not been registered or licensed in any jurisdiction for a period of 2 years shall be required to comply with the examination requirements.

(4)(A) The examination requirement shall not apply to an individual who upon application holds one of the following professional designations:

(i) Certified Financial Planner (CFP) awarded by the Certified Financial Planner Board of Standards, Inc.;

(ii) Chartered Financial Consultant (ChFC) awarded by the American College, Bryn Mawr, Pennsylvania;

(iii) Personal Financial Specialist (PFS) awarded by the American Institute of Certified Public Accountants;

(iv) Chartered Financial Analyst (CFA) awarded by the CFA Institute;

(v) Chartered Investment Counselor (CIC) awarded by the Investment Advisor Association; or

(vi) Such other professional designation as the secretary of state may by rule or order recognize.

(B) The examination requirements shall not apply to a solicitor that submits an application to the secretary of state containing:

(i) A request for a waiver of the examination requirements;

(ii) A copy of the solicitation agreement;

(iii) A copy of the disclosure document of the investment adviser on whose behalf the solicitor solicits or refers clients disclosing the arrangements between the solicitor and the investment adviser; and

(iv) An undertaking that, prior to, or at the time of, entering into any investment advisory contract with a client, the investment adviser will obtain from such client a signed and dated acknowledgment of receipt of the investment adviser's written disclosure statement and acknowledgment that the investment advisory contract is being entered into pursuant to a solicitation arrangement with the solicitor as described in the investment adviser's written disclosure statement.

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

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

(1) appropriate notice to the applicant or registrant;

(2) opportunity for hearing; and

(3) findings of fact and conclusions of law in a record in accordance with RSA 541-A.

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

Article 5
Fraud and Liabilities

421-B:5-501 Fraud and Liabilities.

(a) General fraud. It is unlawful for a person, in connection with the offer, sale, or purchase of a security, directly or indirectly, to:

- (1) employ a device, scheme, or artifice to defraud;
- (2) make an untrue statement of a material fact or to omit to state a material fact necessary in order to make the statement made, in the light of the circumstances under which they were made, not misleading; or
- (3) engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

(b) Supplemental provisions.

(1) Suitability of recommendation; reasonable grounds required.

(A) 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 the customer's other security holdings and as to the customer's financial situation and needs.

(B) 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:

- (i) The customer's financial status;
- (ii) The customer's tax status;
- (iii) The customer's investment objectives; and
- (iv) 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.

(2) Guarantees and excessive trading practices. It shall constitute a device, scheme or artifice to defraud within the meaning of this section for any person to:

(A) Represent in the offer or sale of securities, either directly or by implication, in writing or orally, that there is a guarantee against risk or loss;

(B) Induce excessive trading in a customer's account, or induce trading beyond that customer's known financial resources; or

(C) Effect transactions in the account of a customer without his knowledge or maintain discretionary accounts without written authorization.

(3) Recordkeeping and customer statements. Any act of any broker-dealer designed to effect with or for any customer's account, in respect to which such broker-dealer or his or her agent or employee is vested with any discretionary power, any transaction for the purchase or sale of a security shall constitute a "device, scheme or artifice to defraud" within the meaning of this section unless:

(A) immediately after effecting such transaction such broker-dealer make a record of such transaction, which record includes:

- (i) the name of such customer;
- (ii) the name, amount and price of the security; and
- (iii) the date and time when such transaction took place; and

(B) the broker-dealer sends each month to each customer in whose account such broker-dealer exercises any discretionary authority, an itemized statement showing the funds and securities in the custody or possession of the broker-dealer at the end of such period, and all debits, credits, and transactions in such client's account during such period.

(4) Deceptive representations and actions. Without implied limitation, the following shall be deemed schemes or artifices to defraud:

- (A) creating an atmosphere of false supply or demand or engaging in market manipulations.
- (B) creating unreasonable delays in delivering securities.
- (C) representing that securities will be listed on a national exchange or that application for listing will be made, without any basis in fact for such representation.
- (D) selling or soliciting the purchase of one security conditioned upon the customer's agreement to purchase another security.

421-B:5-502 Prohibited Conduct in Providing Investment Advice.

(a) Fraud in providing investment advice. It is unlawful for any person that advises others for compensation, either directly or indirectly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing, or selling securities or that, for compensation and as part of a regular business, issues or promulgates analyses or reports relating to securities:

- (1) to employ a device, scheme, or artifice to defraud another person; or

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

(b) Supplemental provisions.

(1) It shall constitute a fraudulent or deceptive act, practice, or course of business within the meaning of subsection (a) for any investment adviser registered or required to be registered to fail to disclose to any client or prospective client all material facts with respect to:

(A) a financial condition of the investment adviser that is reasonably likely to impair the ability of the investment adviser to meet contractual commitments to clients, if the investment adviser has discretionary authority (express or implied) or custody over such client's funds or securities, or requires prepayment of advisory fees of more than \$500 from such client, 6 months or more in advance; or

(B) a legal or disciplinary event that is material to an evaluation of the adviser's integrity or ability to meet contractual commitments to clients.

(2) A person who is an investment adviser or investment adviser representative is a fiduciary and has a duty to act primarily for the benefit of the person's clients. While the extent and nature of this duty varies according to the nature of the relationship between an investment adviser and the clients and the circumstances of each case, an investment adviser or investment adviser representative shall not engage in unethical business practices which constitute violations of subsection (a), including the following:

(A) Recommending to a client to whom investment supervisory, management, or consulting services are provided the purchase, sale, or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known by the investment adviser or investment adviser representative.

(B) Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within 10 business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both.

(C) Introducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives, and character of the account in light of the fact that an adviser in such situations can directly benefit from the number of securities transactions effected in a client's account. Subsection (b) (2)(B) appropriately forbids an excessive number of transaction orders to be induced by an investment adviser or investment adviser representative for a client's account.

(D) Placing an order to purchase or sell a security for the account of a client without the authority to do so.

(E) Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third party trading authorization from the client.

(F) Borrowing money or securities from a client unless a client is a broker-dealer, an affiliate of the investment adviser, or a financial institution engaged in the business of loaning funds.

(G) Loaning money to a client unless the investment adviser is a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment adviser.

(H) Misrepresenting to any advisory client, or prospective advisory client, the qualifications of the investment adviser, investment adviser representative, or any employee of the investment adviser, or misrepresenting the nature of the advisory services being offered or fees to be charged for such services, or omitting to state a material fact necessary to make the statements made regarding qualifications, services or fees, in light of the circumstances under which they are made, not misleading.

(I) Providing a report or recommendation to any advisory client prepared by someone other than the investment adviser or investment adviser representative without disclosing that fact. This prohibition does not apply to a situation where the investment adviser or investment adviser representative uses published research reports or statistical analysis to render advice or where a representative orders such a report in the normal course of providing service.

(J) Charging a client an unreasonable advisory fee.

(K) Failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the investment adviser, investment adviser representative, or any of its employees which could reasonably be expected to impair the rendering of unbiased and objective advice. including:

(i) Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients or such services; and

(ii) Charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to such advice will be received by the adviser or its employees.

(L) Guaranteeing a client that a specific result will be achieved, such as gain or no loss, with advice which will be rendered.

(M) Publishing, circulating, or distributing any advertisement which does not comply with Rule 206(4)-1 under the Investment Advisers Act of 1940, 17 C.F.R. 275.206(4)-1.

(N) Disclosing the identity, affairs, or investments of any client unless required by law to do so, or unless consented to in writing by the client.

(O) Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment adviser or investment adviser representative has custody or possession of such securities or funds when the adviser's action is subject to and does not comply with the requirements of Rule 206(4)-2 under the Investment Advisers Act of 1940, 17 C.F.R. 275.206(4)-2.

(P) Entering into, extending, or renewing any investment adviser contract unless such contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or non-performance, whether the contract grants discretionary power to the investment adviser or investment adviser representative, and that no assignment of such contract shall be made by the investment adviser without the written consent of the other party to the contract.

(Q) Entering into, extending, or renewing any investment adviser contract that provides for compensation to the investment adviser on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client.

(i) Subsection (b)(2)(Q) shall not:

(a) be construed to prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period, or as of definite dates, or taken as of a definite date; or

(b) apply to an investment advisory contract with a person (except a trust, governmental plan, collective trust fund, or separate account), provided that the contract relates to the investment of assets in excess of \$1,000,000, if the contract provides for compensation based on the asset value of the company or fund under management averaged over a specified period and increasing and decreasing proportionately with the investment performance of the company or fund over a specified period in relation to the investment record of an appropriate index of securities prices or such other measure of investment performance as the secretary of state by rule may specify.

(ii) Subsection (b)(2)(Q) shall not be deemed to prohibit an investment adviser from entering into, performing, renewing, or extending an investment advisory contract that provides for compensation to the investment adviser on the basis of a share of the capital gains upon, or the capital appreciation of, the funds, or any portion of the funds, of a client, provided that the client entering into the contract subject to subsection (b)(2)(Q) is a qualified client defined as any one of the following persons:

(a) A natural person who or a company that immediately after entering into the contract has as least \$750,000 under the management of the investment adviser.

(b) A natural person who or a company that the investment adviser entering into the contract (and any person acting on his behalf) reasonably believes, immediately prior to entering into the contract, either:

(1) has a net worth (together, in the case of a natural person, with assets held jointly with a spouse) of more than \$1,500,000 at the time the contract is entered into; or

(2) is a qualified purchaser as defined in the Investment Company Act of 1940, 14 U.S.C. 802-a(a)(51)(A), at the time the contract is entered into.

(c) A natural person who immediately prior to entering into the contract is:

(1) an executive officer, director, trustee, general partner, or person serving in a similar capacity, of the investment adviser; or

(2) an employee of the investment adviser (other than an employee performing solely clerical, secretarial or administrative functions with regard to the investment adviser) who, in connection with his or her regular functions or duties, participates in the investment activities of such investment adviser, provided that such employee has been performing such functions and duties for or on behalf of the investment adviser, or substantially similar functions or duties for or on behalf of another company for at least 12 months.

(d) The secretary of state, upon his or her own motion, or by order upon application, may conditionally or unconditionally exempt any person or transaction, or any class or classes of persons or transactions, from subsection (b)(2)(Q), if and to the extent that the exemption relates to an investment advisory contract with any person that the secretary of state determines does not need the protections of subsection (b)(d)(Q), on the basis of such factors as financial sophistication, net worth, knowledge of and experience in financial matters, amount of assets under management, relationship with a registered investment adviser, and such other factors as the secretary of state determines are consistent with subsection (b)(2).

(R) Failing to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information in violation of section 204A of the Investment Advisers Act of 1940.

(S) Entering into, extending, or renewing any advisory contract which would violate section 205 of the Investment Advisers Act of 1940. This provision shall apply to all investment advisers and investment adviser representatives registered or required to be registered under this chapter.

(T) Indicating, in an advisory contract, any condition, stipulation, or provisions binding any person to waive compliance with any provision of this chapter or of the Investment Advisers Act of 1940 or any other practice that would violate section 215 of the Investment Advisers Act of 1940.

(U) Engaging in any act, practice, or course of business which is fraudulent or deceptive in contravention of section 206(4) of the Investment Advisers Act of 1940, notwithstanding the fact that such investment adviser is not registered or required to be registered under section 203 of the Investment Advisers Act of 1940.

(V) Engaging in conduct or any act, indirectly or through or by any other person, which would be unlawful for such person to do directly under the provisions of this chapter or any rule adopted under it.

(3) The conduct set forth in subsection (b)(2) is not inclusive. Engaging in other conduct such as non-disclosure, incomplete disclosure, or deceptive practices, shall be deemed an unethical business practice. The federal statutory and regulatory provisions referenced in subsection (b)(2) shall apply to investment advisers and investment adviser representatives, regardless of whether the federal provision limits its application to investment advisers subject to federal registration.

421-B:5-502-A Custody of Client Funds or Securities by Investment Advisers.

(a) Safekeeping required. It is unlawful and deemed to be a fraudulent or deceitful act, practice, or course of business for an investment adviser, registered or required to be registered, to have custody of client funds or securities unless:

(1) Notice to secretary of state. The investment adviser notifies the secretary of state promptly in writing that the investment adviser has or may have custody. Such notification is required to be given on Form ADV;

(2) Qualified custodian. A qualified custodian maintains those funds and securities:

(A) in a separate account for each client under that client's name; or

(B) in accounts that contain only the investment adviser's clients' funds and securities, under the investment adviser's name as agent or trustee for the clients, or, in the case of a pooled investment vehicle that the investment adviser manages, in the name of the pooled investment vehicle.

(3) Notice to clients. If an investment adviser opens an account with a qualified custodian on its client's behalf, under the client's name, under the name of the investment adviser as agent, or under the name of a pooled investment vehicle, the investment adviser must notify the client in writing of the qualified custodian's name, address, and the manner in which the funds or securities are maintained, promptly when the account is opened and following any changes to this information. If the investment adviser sends account statements to a client to which the investment adviser is required to provide this notice, the investment adviser must include in the notification provided to that client and in any subsequent account statement the investment adviser sends that client a statement urging the client to compare the account statements from the custodian with those from the investment adviser.

(4) Account statements. The investment adviser has a reasonable basis, after due inquiry, for believing that the qualified custodian sends an account statement, at least quarterly, to each client for which it maintains funds or securities, identifying the amount of funds and the amount of each security in the account at the end of the period and setting forth all transactions in the account during that period.

(5) Special rule for limited partnerships and limited liability companies. If the investment adviser or a related person is a general partner of a limited partnership (or managing member of a limited liability company, or holds a comparable position for another type of pooled investment vehicle), the account statements required under subsection (a)(4) must be sent to each limited partner (or member or other beneficial owner).

(6) Independent verification. The client funds and securities of which the investment adviser has custody are verified by actual examination at least once during each calendar year, by an independent certified public accountant, pursuant to a written agreement between the investment adviser and the independent certified public accountant, at a time that is chosen by the independent certified public accountant without prior notice or announcement to the investment adviser and that is irregular from year to year. The written agreement must provide for the first examination to occur within 6 months of becoming subject to subsection (a)(6), except that, if the investment adviser maintains client funds or securities pursuant to this section as a qualified custodian, the agreement must provide for the first examination to occur no later than 6 months after obtaining the internal control report. The written agreement must require the independent certified public accountant to:

(A) file a certificate on Form ADV-E with the secretary of state within 120 days of the time chosen by the independent certified public accountant in subsection (a)(6), stating that it has examined the funds and securities and describing the nature and extent of the examination.

(B) notify the secretary of state within one business day of the finding of any material discrepancies during the course of the examination, by means of a facsimile transmission or electronic mail, followed by first class mail, directed to the attention of the secretary of state; and

(C) file within 4 business days of the resignation or dismissal from, or other termination of, the engagement, or removing itself or being removed from consideration for being reappointed, Form ADV-E accompanied by a statement that includes:

(i) The date of such resignation, dismissal, removal, or other termination, and the name, address, and contact information of the independent certified public accountant; and

(ii) An explanation of any problems relating to examination scope or procedure that contributed to such resignation, dismissal, removal, or other termination.

(7) Investment advisers acting as qualified custodians. If the investment adviser maintains, or if the investment adviser has custody because a related person maintains, client funds or securities pursuant to this section as a qualified custodian in connection with advisory services the investment adviser provides to clients, the following shall apply:

(A) The independent certified public accountant the investment adviser retains to perform the independent verification required by subsection (a)(6) must be registered with, and subject to regular inspection as of the commencement of the professional engagement period, and as of each calendar year-end, by, the Public Company Accounting Oversight Board in accordance with its rules; and

(B) The investment adviser must obtain, or receive from its related person, within 6 months of becoming subject to subsection (a)(7) and thereafter no less frequently than once each calendar year a written internal control report prepared by an independent certified public accountant:

(i) The internal control report must include an opinion of an independent certified public accountant as to whether controls have been placed in operation as of a specific date, and are suitably designed and are operating effectively to meet control objectives relating to custodial services, including the safeguarding of funds and securities held by either the investment adviser or a related person on behalf of the investment adviser's clients, during the year;

(ii) The independent certified public accountant must verify that the funds and securities are reconciled to a custodian other than the investment adviser or the investment advisers related person; and

(iii) The independent certified public accountant must be registered with, and subject to regular inspection as of the commencement of the professional engagement period, and as of each calendar year-end, by, the Public Company Accounting Oversight Board in accordance with its rules.

(8) Independent representatives. A client may designate an independent representative to receive, on his or her behalf, notices and account statements as required under subsections (a)(3) and (a)(4).

(b) Exceptions.

(1) Shares of open end mutual funds. With respect to shares of an open end mutual fund, the investment adviser may use the open end mutual fund's transfer agent in lieu of a qualified custodian for purposes of complying with subsection (a);

(2) Certain privately offered securities.

(A) The investment adviser is not required to comply with subsection (a)(2) with respect to securities that are:

(i) acquired from the issuer in a transaction or chain of transactions not involving any public offering; and

(ii) uncertificated and ownership thereof is recorded only on the books of the issuer or its transfer agent in the name of the client; and transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer.

(iii) Notwithstanding subsection (b)(2)(A), subsection (b)(2) shall apply with respect to securities held for the account of a limited partnership (or limited liability company, or other type of pooled investment vehicle) only if the limited partnership is audited, and the audited financial statements are distributed, as described in subsection (b)(4) and the investment adviser notifies the secretary of state in writing that the investment adviser intends to provide audited financial statements, as described in subsection (a). Such notification is required to be provided on Form ADV.

(3) Fee deduction. Notwithstanding subsection (a)(6), an investment adviser is not required to obtain an independent verification of client funds and securities maintained by a qualified custodian if all of the following conditions are met:

(A) The investment adviser has custody of the funds and securities solely as a consequence of its authority to make withdrawals from client accounts to pay its advisory fee;

(B) The investment adviser has written authorization from the client to deduct advisory fees from the account held with the qualified custodian;

(C) Each time a fee is directly deducted from a client account, the investment adviser concurrently:

(i) sends the qualified custodian an invoice or statement of the amount of the fee to be deducted from the client's account; and

(ii) sends the client an invoice or statement itemizing the fee. Itemization includes the formula used to calculate the fee, the amount of assets under management the fee is based on, and the time period covered by the fee; and

(D) The investment adviser notifies the secretary of state in writing that the investment adviser intends to use the safeguards provided in subsection (b)(3). Such notification is required to be given on Form ADV.

(4) Limited partnerships subject to annual audit. An investment adviser is not required to comply with subsections (a)(3) and (a)(4) and shall be deemed to have complied with subsection (a)(6) with respect to the account of a limited partnership (or limited liability company, or another type of pooled investment vehicle) if each of the following conditions are met:

(A) The adviser sends to all limited partners (or members or other beneficial owners) at least quarterly, a statement showing:

(i) the total amount of all additions to and withdrawals from the fund as a whole as well as the opening and closing value of the fund at the end of the quarter based on the custodian's records;

(ii) a listing of all long and short positions on the closing date of the statement in accordance with FASB Rule ASC 946-210-50; and

(iii) the total amount of additions to and withdrawals from the fund by the investor as well as the total value of the investor's interest in the fund at the end of the quarter;

(B) At least annually the fund is subject to an audit and distributes its audited financial statements prepared in accordance with generally accepted accounting principles to all limited partners (or members or other beneficial owners) and the secretary of state within 120 days of the end of its fiscal year;

(C) The audit is performed by an independent certified public accountant that is registered with, and subject to regular inspection as of the commencement of the professional engagement period, and as of each calendar year-end, by, the Public Company Accounting Oversight Board in accordance with its rules;

(D) Upon liquidation, the adviser distributes the fund's final audited financial statements prepared in accordance with generally accepted accounting principles to all limited partners (or members or other beneficial owners) and the secretary of state promptly after the completion of such audit;

(E) The written agreement with the independent certified public accountant must require the independent certified public accountant to, upon resignation or dismissal from, or other termination of, the engagement, or upon removing itself or being removed from consideration for being reappointed, notify the secretary of state within 4 business days accompanied by a statement that includes:

(i) The date of such resignation, dismissal, removal, or other termination, and the name, address, and contact information of the independent certified public accountant; and

(ii) An explanation of any problems relating to audit scope or procedure that contributed to such resignation, dismissal, removal, or other termination;

(F) The investment adviser must also notify the secretary of state in writing that the investment adviser intends to employ the use of the statement delivery and audit safeguards described above. Such notification is required to be given on Form ADV.

(5) Registered investment companies. The investment adviser is not required to comply with this section with respect to the account of an investment company registered under the Investment Company Act of 1940.

(c) Delivery to related persons. Sending an account statement under subsection (a)(5) or distributing audited financial statements under subsection (b)(4) shall not satisfy the requirements of this section if such account statements or financial statements are sent solely to limited partners (or members or other beneficial owners) that themselves are limited partnerships (or limited liability companies, or another type of pooled investment vehicle) and are related persons of the investment adviser.

(d) Definitions. For purposes of this section the following definitions shall apply:

(1) "Control" means the power, directly or indirectly, to direct the management or policies of a person whether through ownership of securities, by contract, or otherwise. Control includes:

(A) (or persons having similar status or functions) is presumed to control the investment adviser;

(B) A person is presumed to control a corporation if the person:

(i) directly or indirectly has the right to vote 25 percent or more of a class of the corporation's voting securities; or

(ii) has the power to sell or direct the sale of 25 percent or more of a class of the corporation's voting securities;

(C) A person is presumed to control a partnership if the person has the right to receive upon dissolution, or has contributed, 25 percent or more of the capital of the partnership;

(D) A person is presumed to control a limited liability company if the person:

(i) directly or indirectly has the right to vote 25 percent or more of a class of the interests of the limited liability company;

(ii) has the right to receive upon dissolution, or has contributed, 25 percent or more of the capital of the limited liability company; or

(iii) is an elected manager of the limited liability company; and

(E) A person is presumed to control a trust if the person is a trustee or managing agent of the trust.

(2) "Custody" means holding directly or indirectly, client funds or securities, having any authority to obtain possession of them or having the ability to appropriate them. The investment adviser has custody if a related person holds, directly or indirectly, client funds or securities, or has any authority to obtain possession of them, in connection with advisory services the investment adviser provides to clients.

(A) Custody includes:

(i) Possession of client funds or securities unless the investment adviser receives them inadvertently and returns them to the sender promptly but in any case within 3 business days of receiving them;

(ii) Any arrangement (including a general power of attorney) under which the investment adviser is authorized or permitted to withdraw client funds or securities maintained with a custodian upon the investment adviser's instruction to the custodian; and

(iii) Any capacity (such as general partner of a limited partnership, managing member of a limited liability company or a comparable position for another type of pooled investment vehicle, or trustee of a trust) that gives the investment adviser or its supervised person legal ownership of or access to client funds or securities.

(B) Receipt of checks drawn by clients and made payable to third parties will not meet the definition of custody if forwarded to the third party within 3 business days of receipt and the investment adviser maintains a ledger or other listing of all securities or funds held or obtained, including the following information:

(i) Issuer;

(ii) Type of security and series;

(iii) Date of issue;

(iv) For debt instruments, the denomination, interest rate, and maturity date;

(v) Certificate number, including alphabetical prefix or suffix;

(vi) Name in which registered;

(vii) Date given to the adviser;

(viii) Date sent to client or sender;

(ix) Form of delivery to client or sender, or copy of the form of delivery to client or sender; and

(x) Mail confirmation number, if applicable, or confirmation by client or sender of the fund's or security's return.

(3) "Independent certified public accountant" means a certified public accountant that meets the standards of independence described in Rule 2-01(b) and (c) of Regulation S-X 17 C.F.R. 210.2- 01(b) and (c).

(4) "Independent party" means a person that:

(A) is engaged by the investment adviser to act as a gatekeeper for the payment of fees, expenses and capital withdrawals from the pooled investment;

(B) does not control and is not controlled by and is not under common control with the investment adviser;

(C) does not have, and has not had within the past 2 years, a material business relationship with the investment adviser; and

(D) shall not negotiate or agree to have material business relations or commonly controlled relations with an investment adviser for a period of 2 years after serving as the person engaged in an independent party agreement.

(5) "Independent representative" means a person who:

(A) acts as agent for an advisory client, including in the case of a pooled investment vehicle, for limited partners or a limited partnership, members of a limited liability company, or other beneficial owners of another type of pooled investment vehicle and by law or contract is obliged to act in the best interest of the advisory client or the limited partners, members, or other beneficial owners;

(B) does not control, is not controlled by, and is not under common control with investment adviser; and

(C) does not have, and has not had within the past 2 years, a material business relationship with the investment adviser.

(6) "Qualified custodian" means the following:

(A) A bank or savings association that has deposits insured by the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act;

(B) A trust company;

(C) A broker-dealer registered in this jurisdiction and with the SEC holding the client assets in customer accounts;

(D) A registered futures commission merchant registered under section 4f(a) of the Commodity Exchange Act, holding the client assets in customer accounts, but only with respect to clients' funds and security futures, or other securities incidental to transactions in contracts for the purchase or sale of a commodity for future delivery and options thereon; and

(E) A foreign financial institution that customarily holds financial assets for its customers, provided that the foreign financial institution keeps the advisory clients' assets in customer accounts segregated from its proprietary assets.

(7) "Related person" means any person, directly or indirectly, controlling or controlled by the investment adviser, or any person that is under common control with the investment adviser.

421-B:5-503 Evidentiary Burden.

(a) Civil. In a civil action or administrative proceeding under this chapter, a person claiming an exemption, exception, preemption, or exclusion has the burden to prove the applicability of the claim.

(b) Criminal. In a criminal proceeding under this chapter, a person claiming an exemption, exception, preemption, or exclusion has the burden of going forward with evidence of the claim.

421-B:5-504 Filing of Sales and Advertising Literature.

(a) Filing requirement. Except as otherwise provided in subsection (b), an order issued under this chapter may require the filing of a prospectus, pamphlet, circular, form letter, advertisement, sales literature, or other advertising record relating to a security or investment advice, addressed or intended for distribution to prospective investors, including clients or prospective clients of a person registered or required to be registered as an investment adviser under this chapter.

(b) Secretary of state's discretionary information requests. The secretary of state may require at any reasonable time and in any reasonable manner from any person or issuer subject to this title, statements; reports, including reports audited by independent public accountants and sales reports; answers to questionnaires; and other information and evidence thereof, in whatever reasonable form the secretary of state designates, and at such reasonable intervals as the secretary of state may choose, or from time to time.

(c) Excluded communications. This section does not apply to sales and advertising literature specified in subsection (a), or statements, reports or any other information referenced in subsection (b), which relate to a federal covered security, a federal covered investment adviser, or a security or transaction exempted by RSA 421-B:2-201, RSA 421-B:2-202, or RSA 421-B:2-203 except as required pursuant to RSA 421-B:2-201(7).

421-B:5-505 Misleading Filings. It is unlawful for a person to make or cause to be made, in a record that is used in an action or proceeding or filed under this chapter, a statement that, at the time and in the light of the circumstances under which it is made, is false or misleading in a material respect, or, in connection with the statement, to omit to state a material fact necessary to make the statement made, in the light of the circumstances under which it was made, not false or misleading.

421-B:5-506 Misrepresentations Concerning Registration or Exemption. The filing of an application for registration, a registration statement, a notice filing under this chapter, the registration of a person, the notice filing by a person, or the registration of a security under this chapter does not constitute a finding by the secretary of state that a record filed under this chapter is true, complete, and not misleading. The filing or registration or the availability of an exemption, exception, preemption, or exclusion for a security or a transaction does not mean that the secretary of state has passed upon the merits or qualifications of, or recommended or given approval to, a person, security, or transaction. It is unlawful to make, or cause to be made, to a purchaser, customer, client, or prospective customer or client a representation inconsistent with this section.

421-B:5-507 Qualified Immunity. A broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative is not liable to another broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative for defamation relating to a statement that is contained in a record required by the secretary of state, or designee of the secretary of state, the Securities and Exchange Commission, or a self-regulatory organization, unless the person knew, or should have known at the time that the statement was made, that it was false in a material respect or the person acted in reckless disregard of the statement's truth or falsity.

421-B:5-508 Criminal Penalties.

(a) Any person who willfully violates any provisions of RSA 421-B:5-501(a) or RSA 421-B:5-502(a) or a cease and desist order or injunction issued pursuant to RSA 421-B:6-603 or RSA 421-B:6-604, or who violates RSA 421-B:5-505 knowing that the statement was false or misleading in any material respect, shall be guilty of a class B felony. Each of the acts specified shall constitute a separate offense and a prosecution or conviction for any one of such offenses shall not bar prosecution or conviction for any other offense.

(b) Any person who willfully violates RSA 421-B:4-401(a), RSA 421-B:4-402(a), RSA 421-B:4-403(a), RSA 421-B:3-301(a), or RSA 421-B:5-506 shall be guilty of a misdemeanor. Each of the acts specified shall constitute a separate offense and a prosecution or conviction for any one of such offenses shall not bar prosecution or conviction for any other offense. For any subsequent offense, any person shall be guilty of a class B felony.

(c) Nothing in this chapter limits the power of the state to punish any person for any conduct which constitutes a crime by statute.

421-B:5-509 Civil Liability.

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

(b) Liability of seller to purchaser. A person is liable to the purchaser if the person sells a security in violation of RSA 421-B:3-301 or, by means of an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading, the purchaser not knowing the untruth or omission and the seller not sustaining the burden of proof that the seller did not know and, in the exercise of reasonable care, could not have known of the untruth or omission. An action under this subsection (b) is governed by the following:

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

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

(3) Actual damages in an action arising under subsection (b) are the amount that would be recoverable upon a tender less the value of the security when the purchaser disposed of it, and interest at the legal rate of interest from the date of the purchase, costs, and reasonable attorneys' fees determined by the court.

(c) Liability of purchaser to seller. A person is liable to the seller if the person buys a security by means of an untrue statement of a material fact or omission to state a material fact necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading, the seller not knowing of the untruth or omission, and the purchaser not sustaining the burden of proof that the purchaser did not know, and in the exercise of reasonable care, could not have known of the untruth or omission. An action under subsection (c) is governed by the following:

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

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

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

(d) Liability of unregistered broker-dealer and agent. A person acting as a broker-dealer or agent that sells or buys a security in violation of RSA 421-B:4-401(a), RSA 421-B:4-402(a), or RSA 421-B:5-506 is liable to the customer. The customer, if a purchaser, may maintain an action for recovery of actual damages as specified in subsections (b)(1) through (c)(3), or, if a seller, for a remedy as specified in subsections (c)(1) through (c)(3).

(e) Liability of unregistered investment adviser and investment adviser representative. A person acting as an investment adviser or investment adviser representative that provides investment advice for compensation in violation of RSA 421-B:4-403(a), RSA 421-B:4-404(a), or RSA 421-B:5-506 is liable to the client. The client may maintain an action to recover the consideration paid for the advice, interest at the legal rate of interest from the date of payment, costs, and reasonable attorneys' fees determined by the court.

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

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

(2) This subsection does not apply to a broker-dealer or its agents if the investment advice provided is solely incidental to transacting business as a broker-dealer and no special compensation is received for the investment advice.

(g) Joint and several liability. The following persons are liable jointly and severally with and to the same extent as persons liable under subsections (b) through (f):

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

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

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

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

(h) No civil cause of action. No civil cause of action may be based solely upon the failure of a broker-dealer or agent to comply with the registration requirements of RSA 421-B:4-401(a) or RSA 421-B:4-402(a), except a cause of action arising under subsection (d), RSA 421-B:6-603, or RSA 421-B:6-604.

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

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

(k) Statute of limitations. A person may not obtain relief:

(1) under subsection (b) for violation of RSA 421-B:3-301, or under subsection (d) or (e), unless the action is instituted within 2 years after the violation occurred; or

(2) under subsection (b), other than for violation of RSA 421-B:3-301, or under subsection (c) or (f), unless the action is instituted within the earlier of 2 years after discovery of the facts constituting the violation and 6 years after the violation.

(l) No enforcement of violative contract. A person that has made, or has engaged in the performance of, a contract in violation of this chapter or a rule adopted or order issued under this chapter, or that has acquired a purported right under the contract with knowledge of conduct by reason of which its making or performance was in violation of this chapter, may not base an action on the contract.

(m) No contractual waiver. A condition, stipulation, or provision binding a person purchasing or selling a security or receiving investment advice to waive compliance with this chapter or a rule adopted or order issued under this chapter is void.

(n) Survival of other rights or remedies. The rights and remedies provided by this chapter are in addition to any other rights or remedies that may exist, but this chapter does not create a cause of action not specified in this section or RSA 421-B:4-411(e).

421-B:5-510 Rescission Offers. A purchaser or seller of a security, or a recipient of investment advice may not maintain an action under RSA 421-B:5-509 if:

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

(A) an offer stating the respect in which liability under RSA 421-B:5-509 may have arisen and fairly advising the purchaser, seller, or recipient of investment advice of that person's rights in connection with the offer, and any financial or other information necessary to correct all material misrepresentations or omissions in the information that was required by this chapter to be furnished to that person at the time of the purchase, sale, or investment advice;

(B) if the basis for relief under this section may have been a violation of RSA 421-B:5-509(b), an offer to repurchase the security for cash, payable on delivery of the security, equal to the consideration paid, and interest at the legal rate of interest from the date of the purchase, less the amount of any income received on the security, or, if the purchaser no longer owns the security, an offer to pay the purchaser upon acceptance of the offer damages in an amount that would be recoverable upon a tender, less the value of the security when the purchaser disposed of it, and interest at the legal rate of interest from the date of the purchase in cash equal to the damages computed in the manner provided in subsection (1);

(C) if the basis for relief under this section may have been a violation of RSA 421-B:5-509(c), an offer to tender the security, on payment by the seller of an amount equal to the purchase price paid, less income received on the security by the purchaser and interest at the legal rate of interest from the date of the sale; or if the purchaser no longer owns the security, an offer to pay the seller upon acceptance of the offer, in cash, damages in the amount of the difference between the price at which the security was purchased and the value the security would have had at the time of the purchase in the absence of the purchaser's conduct that may have caused liability and interest at the legal rate of interest from the date of the sale;

(D) if the basis for relief under this section may have been a violation of RSA 421-B:5-509(d); and if the customer is a purchaser, an offer to pay as specified in subsection (1)(B); or, if the customer is a seller, an offer to tender or to pay as specified in subsection (1)(C);

(v) if the basis for relief under this section may have been a violation of RSA 421-B:5-509(e), an offer to reimburse in cash the consideration paid for the advice and interest at the legal rate of interest from the date of payment; or

(vi) if the basis for relief under this section may have been a violation of RSA 421-B:5-509(f), an offer to reimburse in cash the consideration paid for the advice, the amount of any actual damages that may have been caused by the conduct, and interest at the legal rate of interest from the date of the violation causing the loss;

(2) the offer under subsection (1) states that it must be accepted by the purchaser or seller of a security, or the recipient of investment advice within 30 days after the date of its receipt by the purchaser, seller, or recipient of investment advice or any shorter period, of not less than 3 days, that the secretary of state, by order, specifies;

(3) the offeror has the present ability to pay the amount offered (a firm financing commitment from a reputable investor or other reputable financial source may be included in present ability to pay the amount offered) or, if the purchaser of a security, has the present ability to tender the security under subsection (1);

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

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

(6) The offer under subsection (1) is required to be filed with the secretary of state 20 days before the offering and conform in form and content as prescribed by order of the secretary of state.

Article 6

Administration and Judicial Review

421-B:6-601 Administration of Chapter.

(a) Administration. The secretary of state shall administer this chapter. The secretary of state may appoint deputy secretaries of state or designees who shall serve as director and who may be classified or unclassified employees whose salary shall be that of or comparable to that of a deputy secretary of state, to administer the provisions of this chapter. The secretary of state may also appoint deputy directors who shall perform such duties as may be assigned by the secretary of state, deputy secretary of state, or designee, or director, to administer the provisions of this chapter. The secretary of state shall, to the greatest extent practical, physically and substantively consolidate the activities and functions related to corporations, limited partnerships, and other business organizations and entities administered by the department of state with the activities and functions related to the registration of securities.

(b) Notwithstanding any other provision of law, the secretary of state shall have exclusive authority and jurisdiction:

(1) To register securities.

(2) To license the following:

(A) Broker-dealers.

(B) Investment advisers.

(C) Agents.

(D) Investment adviser representatives.

(3) Together with the attorney general, to issue, amend, or rescind such orders as are reasonably necessary to carry out the provisions of this chapter.

(4) To bring administrative actions to enforce the securities law.

(5) To investigate and impose penalties for violations of the securities laws, including:

(A) Revoking, suspending, or denying licenses and registrations.

(B) Fines.

(C) Rescission, restitution, or disgorgement.

(6) Together with the attorney general, to bring actions pursuant to RSA 421-B:6-603.

(7) To investigate conduct that would be an unfair or deceptive act or practice under RSA 358-A and that is subject to the jurisdiction of the director of securities regulation pursuant to RSA 358-A:3, I.

(8) To issue letters of censure, caution, warning, or admonition pursuant to audits or inspections under RSA 421-B:4-409(d), investigations under RSA 421-B:6-602, or hearings under RSA 421-B:6-613.

(c) The exclusive authority and jurisdiction to issue licenses pursuant to RSA 421-B:6-601(b)(2) shall not be read to limit the authority of the department of insurance to license sellers of products where licensure is required both by RSA 421-B and Title XXXVII.

(d) The secretary of state shall have all powers specifically granted or reasonably implied in order to perform the substantive responsibilities imposed by this chapter.

(e) Unlawful use of records or information. It is unlawful for the secretary of state or officer, employee, or designee of the secretary of state to use for personal benefit or the benefit of others records or other information obtained by or filed with the secretary of state that are not public under RSA 421-B:6-607(b). The secretary of state may disclose records or information in accordance with RSA 91-A.

(f) No common law privilege or exemption created or diminished. Except for the privilege from defamation in RSA 421-B:4-406(i), this chapter does not create or diminish any privilege or exemption that exists at common law, by statute, rule, or otherwise.

(g) Investor education. The secretary of state may develop and implement investor education initiatives to inform the public about investing in securities, with particular emphasis on the prevention and detection

of securities fraud. In developing and implementing these initiatives, the secretary of state may collaborate with public and nonprofit organizations with an interest in investor education. The secretary of state may accept grants or donations from a person that is not affiliated with the securities industry or from a nonprofit organization, regardless of whether or not the organization is affiliated with the securities industry, to develop and implement investor education initiatives. This subsection does not authorize the secretary of state to require participation or monetary contributions of a registrant in an investor education program.

(h) Investor education fund. All moneys collected as an administrative penalty under this chapter and all moneys collected pursuant to RSA 421-B:6-614(a)(6) and (7) shall be credited to an investor education fund to be maintained by the state treasurer. Funds in excess of \$725,000 at the end of each fiscal year shall be credited to the general fund. The secretary of state, after deducting administrative costs, shall use moneys credited to that fund to provide information to residents of this state about investments in securities, to help investors and potential investors evaluate their investment decisions, protect themselves from unfair, inequitable, or fraudulent offerings, choose their broker-dealers, agents, or investment advisers more carefully, be alert for false or misleading advertising or other harmful practices, and know their rights as investors. The state treasurer shall pay the expenses of investor education out of the investor education fund consisting of the funds. The investor education fund shall be nonlapsing and continually appropriated for the purpose of paying the expenses of investor education, except that the fund shall at no time exceed \$725,000.

421-B:6-602 Investigations and Subpoenas.

(a) Authority to investigate. The secretary of state may:

(1) conduct public or private investigations within or outside of this state that the secretary of state considers necessary or appropriate to determine whether any person has violated, is violating, or is about to violate this chapter or an order issued under this chapter, or to aid in the enforcement of this chapter or in the adoption of forms under this chapter;

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

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

(4) hold hearings, upon reasonable notice, in respect to any matter arising out of the administration of this chapter;

(5) conduct investigations and hold hearings for the purpose of compiling information with a view to recommending changes in this chapter to the legislature; and

(6) require a broker-dealer, agent, or issuer, subject to the limitations set forth in section 18 of the Securities Act of 1933, to report to the secretary of state all transactions as they pertain to any security. Such reports shall be made within 10 days after demand therefor by the secretary of state and shall be open for public inspection only upon a court order. The secretary of state shall not make known, in any manner not provided by law, any information contained in such reports.

(b) Secretary of state's powers to investigate. For the purpose of an investigation under this chapter, the secretary of state or a designated officer may administer oaths and affirmations, subpoena witnesses, seek compulsion of attendance, take evidence, require the filing of a statement, and require the production of any records that the secretary of state considers relevant or material to the investigation.

(c) Procedure and remedies for noncompliance. If a person fails to appear or refuses to testify, file a statement, produce records, or otherwise fails to obey a subpoena as required by the secretary of state under this chapter, the attorney general or the secretary of state may apply to the superior court or a court of another state to enforce compliance. The court may:

(1) hold the person in contempt;

(2) order the person to appear before the attorney general or secretary of state;

(3) order the person to testify about the matter under investigation or in question;

(4) order the production of records;

(5) grant injunctive relief, including restricting or prohibiting the offer or sale of securities or the providing of investment advice;

(6) order a civil penalty of not less than \$2,500 for each violation; and

(7) grant any other necessary or appropriate relief.

(d) Assistance to securities regulator of another state. At the request of the securities regulator of another state or a foreign jurisdiction, the secretary of state may provide assistance if the requesting regulator states that it is conducting an investigation to determine whether a person has violated, is violating, or is about to violate a law or rule of the other state or foreign jurisdiction relating to securities matters which the requesting regulator administers or enforces. The secretary of state may provide the assistance by using the authority to investigate and the powers conferred by this section as the secretary of state determines is necessary or appropriate. The assistance may be provided without regard to whether the facts stated in the request

would also constitute a violation of this chapter or other law of this state if occurring in this state. In deciding whether to provide the assistance, the secretary of state may consider whether the requesting regulator is permitted and has agreed to provide assistance reciprocally within its state or foreign jurisdiction to the secretary of state on securities matters when requested; whether compliance with the request would violate or prejudice the public policy of this state; and the availability of resources and employees of the secretary of state to carry out the request for assistance.

421-B:6-603 Civil Enforcement.

(a) Civil action instituted by attorney general or secretary of state. If it appears to the attorney general or secretary of state that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this chapter or an order issued under this chapter, or that a person has, is, or is about to engage in an act, practice, or course of business that materially aids a violation of this chapter or an order issued under this chapter, the attorney general or the secretary of state may maintain an action in the superior court to enjoin the act, practice, or course of business and to enforce compliance with this chapter or an order issued under this chapter. 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.

(b) Relief available. In an action under this section and upon a proper showing, the court may:

(1) grant or require a permanent or temporary injunction, restraining order, writ of mandamus, or a declaratory judgment;

(2) issue an order for other appropriate or ancillary relief, to include:

(A)(i) 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 secretary of state, for the defendant or the defendant's assets.

(ii) Notwithstanding any law to the contrary, the court may grant, upon a proper showing by the secretary of state, a writ of attachment for the state of New Hampshire for the benefit of all aggrieved investors identified by the secretary of state which will have priority over any other attachment or lien granted in connection with a civil action brought by an aggrieved investor asserting a claim based on the same act or omission.

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

(C) the imposition of a civil penalty up to a maximum of \$5,000 for a single violation; an order of rescission, restitution, or disgorgement directed to a person that has engaged in an act, practice, or course of business constituting a violation of this chapter or the predecessor act or an order issued under this chapter or the predecessor act; and

(D) an order for the payment of prejudgment and postjudgment interest; or

(3) granting other relief that the court considers appropriate.

(c) No bond requirement. The attorney general or the secretary of state may not be required to post a bond.

(d) 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.

421-B:6-604 Administrative Enforcement.

(a) Issuance of an order or notice. If the secretary of state determines that a person has engaged, is engaging, or is about to engage, in an act, practice, or course of business constituting a violation of this chapter or an order issued under this chapter, or that a person has, is, or is about to materially aid an act, practice, or course of business constituting a violation of this chapter or an order issued under this chapter, the secretary of state may:

(1) issue an order directing the person to cease and desist from engaging in the act, practice, or course of business or to take other action necessary or appropriate to comply with this chapter; or

(2) issue an order under RSA 421-B:2-204.

(b) Summary process. An order under subsection (a) is effective on the date of issuance. Upon issuance of the order, the secretary of state shall promptly serve each person subject to the order with a copy of the order and a notice that the order has been entered. The order shall include a statement of the reasons for the order and notice that, within 15 days after receipt of a request in a record from the person, the matter will be scheduled for a hearing. If a person subject to the order does not request a hearing and none is ordered by the secretary of state within 30 days after the date of service of the order, the order becomes final as to that person. If a hearing is requested or ordered, the secretary of state, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend it until final determination. 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.

(c) Procedure for final order. If a hearing is requested or ordered pursuant to subsection (b), a hearing shall be held pursuant to RSA 421-B:6-612. In accordance with RSA 421-B:6-612, the secretary of state shall issue a written decision stating the action to be taken by the department and may set forth findings of fact, conclusions of law, and disposition. The final order may make final, vacate, or modify the order issued under subsection (a).

(d) Civil penalty. In a final order, the secretary of state may impose a civil penalty up to a maximum of \$2,500 for a single violation. In addition, every such person who is subject to such civil penalty, upon hearing, and in addition to any other penalty provided for by law, be subject to such suspension, revocation, or denial of any registration or license, or be barred from registration or licensure, including the forfeiture of any application fee.

(e) After notice and hearing, the secretary of state may enter an order of rescission, restitution, or disgorgement directed to a person who has violated this chapter, or a rule or order under this chapter. Rescission, restitution, or disgorgement shall be in addition to any other penalty provided for under this chapter.

(f) The secretary of state may order any person who violates RSA 421-B:5-501, RSA 421-B:5-502, RSA 421-B:3-301, RSA 421-B:3-302, RSA 421-B:5-505 or a cease and desist order issued under this chapter, upon hearing, and in addition to any other penalty provided for by law, to make a written offer to the purchaser of the security to repurchase the security for cash, payable on delivery of the security, equal to the consideration paid for the security together with interest at the legal rate, less the amount of any income received by the purchaser on the security, or if the purchaser no longer owns the security, an offer to pay an amount in cash equal to consideration paid for the security together with interest at the legal rate, less the amount the purchaser received on disposition of the security and less the amount of any income received by the purchaser on the security.

(g) Costs. In a final order, the secretary of state may charge the actual cost of an investigation or proceeding for a violation of this chapter or an order issued under this chapter.

(h) Enforcement by court; further civil penalty. If a person fails to comply with an order under this section, the attorney general or secretary of state may petition a court of competent jurisdiction to enforce the order. The court may not require the attorney general or secretary of state to post a bond. If the court finds, after service and opportunity for hearing, that the person is not in compliance with the order, the court may adjudge the person in civil contempt of the order. The court may impose a further civil penalty against the person for contempt in an amount not less than \$5,000 for each violation, and may grant any other relief the court determines is just and proper in the circumstances.

421-B:6-605 Orders, Interpretative Opinions, and Hearings.

(a) Issuance and adoption of forms, orders, and rules. The secretary of state may: by order, define terms, whether or not used in this chapter, when those definitions are not inconsistent with this chapter.

(b) Findings and cooperation. All actions undertaken by the secretary of state pursuant to this section shall be taken only when the secretary of state finds such action necessary or appropriate to the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of this title. In preparing forms, setting standards, and reviewing offerings, the secretary of state may cooperate with the securities regulators of other states, self regulatory organizations, and the Securities and Exchange Commission in order to implement the policy of this chapter in an efficient and effective manner and to achieve maximum uniformity in the form and content of registration statements, applications, reports, and requirements for issuers, broker-dealers, and investment advisors, where practicable.

(c) Financial statements. Subject to section 15(h) of the Securities Exchange Act and Section 222 of the Investment Advisers Act of 1940, the secretary of state may require that a financial statement filed under this chapter be prepared in accordance with generally accepted accounting principles in the United States and comply with other requirements specified by rule or order under this chapter. Subject to section 15(h) of the Securities Exchange Act and section 222 of the Investment Advisers Act of 1940, a rule or order under this chapter may establish the form and content of financial statements required under this chapter.

(d) Interpretative opinions. The secretary of state may provide interpretative opinions or may issue determinations that the secretary of state will not institute an enforcement proceeding or commence an action under this chapter against a specified person for engaging in a specified act, practice, or course of business if the determination is consistent with the purposes intended by this chapter. The secretary of state may assess a reasonable charge for interpretative opinions or determinations that the secretary of state will not commence an action or institute an enforcement proceeding under this chapter.

421-B:6-606 Administrative Files and Opinions.

(a) Public register of filings. The secretary of state shall maintain a register of all applications for registration of securities; registration statements; notice filings, applications for registration of broker-dealers, agents, investment advisers, and investment adviser representatives; notice filings by federal covered investment advisers that are or have been effective under this chapter or the predecessor act; notices of

claims of exemption from registration or notice filing requirements contained in a record; orders issued under this chapter or the predecessor act; and interpretative opinions or no-action determinations issued under this chapter.

(b) Public availability. The secretary of state shall make all forms, interpretative opinions, and orders available to the public.

(c) Copies of public records. Upon request, the secretary of state shall furnish to a person a copy of a record that is a public record pursuant to RSA 91-A or a certification that the public record does not exist. The secretary of state may prescribe a reasonable charge for furnishing the record. A copy of the record certified or a certificate of its nonexistence by the secretary of state is prima facie evidence.

421-B:6-607 Public Records; Confidentiality.

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

(b) The information contained in or filed with any registration statement, application, or report may be made available to the public in accordance with RSA 91-A. A person who files a record in connection with a registration statement under RSA 421-B:3-301 and RSA 421-B:3-303 through RSA 421-B:3-305 or a record under RSA 421-B:4-411(d) that contains trade secrets or confidential information may request that the secretary of state treat such record as confidential or privileged and subject to the exemptions from public disclosure under RSA 91-A.

421-B:6-608 Uniformity and Cooperation with Other Agencies.

(a) Interstate cooperation. The secretary of state and the secretary of state's staff shall maintain close relations with the securities and corporate administrators of other states and shall actively participate in the activities and affairs of the North American Security Administrators Association and other organizations so far as it will, in the secretary of state's judgment, enhance the purposes of the securities and corporate laws. The actual and necessary travel and related expenses incurred in attending meetings of said association, their committees, subcommittees, hearings, and other official activities, as well as the general expenses of participation in such associations, shall be a charge on available funds and the appropriation of the office of the secretary of state.

(b) Statutory policy. This chapter shall be so construed as to effectuate its general purpose to make uniform the laws of those states which enact it and to coordinate the interpretation of this chapter with the related federal regulation.

421-B:6-609 Judicial Review. Final orders issued by the secretary of state under this chapter are subject to judicial review in accordance with RSA 541.

421-B:6-610 Jurisdiction.

(a) Sales and offers to sell. RSA 421-B:3-301, RSA 421-B:3-302, RSA 421-B:4-401(a), RSA 421-B:4-402(a), RSA 421-B:4-403(a), RSA 421-B:4-404(a), RSA 421-B:5-501, RSA 421-B:5-506, RSA 421-B:5-509, and RSA 421-B:5-510 apply to a person that sells or offers to sell a security if the offer to sell or the sale is made in this state, or the offer to purchase or the purchase is made and accepted in this state.

(b) Purchases and offers to purchase. RSA 421-B:4-401(a), RSA 421-B:4-402(a), RSA 421-B:4-403(a), RSA 421-B:4-404(a), RSA 421-B:5-501, RSA 421-B:5-506, RSA 421-B:5-509, and RSA 421-B:5-510 apply to a person that purchases or offers to purchase a security if the offer to purchase or the purchase is made in this state, or the offer to sell or the sale is made and accepted in this state.

(c) Offers in this state. For the purpose of this section, an offer to sell or to purchase a security is made in this state, whether or not either party is then present in this state, if the offer:

(1) originates from this state; or

(2) is directed by the offeror to a place in this state and received at the place to which it is directed.

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

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

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

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

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

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

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

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

(f) Investment advice and misrepresentations. RSA 421-B:4-403(a), RSA 421-B:4-404(a), RSA 421-B:4-405(a), RSA 421-B:5-502, RSA 421-B:5-505, and RSA 421-B:5-506 apply to a person if an act, practice, or course of business instrumental in effecting prohibited or actionable conduct is engaged in this state, whether or not either party is then present in this state.

421-B:6-611 Service of Process.

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

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

(c) Procedure for service of process. Service under subsection (a) or (b) may be made by providing a copy of the process to the office of the secretary of state, but it is not effective unless:

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

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

(d) Use in administrative proceedings. Service as provided in subsection (c) may be used in a proceeding before the secretary of state or by the secretary of state in a civil action in which the secretary of state is the moving party.

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

421-B:6-612 Severability Clause. If any provision of this chapter or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

421-B:6-613 Hearing Procedures.

(a) Notwithstanding any other law to the contrary, all adjudicatory proceedings pursuant to this chapter shall be conducted by the secretary of state or by a presiding officer appointed by the secretary of state. All hearings conducted pursuant to this chapter shall be governed by the provisions of this section and the provisions of RSA 541-A shall not apply to this chapter.

(b) A document shall be considered filed when it is actually received at the department's office in Concord, New Hampshire, and conforms to the requirements of this chapter.

(c) For the purposes of this section:

(1) All complaints, petitions, motions, responses, and replies shall be signed by the proponent of the document or, if the party appears by a representative, by the representative.

(2) License, registration, and exemption applications shall be signed only by the applicant or properly authorized designee.

(3) The signature on a document filed with the department shall constitute a certification that:

(A) The signer has read the document and is authorized to file it;

(B) There are good grounds to support the representations made therein; and

(C) The document has not been filed for purposes of delay or harassment.

(4) A willful violation of subsection (c), shall, to the extent consistent with the policy of the statutes administered by the secretary of state, be a basis for entering an order adverse to the party committing the violation.

(d) Within a reasonable time after receipt of a complaint:

(1) The department staff or a presiding officer shall review the complaint to determine whether any basis exists for administrative action.

(2) If the complaint is insufficient or no basis exists which warrants administrative action, the complaint shall be dismissed and no hearing shall be scheduled on such complaint.

(3) If the staff determines that sufficient basis exists which warrants administrative action, the staff shall petition the secretary of state for relief.

(4) On any complaint, the staff shall temporarily defer any action and refer the subject matter of the complaint to the appropriate agency if a more complete investigation is necessary. The results of the investigation shall be used to determine the necessity of conducting a hearing by the department.

(e) Within a reasonable time after receipt of a petition:

(1) The secretary of state may issue an order either denying or granting the petition or granting in part and denying in part. If any part of the petition is granted, the respondent shall be informed, as part of the hearing notice, of the respondent's right to a hearing.

(2) A petition may include a request for summary action prior to a hearing.

(3) The staff may, sua sponte, petition for relief whenever it has reasonable grounds to believe that a violation of law has occurred, is occurring, or is about to occur.

(f) Notices of hearings shall:

(1) Be prepared and forwarded in a manner which affords interested persons sufficient opportunity to prepare for and deal with the issues to be considered and decided upon at the hearing.

(2) Given in writing and addressed to the address of record of the person being called in for the hearing. The notice shall be prepared on an official form of the department and shall be sent in a sealed envelope through the United States mail, personal services, or by Federal Express or other similar delivery service.

(g) A notice of hearing shall include:

(1) The time, date, and location of the hearing.

(2) The statute which has allegedly been violated and a statement of the legal authority under which the hearing is to be held.

(3) An explicit description of the alleged violation or a copy of the complaint or petition for relief or both the copy of complaint and petition for relief.

(h) Each hearing shall be set for a date as soon as practicable after the complaint has been received and reviewed. The hearing shall be scheduled to allow sufficient and reasonable time for the preparation of the case by both the department and interested parties.

(i) A request for continuance of a hearing shall be made in writing and received by the department, absent exigent circumstances, at least 5 working days prior to the hearing. Exigent circumstances include:

(1) Absence from the jurisdiction;

(2) Serious illness;

(3) Hospitalization;

(4) Death of a family member.

(j) The written request or motion for continuance shall contain the following:

(1) The specific reason or reasons for the request; and

(2) Optional dates and times when all interested parties shall be available.

(k) Each presiding officer may, at any stage of the hearing process, withdraw from a case if the presiding officer has or has had a personal or business relationship with any party, witness, or representative that may hinder such presiding officer from being able to arrive at an impartial decision on the issue or issues, or for any other reason that may interfere with the presiding officer's ability to remain impartial.

(l) Parties shall have the right to:

(1) Appear pro se or be represented by an attorney.

(2) Cross-examine witnesses; and

(3) Present evidence and witnesses on their own behalf.

(m) Except as provided as follows, administrative hearings shall be open to the public:

(1) The presiding officer may, on the presiding officer's own motion or at the request of a party, rule that the public be excluded from a hearing if necessary, pursuant to RSA 91-A:3, II, to protect the interests and rights of the parties to the hearing.

(2) In matters involving sensitive issues, a presiding officer may consult with the office of the attorney general for a ruling on the privacy issue.

(3) Members of the press shall be admitted to the hearing whenever the public is permitted. If the press is present at a hearing, the presiding officer shall brief them, off the record, in the presence of all parties, as to the nature and purpose of the hearing.

(4) In the event a party objects to the attendance of persons not involved in the hearing, the presiding officer shall ascertain the reason for such objection and determine whether the reason given justifies closing the hearing to such persons.

(n) Subject to the laws governing the department of state, and within the general scope of his powers, each presiding officer shall have the authority to:

- (1) Schedule and hold hearings.
- (2) Administer oaths and affirmations.
- (3) Issue subpoenas on behalf of the state.
- (4) Determine the order of proof in any proceeding.
- (5) Receive relevant evidence and rule on offers of proof in hearings.
- (6) Take judicial notice of any facts which are of common knowledge and general notoriety.
- (7) Take, or cause to be taken, depositions.
- (8) Regulate and control the course of an administrative hearing.
- (9) Hold conferences for the settlement or simplification of issues, or for obtaining stipulations as to issues of fact or proof by consent of the parties.
- (10) Dispose of procedural requests, including adjournments or continuances at the request of the parties or on the presiding officer's own motion.
- (11) Interview and examine witnesses and parties as the case may require.
- (12) Direct parties to appear at hearings.
- (13) Consider and evaluate the facts and evidence on the record in making findings of fact and conclusions of law and dispositions.
- (14) Determine credibility or weight of evidence in making findings of fact and conclusions of law.
- (15) Render oral and written decisions, reports, or recommendations as authorized by statute.
- (16) Take any action in a proceeding necessary to conduct and complete the case, consistent with applicable statutes, and precedents.

(o) During any proceeding, the secretary of state shall, upon motion or upon his own motion, direct all parties to attend an informal conference to aid in the disposition of the proceeding. Such conferences:

- (1) May be recorded unless all parties wish to discuss possible settlements off the record. Such recordings shall be part of the record.
- (2) Shall be held, in addition to settlement possibilities, to consider:
 - (A) Possible simplification of the issues.
 - (B) Possible amendments to the pleadings.
 - (C) Possible admissions of fact, admissions of documents, or other stipulations which might avoid unnecessary proof.
 - (D) The identification and possible limitations on the number of witnesses.
 - (E) Possible changes to the method of proceeding or hearing schedule which would otherwise be applicable.
 - (F) The distribution of written testimony, if any, and exhibits to the parties.
 - (G) Possible consolidation of the examination of witnesses by the parties.
 - (H) Any other matters which might contribute to the prompt, orderly, and fair conduct of the proceeding.

(p) A prehearing conference or other informal conference shall be conducted in person or, with the consent of the parties, shall be conducted by means of electronic communications.

(q) The presiding officer shall cause the administrative hearing to be electronically recorded. Such recording shall be made available, upon written request by a party and upon a fee sufficient to reimburse the full cost of providing the tape, or a true and accurate copy of such tape or tapes. A party may request, in writing, a transcript of the hearing but shall first pay the full costs for such transcription as determined by the secretary of state.

(r) In the event there is a clear dispute of facts between the parties in which credibility of testimony will determine the outcome of the hearing, the presiding officer on his own motion or that of a party, may sequester witnesses until they are called to testify.

(s) In any administrative hearing in which administrative action affecting the rights or privileges of any party may be taken, an oath or affirmation shall be administered by the presiding officer to each witness prior to receiving testimony, provided, however, that if a witness asserts an objection to the taking of an oath for religious or other related reasons, an affirmation shall be administered. Once a witness has been sworn at any hearing, it shall not be necessary to swear the witness again for subsequent testimony on the same day and in the same case. The record of the proceeding shall indicate that a person was recalled to testify and reminded that such person was still under oath or affirmation.

(t) Motions shall be in written form unless presented at the hearing. Written motions shall be included in the record of the proceeding and filed together with the case file. Oral motions shall be recorded in full in any transcript of the proceeding or, at the discretion of the presiding officer, noted in the minutes of the

proceeding and submitted in written form within a reasonable time. A presiding officer may rule upon a motion when made or may defer decision until a later time in the hearing, or until after the conclusion of the hearing.

(u) Administrative hearings shall not be bound by common law or statutory rules of evidence, nor by technical or formal rules of procedure. All relevant, material, and reliable evidence shall be admissible. Such evidence may include, but shall not be limited to, depositions, affidavits, official documents, and testimony of witnesses. Provided, however, the presiding officer may, in the presiding officer's discretion, exclude any irrelevant, immaterial, unreliable, or unduly cumulative or repetitious evidence. Applicable statutory and constitutional provisions and immunities requiring exclusion of evidence in civil proceedings shall be recognized, provided, however, that nothing contained herein shall prohibit a party from waiving such party's privilege or immunity.

(v) Within a reasonable time after the hearing, the presiding officer shall issue a written decision stating the action to be taken by the department and may set forth findings of fact, conclusions of law, and disposition. All decisions shall be reached upon the basis of a preponderance of the evidence. The decision of the presiding officer shall be construed as the decision of the secretary of state.

(w) Any party to whom notice has been forwarded pursuant to and in accordance with this section who fails to appear shall have a default judgment rendered against him.

(x) The presiding officer may take judicial notice.

(y) Where the interests of justice will be better served without prejudice to the substantial rights of any party, a presiding officer may sever one case from another or may consolidate 2 or more cases, preserving to all parties the right of appeal from the single or several decisions rendered.

(z) Once a hearing notice has been issued commencing an adjudicatory proceeding, no party shall communicate with the presiding officer or the secretary of state concerning the merits of the case except upon notice to all parties nor shall any party cause another person to make such communications.

(aa) Within 30 days after a final decision, any party may file a motion for reconsideration which shall serve as a petition for rehearing under RSA 541. No distinctions shall be made between the terms "reconsideration" and "rehearing." A motion for reconsideration shall:

(1) Identify each error of law, error of reasoning, or erroneous conclusion contained in the final order which the moving party wishes the secretary of state to reconsider.

(2) Concisely state the correct factual finding, correct reasoning, and correct conclusion being advocated.

(3) Include any memorandum of law the petitioner wishes to submit.

(bb) Within 30 days after a final decision, the presiding officer may reconsider, revise or reverse any final action on the presiding officer's own motion. If reconsideration is based upon the existing record, prior notice shall not be given to the parties. If the presiding officer believes further information or argument should be considered, the parties shall be provided with an appropriate notice and opportunity to be heard before any revision is made in the previous action.

(cc) The filing of a motion for reconsideration shall not operate as a stay of any order or decision, but a motion for stay may be combined with a motion for reconsideration.

421-B:6-614 Fees.

(a) Initial fees and fees for amendments shall be as follows:

- (1) Non-refundable registration fee for offers and sales of each class of open end mutual funds required to register under RSA 421-B:301

\$1,000

- (2) Registration fee prior to offers or sales of securities in this state

2/10 of one percent
of the offering
value of the
securities offered
in the registration
statement, provided
said fee shall not
be more than
\$1,050, plus a
\$200 non-refundable
examination fee

- (3) Fee prior to offers and sales of securities in initial public offerings in this state under the Securities Act of 1933, 15 U.S.C. section 77r(b)(1)(A)

\$1,000

- (4) Non-refundable fee prior to offers or sales of:

- (A) Covered securities of other investment companies under section 18(b)(2) of the Securities Act of 1933

\$500

(B) Non-issuer transactions under section 18(b)(4)(A) of the Securities Act of 1933-- a one-time filing fee

\$500

(5) Fee for a notice filing under RSA 421-B:3-302(c)

\$500

(6) A copying and printing charge may be assessed per page for each document

(7) Non-refundable initial notice filing fee prior to offers or sales of each class of an open end mutual fund under section 18(b)(2) of the Securities Act of 1933

\$1,000

(8) 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 securities offered in the registration statement, provided said fee shall not be more than \$1,050, plus a \$200 non-refundable initial notice fee

(b) Renewal fees shall be as follows:

(1) 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 securities offered in the registration statement, provided that the fee shall not be more than \$1,050

(2) Annual non-refundable notice filing fee for offers and sales of each class of an issuer of open end mutual funds which are covered securities under section 18(b)(2) of the Securities Act of 1933, due on or before May 1 of each year

\$1,000

(3) Annual non-refundable registration fee for each class of an issuer of open end mutual funds, due on or before May 1 of each year, if required to register under RSA 421-B:3-301

\$1,000

(4) 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 securities offered in the registration statement, provided that the fee shall not be more than \$1,050

(c) 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) securities offered in the registration statement, or (2) an offering of federal covered securities, provided that the fee shall not be more than \$525, shall be imposed if:

- (1) It is requested that the provisions of RSA 421-B:3-303(c)(2) be waived; or
- (2) Securities sold in this state are more than registered on the effective application filed with the secretary of state, where the maximum registration fee has not been paid; or
- (3) The registration application is amended to increase the amount registered in this state, where the maximum registration fee has not been paid, subsequent to the effectiveness of the registration in this state; or
- (4) Federal covered securities sold in this state are more than described in the notice filing made, where the maximum notice filing fee or the total amount of a flat fee has not been paid; or
- (5) The notice filing for federal covered securities sold in this state is amended to increase the amount to be sold, subsequent to the date the filing was made in this state.

(d)(1) Any person who offers or sells securities in New Hampshire under (A) RSA 421-B:3-303 or RSA 421-B:3-304, where less than the maximum filing fee has been paid in this state, or (B) a notice filing under section 18(b) of the Securities Act of 1933 where less than the maximum filing fee has been paid in this state shall file a sales report with the secretary of state. The sales report shall be filed one year from (1) the effective date of the registration or exemption or (2) the date the notice filing under section 18(b) of the Securities Act of 1933 was made with the secretary of state, and a final sales report shall be filed within 60 days of the termination of the offering. The sales report shall indicate the termination date, the total number and amount of sales in this state, and the total number and amount of sales in all jurisdictions. Any person who fails to file a sales report shall pay a penalty of \$25 for each day of delinquency; provided, however, that, for good cause shown, the secretary of state may abate all or a portion of the delinquency penalty. Subdivision (d)(1) shall not apply to federal covered securities pursuant to section 18(b)(2) of 18(b)(4)(D) of the Securities Act of 1933 15 U.S.C. section 77r(b)(2) or 77r(b)(4)(D).

(2) Any person who fails to timely file the notice required by RSA 421-B:3-302(c) shall pay a penalty of \$500 if the notice filing is delinquent by no more than 90 days or a penalty of \$1,000 if the notice filing is delinquent by more than 90 days; provided, however, that if the filing is delinquent by more than one year, the person failing to timely file the required notice may be subject to RSA 421-B:6-603, RSA 421-B:6-604 and RSA 421-B:5-508 for that failure.

Article 7

Application of Chapter

421-B:7-701 Application of Act to Existing Proceeding and Existing Rights and Duties.

(a) Applicability of predecessor act to pending proceedings and existing rights. The predecessor act exclusively governs all actions or proceedings that are pending on the effective date of this chapter or may be instituted on the basis of conduct occurring before the effective date of this chapter, but a civil action may not be maintained to enforce any liability under the predecessor act unless instituted within any period of limitation that applied when the cause of action accrued or within 5 years after the effective date of this chapter, whichever is earlier.

(b) Continued effectiveness under predecessor act. All effective registrations under the predecessor chapter, all administrative orders relating to the registrations, rules, statements of policy, interpretative opinions, declaratory rulings, no action determinations, and conditions imposed on the registrations under the predecessor act remain in effect while they would have remained in effect if this chapter had not been enacted. They are considered to have been filed, issued, or imposed under this chapter, but are exclusively governed by the predecessor act.

(c) Applicability of predecessor act to offers or sales. The predecessor act exclusively applies to an offer or sale made within one year after the effective date of this chapter pursuant to an offering made in good faith before the effective date of this act on the basis of an exemption available under the predecessor act.

2 Cross Reference; Informational Filing Required. Amend RSA 5-B:4 to read as follows:

5-B:4 Informational Filing Required; Fee. Pooled risk management programs established for the benefit of political subdivisions shall make an informational filing, as defined in RSA 5-B:2, II, with the department and shall pay an annual filing fee of \$150. The department may make requests for additional information necessary to exercise regulatory or enforcement authority pursuant to, but not limited to, the hearings procedures under ~~[RSA 421-B:26-a]~~ **RSA 421-B:6-613** over any pooled risk management program formed or affirmed in accordance with this chapter. Pooled workers' compensation and unemployment compensation programs which are regulated by and which report to the department of labor and the department of employment security, under RSA 281-A and RSA 282-A, respectively, shall be exempt from the requirements of this section as long as their operations and reports conform to the laws and rules adopted by those departments.

3 Cross Reference; Authority of the Secretary of State. Amend RSA 5-B:4-a, VI to read as follows:

VI. 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 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. All hearings shall be conducted in accordance with ~~[RSA 421-B:26-a]~~ **RSA 421-B:6-613**.

4 Cross Reference; Investor Education Fund. Amend RSA 6:12, I(b)(53) to read as follows:

(53) Moneys ~~[received under RSA 421-B:26, I, H and HH, which shall be]~~ **that are** credited to the investor education fund ~~[established in RSA 421-B:26, IV]~~ **pursuant to RSA 421-B:6-601(h).**

5 Cross Reference; Incorporators. Amend RSA 293-A:2.01 to read as follows:

293-A:2.01 Incorporators. One or more persons may act as the incorporator or incorporators of a corporation by delivering articles of incorporation ~~[and the certificate required by RSA 421-B:11, H(a)-a]~~ to the secretary of state for filing.

6 Cross Reference; Articles of Domestication. Amend RSA 293-A:9.22(c) to read as follows:

(c) The articles of domestication with articles of incorporation ~~[and the certificate required by RSA 421-B:11, H(a)]~~ shall be delivered to the secretary of state for filing, and shall take effect at the effective time provided in RSA 293-A:1.23.

7 Cross Reference; Articles of Merger or Share Exchange. Amend RSA 293-A:11.06(a)(3) to read as follows:

(3) if the articles of incorporation of the survivor of a merger are amended, the amendments to the survivor's articles of incorporation, or if a new corporation is created as a result of a merger, the articles of incorporation of the new corporation ~~[and the certificate required by RSA 421-B:11, H(a)]~~;

8 Cross Reference; Procedure for and Effect of Administrative Dissolution. Amend RSA 293-A:14.21(f) to read as follows:

(f) In connection with the issuance of a notice of dissolution by the secretary of state under RSA 293-A:14.21(a) on grounds set forth in RSA 293-A:14.20(a)(6), a hearing shall be set for 10 business days after the issuance of the notice of dissolution. All hearings shall be conducted in accordance with ~~[RSA 421-B:26-a]~~ **RSA 421-B:6-613**. If the person whom the notice is issued fails to appear for the hearing, then such person shall be deemed in default, and the dissolution shall become final.

9 Cross Reference; Late Reinstatement. Amend RSA 293-A:14.22-a(g) to read as follows:

(g) Except for provisions and requirements set forth in this section, late reinstatement hearings shall be subject to ~~[RSA 421-B:26-a]~~ **RSA 421-B:6-613**.

10 Cross Reference; Inspection of Records by Shareholders. Amend RSA 293-A:16.02(e) to read as follows:

(e) For purposes of RSA 293-A:16.02(d), if a shareholder makes a written demand on a corporation for an alphabetical list of the names and addresses of its shareholders who are entitled to notice of a shareholders' meeting for the purpose of communicating with other shareholders relating to an item of business listed in the notice, and the corporation refuses to allow inspection and copying of the list, the shareholder may petition the secretary of state to issue an order requiring the corporation to allow the shareholder to inspect and copy the list of shareholders pursuant to the provisions of ~~[RSA 421-B:26-a]~~ **RSA 421-B:6-613**. The secretary of state, or his or her designee, shall confirm that (i) the petitioner is a shareholder of the corporation, (ii) the corporation has given a notice of shareholder meeting to its shareholders, and (iii) the shareholder made a written demand to inspect and copy the shareholder list for the purpose of communicating with the shareholders regarding an item of business set forth in the notice. If the secretary of state confirms such information, he or she shall schedule a hearing no later than 10 business days after making such confirmation. The secretary of state shall promptly give the petitioner and the corporation notice of the hearing. At such hearing, the presiding officer shall determine whether the petitioner has made the demand for the inspection and copying of the shareholder list for a proper purpose and in good faith and in accordance with RSA 293-A:16.02(d) and, if so, he or she shall order the corporation to comply with the law. If the corporation fails to attend the hearing, the corporation shall be deemed to be in default, and the presiding officer may issue an order requiring it to allow the petitioner to inspect and copy the shareholder list. Such order in the case of default shall be deemed final and may be enforced by the secretary of state pursuant to RSA 293-A:16.02(f).

11 Cross Reference; Certificate of Formation; General Requirements. Amend RSA 304-C:31, I to read as follows:

I. In order to form a domestic limited liability company, one or more authorized persons shall deliver a certificate of formation ~~[and the certificate required by RSA 421-B:11, H(a)]~~ to the secretary of state for filing.

12 Cross Reference; Late Reinstatements. Amend RSA 304-C:145, VII to read as follows:

VII. Except for provisions and requirements set forth in this section, late reinstatement hearings shall be subject to ~~[RSA 421-B:26-a]~~ **RSA 421-B:6-613**.

13 Cross Reference; Statutory Conversions of Other Business Entities to Limited Liability Companies. Amend RSA 304-C:149, IV to read as follows:

IV. A converting business entity making a statutory conversion under this section shall file with the secretary of state:

(a) A certificate of statutory conversion to a limited liability company; **and**

(b) A certificate of formation that complies with the requirements of RSA 304-C:31~~[-and-~~

~~(c) The certificate required by RSA 421-B:11, H].~~

14 Cross Reference; Requirement of Registration by a Foreign Limited Liability Companies. Amend the introductory paragraph of RSA 304-C:175 to read as follows:

Before doing business in New Hampshire, a foreign limited liability company shall register with the secretary of state. In order to register, a foreign limited liability company shall pay the fee required by RSA 304-C:191, II(h) and shall file ~~[the certificate required by RSA 421-B:11, II(a) and]~~ an application for registration as a foreign limited liability company, setting forth:

15 Cross Reference; Membership. Amend RSA 403-F:9, IV to read as follows:

IV. A membership interest in a mutual insurance holding company shall not constitute a security, as defined ~~[by RSA 421-B:2]~~ **in RSA 421-B:1-102(53).**

16 Cross Reference; Filing with Secretary of State. Amend RSA 405:65 to read as follows:

405:65 Filing with Secretary of State. An insurer transferring its domicile to this state shall file the following documents with the secretary of state, together with applicable filing fees:

I. Restated articles of incorporation or equivalent, as amended pursuant to RSA 405:62; **and**

II. Executed order of the commissioner approving the redomestication~~[-and-~~

~~III. The statement set forth in RSA 421-B:11, II].~~

17 Cross Reference; Definition; Variable Contract. Amend RSA 408:27 to read as follows:

408:27 Definition. A “variable contract” shall mean any life insurance policy or annuity contract issued by an insurance company which provides that the dollar amount of benefits or other contractual payments thereunder may vary according to the investment experience of any separate account or accounts maintained by the insurance company in which amounts received in connection with such policies or contracts have been placed. Variable contracts shall not be deemed subject to ~~[RSA 421]~~ **RSA 421-B.**

18 Cross Reference; Definition; Funding Agreement. Amend RSA 408-E:2, I to read as follows:

I. “Funding agreement” means an agreement issued by a life insurance company, not based on mortality or morbidity, providing for the accumulation of funds by the insurer for the purpose of making one or more payments to the holder, where the initial premium paid is \$1,000,000 or more. Except as provided in this chapter, a “funding agreement” does not constitute life insurance or an annuity and does not constitute a security~~[-]~~ as defined by ~~[RSA 421-B:2, XX]~~ **in RSA 421-B:1-102(53).**

19 Cross Reference; Authorization for Interception of Telecommunications or Oral Communications. Amend RSA 570-A:7 to read as follows:

570-A:7 Authorization for Interception of Telecommunications or Oral Communications. The attorney general, deputy attorney general, or a county attorney, upon the written approval of the attorney general or deputy attorney general, may apply to a judge of competent jurisdiction for an order authorizing or approving the interception of telecommunications or oral communications, and such judge may grant, in conformity with RSA 570-A:9, an order authorizing or approving the interception of telecommunications or oral communications by investigative or law enforcement officers having responsibility for the investigation of the offenses as to which the application is made, when such interception may provide, or has provided, evidence of the commission of organized crime, as defined in RSA 570-A:1, XI, or evidence of the commission of the offenses of homicide, kidnapping, gambling, theft as defined in RSA 637, corrupt practices as defined in RSA 640, child pornography under RSA 649-A, computer pornography and child exploitation under RSA 649-B, criminal conduct in violation of the securities law, as defined in ~~[RSA 421-B:3, 421-B:4, 421-B:5, 421-B:19, and 421-B:24]~~ **RSA 421-B:5-501, RSA 421-B:5-502, RSA 421-B:5-502-A, RSA 421-B:5-505, RSA 421-B:5-506, and RSA 421-B:5-508**, criminal conduct in violation of the security takeover disclosure laws, as defined in RSA 421-A:3, 421-A:7, 421-A:8, 421-A:11, and 421-A:13, robbery as defined in RSA 636:1, arson as defined in RSA 634:1, hindering apprehension or prosecution as defined in RSA 642:3, tampering with witnesses and informants as defined in RSA 641:5, aggravated felonious sexual assault as defined in RSA 632-A:2, felonious sexual assault as defined in RSA 632-A:3, escape as defined in RSA 642:6, bail jumping as defined in RSA 642:8, insurance fraud as defined in RSA 638:20, dealing in narcotic drugs, marijuana, or other dangerous drugs, hazardous waste violations under RSA 147-A:4, I, or any conspiracy to commit any of the foregoing offenses.

20 Cross Reference; Loan of Securities. Amend RSA 387:24-b, VI to read as follows:

VI. Every brokerage firm receiving a loan of securities under this section shall be registered, and every agent soliciting such a loan of securities shall be licensed, with the ~~[securities division of the New Hampshire insurance department]~~ **bureau of securities regulation of the secretary of state** pursuant to ~~[RSA 421]~~ **RSA 421-B.**

21 Cross Reference; Loan of Securities. Amend RSA 394-B:23, VI to read as follows:

VI. Every brokerage firm receiving a loan of securities under this section shall be registered, and every agent soliciting such a loan of securities shall be licensed, with the ~~[securities division of the New Hampshire insurance department]~~ **bureau of securities regulation of the secretary of state** pursuant to ~~[RSA 421]~~ **RSA 421-B.**

22 Repeal. RSA 304-B:50, III, relative to application for registration of foreign limited liability partnerships, is repealed.

23 Contingency. If SB 188 of the 2015 legislative session becomes law, then sections 21 and 22 of this act shall not take effect. If SB 188 of the 2015 legislative session does not become law, then sections 21 and 22 of this act shall take effect on January 1, 2016.

24 Effective Date. This act shall take effect January 1, 2016.

**Amendment to SB 266-FN
(2015-1823h)**

Proposed by the Minority of the Committee on Commerce and Consumer Affairs - r

Amend RSA 421-B:301 as inserted by section 1 of the bill by replacing it with the following:

421-B:301 Securities Registration Requirement.

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

(1) the security is a federal covered security;

(2) the security, transaction, or offer is exempted from registration under RSA 421-B:2-201 through RSA 421-B:2-203; or

(3) the security is registered under this chapter.

(b)(1) Before the secretary of state may accept (1) articles of incorporation for a new corporation under RSA 293-A or an application for a certificate of authority for a foreign corporation under RSA 293-A, (2) a certificate of limited partnership for a new limited partnership or an application for registration of a foreign limited partnership under RSA 304-B, (3) a certificate of formation for a new limited liability company or an application for registration as a foreign limited liability company under RSA 304-C, or (4) an application for registration of a registered limited liability partnership or a notice of registration of a foreign registered limited liability partnership under RSA 304-A, the following requirements shall be met:

(A) Along with a \$50 filing fee, a statement shall be filed with the secretary of state that the capital stock of the corporation, memberships, or the interests of the limited partnership, registered limited liability partnership, foreign registered limited liability partnership, or limited liability company have been registered, or when offered will be registered, under this chapter or are exempted, or when offered will be exempted, under this chapter, or are or will be offered in a transaction exempted from registration under this chapter, or are not securities under this chapter, or are federal covered securities under this chapter; and, in the case of a New Hampshire corporation, limited partnership, registered limited liability partnership, or limited liability company, that the articles of incorporation or certificate of limited partnership state whether the capital stock, memberships, or interests in the limited partnership, registered limited liability partnership or limited liability company will be sold or offered for sale within the meaning of this chapter.

(B) The statement shall be signed by the incorporators of a corporation to be formed, by an executive officer of an existing corporation, by the general partners or intended general partners if a limited partnership, by one or more members or managers authorized to do so if a limited liability company, or by one or more partners authorized to do so if a registered limited liability partnership or foreign registered limited liability partnership.

(2) Notwithstanding any provision of law to the contrary, the statement filed pursuant to this paragraph shall not by itself constitute a registration, or a notice of exemption from registration, of securities within the meaning of sections 448 and 461(i)(3) of the United States Internal Revenue Code and the regulations promulgated thereunder.

Amend RSA 421-B:4-405(c) as inserted by section 1 of the bill by replacing it with the following:

(c) Notice filing procedure. A person acting as a federal covered investment adviser, not excluded under subsection (b), shall file a notice, a consent to service of process complying with RSA 421-B:6-611, and such records as have been filed with the Securities and Exchange Commission under the Investment Advisers Act of 1940 required by order issued under this chapter and pay the fees specified in RSA 421-B:4-410(c). Initial fees shall be paid before business is transacted in this state, and annual fees shall be paid on or before December 31 of the current year for the ensuing year. Federal covered advisers shall submit copies to the secretary of state of all documents filed with the Securities and Exchange Commission pursuant to the federal securities laws within 10 business days of their submission to the Securities and Exchange Commission. Documents and fees that are accepted by IARD may be submitted through IARD. Other documents filed or deemed filed with the Securities and Exchange Commission shall be submitted directly to the secretary of state.

Amend RSA 421-B:4-411(c)(1) as inserted by section 1 of the bill by replacing it with the following:

(1) a broker-dealer registered or required to be registered under this chapter and an investment adviser registered or required to be registered under this chapter shall make and maintain the accounts, correspondence, memoranda, papers, books, and other records required by order issued under this chapter except as provided by section 15 of the Securities Exchange Act of 1934 in the case of broker-dealers and section 222 of the Investment Advisers Act of 1940 in the case of investment advisers;

Amend RSA 421-B:6-614(a) as inserted by section 1 of the bill by replacing it with the following:

421-B:6-614 Fees.

(a) Initial fees and fees for amendments shall be as follows:

(1) Non-refundable registration fee for offers and sales of each class of open end mutual funds required to register under RSA 421-B:301

\$1,000

- (2) Registration fee prior to offers or sales of securities in this state 2/10 of one percent of the offering value of the securities offered in the registration statement, provided said fee shall not be more than \$1,050, plus a \$200 non-refundable examination fee
- (3) Fee prior to offers and sales of securities in initial public offerings in this state under the Securities Act of 1933, 15 U.S.C. section 77r(b)(1)(A) \$1,000
- (4) Non-refundable fee prior to offers or sales of:
- (A) Covered securities of other investment companies under section 18(b)(2) of the Securities Act of 1933 \$500
- (B) Non-issuer transactions under section 18(b)(4)(A) of the Securities Act of 1933-- a one-time filing fee \$500
- (5) Non-refundable fee submitted no later than 15 days after the first sale for an initial and annual renewal notice filing fee for sales of covered securities under section 18(b)(4)(D) of the Securities Act of 1933 \$500
- (6) A copying and printing charge may be assessed per page for each document
- (7) Non-refundable initial notice filing fee prior to offers or sales of each class of an open end mutual fund under section 18(b)(2) of the Securities Act of 1933 \$1,000
- (8) 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 securities offered in the registration statement, provided said fee shall not be more than \$1,050, plus a \$200 non-refundable initial notice fee