



**Substitute House Bill No. 6829**

**Public Act No. 05-177**

**AN ACT UPDATING AND REVISING THE CONNECTICUT  
UNIFORM SECURITIES ACT.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 36b-3 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2005*):

As used in sections 36b-2 to 36b-33, inclusive, as amended by this act, unless the context otherwise requires:

(1) "Agent" means any individual, other than a broker-dealer, who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities. "Agent" does not include an individual who represents an issuer in (A) effecting transactions in a security exempted by subdivision (1), (2), (3), (4), (6), (9), (10), (11) or [(21)] (22) of subsection (a) of section 36b-21, as amended by this act, (B) effecting transactions exempted by subsection (b) of section 36b-21, as amended by this act, except for transactions exempted by subdivisions (10), (13) or (14) of said subsection, (C) effecting transactions with existing employees, partners or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state, or (D) effecting transactions in any covered security, except for covered securities within the meaning of Sections

**Substitute House Bill No. 6829**

18(b)(2) or 18(b)(4)(D) of the Securities Act of 1933. "Agent" does not include such other persons not within the intent of this subdivision as the commissioner may by regulation or order determine. A general partner, officer or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions, is an agent only if [he] such person otherwise comes within this definition and any compensation that [he] such person receives is directly or indirectly related to purchases or sales of securities.

(2) "Associated person" has the meaning given to that term in Section 3(a)(21) of the Securities Exchange Act of 1934.

(3) "Blank check company" means any company that (A) devotes substantially all of its efforts to establishing a new business in which planned principal operations have not commenced or, that has commenced planned principal operations, but has not derived significant revenue [therefrom] from such operations; and (B) has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person.

(4) "Branch office" means any location other than the main office [identified by any means to the public, customers or clients as a location] at which an agent or investment adviser agent regularly conducts business on behalf of a broker-dealer or investment adviser, [conducts a securities or investment advisory business. "Branch office" does not include (A) a location identified solely in a telephone directory line listing or on a business card or letterhead if (i) the listing, card, or letterhead also sets forth the address and telephone number of a Connecticut office of the broker-dealer or investment adviser from which individuals conducting business from such identified location are directly supervised, and (ii) no more than one agent or investment adviser agent transacts business on behalf of the broker-dealer or investment adviser from such identified location] or any location that

**Substitute House Bill No. 6829**

is held out as such, excluding: (A) Any location that is established solely for customer service or 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 or investment adviser agent's primary residence, provided (i) only agents or investment adviser agents who reside at the location and are members of the same immediate family conduct business at the location, (ii) the location is not held out to the public as an office and the agent or investment adviser agent does not meet with customers at the location, (iii) neither customer funds nor securities are handled at that location, (iv) the agent or investment adviser 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 or investment adviser agent, (v) the agent's or investment adviser agent's correspondence and communications with the public are subject to the supervision of the broker-dealer or investment adviser with which such agent or investment adviser agent is associated, (vi) electronic communications, including e-mail, are made through the electronic system of the broker-dealer or investment adviser, (vii) all orders for securities are entered through the designated branch office or an electronic system established by a broker-dealer that is reviewable at the branch office, (viii) written supervisory procedures pertaining to supervision of activities conducted at the residence are maintained by the broker-dealer or investment adviser, and (ix) a list of the residence locations is maintained by the broker-dealer or investment adviser, (C) any location, other than a primary residence, that is used for securities or investment advisory business for less than thirty business days in any one calendar year, provided the broker-dealer or investment adviser complies with the provisions of subparagraph (B)(ii),(iii),(iv),(v),(vi),(vii),(viii) of this subdivision, (D) any office of convenience, where associated persons occasionally and exclusively by appointment meet with customers, which is not held out to the public

***Substitute House Bill No. 6829***

as an office, (E) any location that is used primarily to engage in nonsecurities activities and from which the agent or investment adviser agent effects no more than twenty-five securities transactions in any one calendar year, provided any advertisement or sales literature identifying such location also sets forth the address and telephone number of the location from which the agent or investment adviser agent conducting business at the nonbranch 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 [(B)] (H) any other location not within the intent of this subdivision as the commissioner may determine. As used in this subdivision, the term "business day" does not include any partial business day, provided the agent or investment adviser agent spends at least four hours on such day at the designated branch office of such agent or investment adviser agent during the hours that such office is normally open for business.

(5) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for such person's own account. "Broker-dealer" does not include (A) an agent, (B) an issuer, (C) a bank, as defined in Section 3(a)(6) of the Securities Exchange Act of 1934, when conducting activities that would except it from the definitions of "broker" or "dealer" under Sections 3(a)(4) or 3(a)(5) of the Securities Exchange Act of 1934, (D) a person who has no place of business in this state if such person effects transactions in this state exclusively with or through (i) the issuers of the securities involved in the transactions, (ii) other broker-dealers, or (iii) a bank and trust company, a national banking association, a savings bank, a savings and loan association, a federal savings bank, a federal savings and loan association, a credit union, a federal credit union, a trust company, an insurance company, an investment company as defined in the Investment Company Act of 1940, a pension or profit-sharing

**Substitute House Bill No. 6829**

trust, or other financial institution or institutional buyer, whether acting for itself or as trustee, or (E) such other persons not within the intent of this subdivision as the commissioner may by regulation or order determine.

(6) "Commissioner" means the Banking Commissioner or any person appointed or designated by the Banking Commissioner to administer sections 36b-2 to 36b-33, inclusive, as amended by this act.

(7) "Covered security" has the meaning given to that term in Section 18(b) of the Securities Act of 1933.

(8) "Fraud", "deceit" and "defraud" are not limited to common-law deceit.

(9) "Guaranteed" means guaranteed as to payment of principal, interest or dividends.

(10) "International banking institution" means an international financial institution, as defined in 22 USC 262r, as from time to time amended, of which the United States is a member and whose securities are exempt from registration under the Securities Act of 1933.

[(10)] (11) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. "Investment adviser" does not include (A) an investment adviser agent; (B) a bank, as defined in Section 202(a)(2) of the Investment Advisers Act of 1940, or a bank holding company, as defined in the Bank Holding Company Act of 1956, that is excepted from the definition of "investment adviser" in Section 202(a)(11) of the Investment Advisers Act of 1940; (C) a lawyer, accountant, engineer, or

**Substitute House Bill No. 6829**

teacher whose performance of these services is solely incidental to the practice of such person's profession; (D) a broker-dealer whose performance of these services is solely incidental to the conduct of such person's business as a broker-dealer and who receives no special compensation for them; (E) a publisher of any bona fide newspaper, news magazine, or business or financial publication of general, regular, and paid circulation; (F) a person whose advice, analyses or reports relate only to securities exempted by subdivision (1) of subsection (a) of section 36b-21, as amended by this act; (G) any insurance company under the supervision of the Insurance Commissioner or any affiliate thereof, as defined in subsection (b) of section 38a-129, when providing services to separate accounts of that insurance company or registered investment companies all of whose shares are owned by such insurance company or its insurance company affiliates or by the separate accounts of that insurance company or its insurance company affiliates; and (H) such other persons not within the intent of this subdivision as the commissioner may by regulation or order designate.

[(11)] (12) (A) "Investment adviser agent" includes (i) any individual, including an officer, partner or director of an investment adviser, or an individual occupying a similar status or performing similar functions, employed, appointed or authorized by or associated with an investment adviser to solicit business from any person for such investment adviser [, within or from] in this state [,] and who receives compensation or other remuneration, directly or indirectly, for such solicitation; or (ii) any partner, officer, or director of an investment adviser, or an individual occupying a similar status or performing similar functions, or other individual employed, appointed, or authorized by or associated with an investment adviser, who makes any recommendation or otherwise renders advice regarding securities to clients and who receives compensation or other remuneration, directly or indirectly, for such advisory services.

**Substitute House Bill No. 6829**

(B) "Investment adviser agent" does not include an individual employed, appointed or authorized by, associated with or acting on behalf of an investment adviser exempt from registration under subdivision (1) or (2) of subsection (e) of section 36b-6, as amended by this act, who is a "supervised person", as defined in Section 202(a)(25) of the Investment Advisers Act of 1940, unless such supervised person is an "investment adviser representative", as defined in Securities and Exchange Commission Rule 203A-3, 17 CFR 275.203A-3.

(C) "Investment adviser agent" does not include such other individuals not within the intent of this subdivision as the commissioner may by regulation or order designate.

[(12)] (13) "Issuer" means any person who issues or proposes to issue any security; except that (A) with respect to [certificates] a certificate of deposit, a voting-trust [certificates] certificate, or a collateral-trust [certificates] certificate, or with respect to [certificates] a certificate of interest or [shares] a share in an unincorporated investment trust not having a board of directors or persons performing similar functions or of the fixed, restricted management, or unit type, "issuer" means [the] any person [or persons] performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued; [and] (B) with respect to [certificates of interest or participation in oil, gas or mining titles or leases, or in payments out of production under such titles or leases, "issuer" means the owner of any such title, lease, right or interest, whether whole or fractional, who creates or sells fractional interests therein] an equipment trust certificate or similar security serving the same purpose, "issuer" means any person who uses or will use the property, any person to whom the property or equipment is or will be leased or conditionally sold or any person who is otherwise contractually responsible for assuring payment of the certificate; and (C) with respect to a fractional

**Substitute House Bill No. 6829**

undivided interest in oil, gas or other mineral leases or in payments out of production under a lease, right or royalty, "issuer" means any owner of an interest in the lease or in payments out of production under a lease, right or royalty, whether whole or fractional, who creates fractional interests for the purpose of sale.

[(13)] (14) "Nonissuer" means not directly or indirectly for the benefit of the issuer.

[(14)] (15) "Person" means an individual, a corporation, a limited liability company, a partnership, a limited partnership, a limited liability partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government or a political subdivision of a government.

[(15)] (16) (A) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of, a security or interest in a security for value. (B) "Offer" or "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value. (C) Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing shall be conclusively presumed to constitute a part of the subject of such purchase and to have been sold for value. (D) Nothing in this subdivision shall limit or diminish the full meaning of the terms "sale", "sell", "offer" or "offer to sell" as construed by the courts of this state. (E) A purported gift of assessable stock is considered to involve an offer and sale. (F) Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security. (G) The terms defined in this subdivision do not include: (i) Any bona fide pledge or loan; (ii) any stock dividend, whether the corporation

**Substitute House Bill No. 6829**

distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the dividend other than the surrender of a right to a cash or property dividend when each stockholder may elect to take the dividend in cash or property or in stock; (iii) any act incident to a class vote by security holders on a merger, exchange of securities for securities, consolidation, reclassification of securities, or sale of assets in consideration of the issuance of securities or securities and cash of another person other than an individual; or (iv) any security which is issued in exchange for one or more bona fide outstanding securities, claims or property interests, or partly in such exchange and partly for cash, where the terms and conditions of such issuance and exchange are approved by any state or federal court.

[(16)] (17) "Securities Act of 1933", "Securities Exchange Act of 1934", "Public Utility Holding Company Act of 1935", "Investment Advisers Act of 1940" and "Investment Company Act of 1940" mean the federal statutes of those names, as from time to time amended.

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

[(17)] (19) "Security" means any note, stock, treasury stock, security future, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, interests of limited partners in a limited partnership, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, [certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease] fractional undivided interest in oil, gas or other mineral rights, put, call, straddle, option, or privilege on any security or group or index of securities, including any interest in or based on the value of such security, group or index, put, call, straddle, option or privilege

**Substitute House Bill No. 6829**

entered into on a national securities exchange relating to foreign currency, or, in general, any interest or instrument commonly known as a "security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. "Security" includes (A) a certificated and an uncertificated security, and (B) as an "investment contract", an interest in a limited liability company or limited liability partnership, but does not include any insurance or endowment policy or annuity contract issued by an insurance company [which] that is subject to regulation by the Insurance Commissioner.

(20) "Self-regulatory organization" means a national securities exchange, a national securities association of broker-dealers or 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.

[(18)] (21) "Shell company" or "dormant company" means any company which does not pursue nor has the financial capacity to pursue a business plan or purpose.

[(19)] (22) "State" means any state, territory or possession of the United States, the District of Columbia and Puerto Rico.

Sec. 2. Section 36b-6 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2005*):

(a) No person shall transact business in this state as a broker-dealer unless such person is registered under sections 36b-2 to 36b-33, inclusive, as amended by this act. No person shall transact business in this state as a broker-dealer in contravention of a sanction that is currently effective imposed by the Securities and Exchange Commission or by a self-regulatory organization [,] of which such

**Substitute House Bill No. 6829**

person is a member [, that is registered under federal laws administered by the Securities and Exchange Commission] if the sanction would prohibit such person from effecting transactions in securities in this state. No individual shall transact business as an agent in this state unless such individual is (1) registered as an agent of the broker-dealer or issuer whom such individual represents in transacting such business, or (2) an associated person who represents a broker-dealer in effecting transactions described in subdivisions (2) and (3) of Section 15(h) of the Securities Exchange Act of 1934. No individual shall transact business in this state as an agent of a broker-dealer in contravention of a sanction that is currently effective imposed by the Securities and Exchange Commission or a self-regulatory organization [registered under the federal laws administered by the Securities and Exchange Commission] of which the employing broker-dealer is a member [,] if the sanction would prohibit the individual employed by such broker-dealer from effecting transactions in securities in this state.

(b) No issuer shall employ an agent unless such agent is registered under sections 36b-2 to 36b-33, inclusive, as amended by this act. No broker-dealer shall employ an agent unless such agent is (1) registered under sections 36b-2 to 36b-33, inclusive, as amended by this act, or (2) an associated person who represents a broker-dealer in effecting transactions described in subdivisions (2) and (3) of Section 15(h) of the Securities Exchange Act of 1934. The registration of an agent is not effective during any period when such agent is not associated with a particular broker-dealer registered under sections 36b-2 to 36b-33, inclusive, as amended by this act, or a particular issuer. When an agent begins or terminates a connection with a broker-dealer or issuer, or begins or terminates those activities which make such individual an agent, both the agent and the broker-dealer or issuer shall promptly notify the commissioner.

**Substitute House Bill No. 6829**

(c) (1) No person shall transact business in this state as an investment adviser [, within or from this state,] unless registered as such by the commissioner as provided in sections 36b-2 to 36b-33, inclusive, as amended by this act, or exempted pursuant to subsection (e) of this section. No person shall transact business, directly or indirectly, in this state as an investment adviser if the registration of such investment adviser is suspended or revoked or, in the case of an investment adviser who is an individual, the investment adviser is barred from employment or association with an investment adviser or broker-dealer by order of the commissioner, the Securities and Exchange Commission or a self-regulatory organization.

(2) No individual shall transact business in this state as an investment adviser agent [, within or from this state,] unless such individual is registered as an investment adviser agent of the investment adviser for [whom] which such individual acts in transacting such business. An investment adviser agent registered under sections 36b-2 to 36b-33, inclusive, as amended by this act, who refers advisory clients to another investment adviser registered under said sections 36b-2 to 36b-33, inclusive, or to an investment adviser registered with the Securities and Exchange Commission that has filed a notice under subsection (e) of this section, is not required to register as an investment adviser agent of such investment adviser if the only compensation paid for such referral services is paid to the investment adviser with whom the individual is employed or associated. No individual shall transact business, directly or indirectly, in this state as an investment adviser agent on behalf of an investment adviser if the registration of such individual as an investment adviser agent is suspended or revoked or the individual is barred from employment or association with an investment adviser by an order of the commissioner, the Securities and Exchange Commission or a self-regulatory organization.

**Substitute House Bill No. 6829**

(3) No investment adviser shall engage an investment adviser agent unless such investment adviser agent is registered under [said] sections 36b-2 to 36b-33, inclusive, as amended by this act. The registration of an investment adviser agent is not effective during any period when such investment adviser agent is not associated with a particular investment adviser. When an investment adviser agent begins or terminates a connection with an investment adviser, both the investment adviser agent and the investment adviser shall promptly notify the commissioner. If an investment adviser or investment adviser agent provides such notice, such investment adviser or investment adviser agent shall not be liable for the failure of the other to give such notice.

(d) No broker-dealer or investment adviser shall transact business from any place of business located within this state unless that place of business is registered as a branch office with the commissioner pursuant to this subsection. An application for branch office registration shall be made on forms prescribed by the commissioner and shall be filed with the commissioner, together with a nonrefundable application fee of one hundred dollars per branch office. A broker-dealer or investment adviser shall promptly notify the commissioner in writing if such broker-dealer or investment adviser (1) engages a new manager at a branch office in this state, (2) acquires a branch office of another broker-dealer or investment adviser in this state, or (3) relocates a branch office in this state. In the case of a branch office acquisition or relocation, such broker-dealer or investment adviser shall pay to the commissioner a nonrefundable fee of one hundred dollars. Each registrant or applicant for branch office registration shall pay the actual cost, as determined by the commissioner, of any reasonable investigation or examination made of such registrant or applicant by or on behalf of the commissioner.

(e) The following investment advisers are exempted from the

**Substitute House Bill No. 6829**

registration requirements under subsection (c) of this section: Any investment adviser that (1) is registered or required to be registered under Section 203 of the Investment Advisers Act of 1940; (2) is excepted from the definition of investment adviser under Section 202(a)(11) of the Investment Advisers Act of 1940; or (3) has no place of business in this state and, during the preceding twelve months, has had no more than five clients who are residents of this state. Any investment adviser claiming an exemption pursuant to subdivision (1) or (2) of this subsection that is not otherwise excluded under subsection [(10)] (11) of section 36b-3, as amended by this act, shall first file with the commissioner a notice of exemption together with a consent to service of process as required by subsection (g) of section 36b-33, as amended by this act, and shall pay to the commissioner or to any person designated by the commissioner in writing to collect such fee on behalf of the commissioner a nonrefundable fee of two hundred fifty dollars. The notice of exemption shall contain such information as the commissioner may require. [and shall be accompanied by a nonrefundable fee of two hundred fifty dollars.] Such notice of exemption shall be valid until December thirty-first of the calendar year in which it was first filed and may be renewed annually thereafter upon submission of such information as the commissioner may require together with a nonrefundable fee of one hundred fifty dollars. If any investment adviser that is exempted from registration pursuant to subdivision (1) or (2) of this subsection fails or refuses to pay any fee required by this subsection, the commissioner may require such investment adviser to register pursuant to subsection (c) of this section. For purposes of this subsection, a delay in the payment of a fee or an underpayment of a fee which is promptly remedied shall not constitute a failure or refusal to pay such fee.

(f) Any broker-dealer or investment adviser ceasing to transact business at any branch office or main office in this state shall, in addition to providing written notice to the commissioner prior to the

**Substitute House Bill No. 6829**

termination of business activity at that office, (1) provide written notice to each customer or client serviced by such office at least ten business days prior to the termination of business activity at that office, or (2) demonstrate to the commissioner, in writing, the reasons why such notice to customers or clients cannot be provided within the time prescribed. If the commissioner finds that the broker-dealer or investment adviser cannot provide notice to customers or clients at least ten business days prior to the termination of business activity, the commissioner may exempt the broker-dealer or investment adviser from giving such notice. The commissioner shall act upon a request for such exemption within five business days following receipt by the commissioner of the written request for such an exemption. The notice to customers or clients shall contain the following information: The date and reasons why business activity will terminate at the office; if applicable, a description of the procedure the customer or client may follow to maintain the customer's account at any other office of the broker-dealer or investment adviser; the procedure for transferring the customer's or client's account to another broker-dealer or investment adviser; and the procedure for making delivery to the customer or client of any funds or securities held by the broker-dealer or investment adviser.

(g) Any broker-dealer or investment adviser ceasing to transact business at any branch office or main office in this state as a result of executing an agreement and plan of merger or acquisition shall provide written notice to the commissioner and to each customer or client serviced by such office not later than the date such merger or acquisition is completed. The notice provided to each customer or client shall contain the information specified in subsection (f) of this section.

(h) Any broker-dealer or investment adviser ceasing to transact business at any branch office or main office in this state as a result of

**Substitute House Bill No. 6829**

the commencement of a bankruptcy proceeding by such broker-dealer or investment adviser or by a creditor or creditors of such broker-dealer or investment adviser shall, immediately upon the filing of a petition with the bankruptcy court, provide written notice to the commissioner. The commissioner shall determine the time and manner in which notice shall be provided to each customer or client serviced by such office.

(i) (1) A broker-dealer or investment adviser may succeed to the current registration of another broker-dealer or investment adviser or to a notice filing of an investment adviser registered with the Securities and Exchange Commission, and an investment adviser registered with the Securities and Exchange Commission may succeed to the current registration of an investment adviser or to a notice filing of another investment adviser registered with the Securities and Exchange Commission, by filing as a successor an application for registration pursuant to section 36b-7, as amended by this act, or a notice pursuant to subsection (e) of this section for the unexpired portion of the current registration or notice filing and paying the fee required by subsection (a) of section 36b-12.

(2) 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 management. The amendment shall become effective when filed or on a date designated by the registrant in its filing. The new organization shall be a successor to the original registrant for the purposes of sections 36b-2 to 36b-33, inclusive, as amended by this act. If there is a material change in management, the broker-dealer or investment adviser shall file a new application for registration. A predecessor registered under sections 36b-2 to 36b-33, inclusive, as amended by this act, shall stop conducting its securities business or investment advisory business

**Substitute House Bill No. 6829**

other than winding down transactions and shall file for withdrawal of its broker-dealer or investment adviser registration not later than forty-five days after filing its amendment to effect succession.

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

(4) The commissioner may, by regulation adopted, in accordance with chapter 54, or order, prescribe the means by which a change of control of a broker-dealer or investment adviser may be made.

(5) Nothing in this subsection shall relieve a registrant of its obligation to pay agent and investment adviser agent transfer fees as described in subsection (d) of section 36b-12.

(j) The commissioner may, by regulation adopted, in accordance with chapter 54, or order, require an agent or investment adviser agent 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, the commissioner may require continuing education for registered investment adviser agents by regulation or order.

[(i)] (k) For purposes of subsections (d), (f), (g) and (h) of this section, "investment adviser" means an investment adviser registered or required to be registered with the commissioner.

Sec. 3. Section 36b-7 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2005*):

(a) A broker-dealer, agent, investment adviser or investment adviser agent may obtain an initial or renewal registration by filing with the commissioner or other depository as the commissioner may by

**Substitute House Bill No. 6829**

regulation or order designate an application together with a consent to service of process pursuant to subsection (g) of section 36b-33, as amended by this act. The application shall contain such information as the commissioner may require.

(b) The commissioner may, by regulation adopted, in accordance with chapter 54, or order, impose such registration conditions as are not inconsistent with the National Securities Markets Improvement Act of 1996. The commissioner may, by regulation or order, waive, in whole or in part, specific requirements in connection with registration as are in the public interest and for the protection of investors.

Sec. 4. Section 36b-14 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2005*):

(a) (1) Every registered investment adviser shall make, keep and preserve such accounts, correspondence, memoranda, papers, books and other records as the commissioner by regulation adopted, in accordance with chapter 54, or order prescribes. All such records shall be preserved for such period as the commissioner by regulation or order prescribes.

(2) Every investment adviser that is registered with the Securities and Exchange Commission or excepted from the definition of investment adviser under Section 202(a)(11) of the Investment Advisers Act of 1940, and every registered broker-dealer, shall make, keep and preserve such accounts, correspondence, memoranda, papers, books and other records as the Securities and Exchange Commission requires. All such records shall be preserved for such period as the Securities and Exchange Commission requires.

(3) [All records referred to in this subsection] Broker-dealer records required to be maintained under subdivision (2) of this subsection may be maintained in any form of data storage acceptable under Section

**Substitute House Bill No. 6829**

17(a) of the Securities and Exchange Act of 1934 if they are readily accessible to the commissioner. Investment adviser records required to be maintained under this section may be stored on microfilm, microfiche or on an electronic data processing system or similar system utilizing an internal memory device provided that a printed copy of any such record is immediately accessible.

(b) (1) Every registered investment adviser shall file such financial reports as the commissioner by regulation prescribes.

(2) Every investment adviser that is registered with the Securities and Exchange Commission or excepted from the definition of investment adviser under Section 202(a)(11) of the Investment Advisers Act of 1940, and, subject to Section 15(h) of the Securities Exchange Act of 1934, every registered broker-dealer [,] shall file such financial reports as the commissioner by regulation prescribes, except that the commissioner shall not require the filing of financial reports that are not required to be filed with the Securities and Exchange Commission.

(c) If the information contained in any document filed with the commissioner under this section is or becomes inaccurate or incomplete in any material respect, the person making the filing shall promptly file a correcting amendment unless notification of the correction has been given under sections 36b-2 to 36b-33, inclusive, as amended by this act.

(d) All the records of a registered investment adviser and a registered broker-dealer referred to in subsection (a) of this section are subject at any time or from time to time to such reasonable periodic, special or other examinations by the commissioner, within or without this state, as the commissioner deems necessary or appropriate in the public interest or for the protection of investors. Every registered investment adviser and every registered broker-dealer shall keep such

**Substitute House Bill No. 6829**

records open to examination by the commissioner and, upon the commissioner's request, shall provide copies of any such records to the commissioner. For the purpose of avoiding unnecessary duplication of examinations, the commissioner, insofar as the commissioner deems it practicable in administering this subsection, may cooperate with the securities administrators of other states, the Securities and Exchange Commission, and any [national securities exchange or national securities association registered under the Securities Exchange Act of 1934] self-regulatory organization.

(e) Subject to Section 15(h) of the Securities Exchange Act of 1934 or Section 222 of the Investment Advisers Act of 1940, 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 agent may not have custody of funds or securities of a client except under the supervision of an investment adviser. Subject to Section 15(h) of the Securities Exchange Act of 1934 or Section 222 of the Investment Advisers Act of 1940, the commissioner may, by regulation adopted, in accordance with chapter 54, or order, 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 funds or securities of a client.

Sec. 5. Subsection (a) of section 36b-15 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2005*):

(a) The commissioner may, by order, deny, suspend or revoke any registration or, by order, restrict or impose conditions on the securities or investment advisory activities that an applicant or registrant may perform in this state if the commissioner finds that (1) the order is in the public interest, and (2) the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions,

**Substitute House Bill No. 6829**

or any person directly or indirectly controlling the broker-dealer or investment adviser: (A) Has filed an application for registration which as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact; (B) has wilfully violated or wilfully failed to comply with any provision of sections 36b-2 to 36b-33, inclusive, as amended by this act, or a predecessor statute or any regulation or order under said sections or a predecessor statute; (C) has been convicted, within the past ten years, of any misdemeanor involving a security, any aspect of the securities business, or any felony, provided any denial, suspension or revocation of such registration shall be in accordance with the provisions of section 46a-80; (D) is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities or commodities business; (E) is the subject of a cease and desist order of the commissioner or an order of the commissioner denying, suspending, or revoking registration as a broker-dealer, agent, investment adviser or investment adviser agent; (F) is the subject of any of the following sanctions that are currently effective or were imposed within the past ten years: (i) An order issued by the securities administrator of any other state, Canadian province or territory, or by the Securities and Exchange Commission or the Commodity Futures Trading Commission denying, suspending or revoking registration as a broker-dealer, agent, investment adviser, investment adviser agent or a person required to be registered under the Commodity Exchange Act, 7 USC 1 et seq., as from time to time amended, and the rules and regulations thereunder, or the substantial equivalent of those terms, as defined in sections 36b-2 to 36b-33, inclusive, as amended by this act, (ii) an order of the Securities and Exchange Commission or Commodity Futures Trading Commission suspending or expelling such applicant, registrant or person from a

**Substitute House Bill No. 6829**

national securities or commodities exchange or national securities or commodities association registered under the Securities Exchange Act of 1934 or the Commodity Exchange Act, 7 USC 1 et seq., as from time to time amended, or, in the case of an individual, an order of the Securities and Exchange Commission or an equivalent order of the [commodity futures trading commission] Commodity Futures Trading Commission barring such individual from association with a broker-dealer or an investment adviser, (iii) a suspension, expulsion or other sanction issued by a national securities exchange or other self-regulatory organization registered under federal laws administered by the Securities and Exchange Commission or the Commodity Futures Trading Commission if the effect of the sanction has not been stayed or overturned by appeal or otherwise, (iv) a United States Post Office fraud order, or (v) a cease and desist order entered by the Securities and Exchange Commission, a self-regulatory organization or the securities agency or administrator of any other state or Canadian province or territory; but the commissioner may not (I) institute a revocation or suspension proceeding under this subparagraph more than five years from the date of the sanction relied on, and (II) enter an order under this subparagraph on the basis of an order under any other state act unless that order was based on facts which would constitute a ground for an order under this section; (G) may be denied registration under federal law as a broker-dealer, agent, investment adviser, investment adviser agent or as a person required to be registered under the Commodity Exchange Act, 7 USC 1 et seq., as from time to time amended, and the rules and regulations promulgated thereunder, or the substantial equivalent of those terms as defined in sections 36b-2 to 36b-33, inclusive, as amended by this act; (H) has engaged in fraudulent, dishonest or unethical practices in the securities or commodities business, including abusive sales practices in the business dealings of such applicant, registrant or person with current or prospective customers or clients; (I) is insolvent, either in the sense that the liabilities of such applicant, registrant or

**Substitute House Bill No. 6829**

person exceed the assets of such applicant, registrant or person, or in the sense that such applicant, registrant or person cannot meet the obligations of such applicant, registrant or person as they mature; but the commissioner may not enter an order against a broker-dealer or investment adviser under this subparagraph without a finding of insolvency as to the broker-dealer or investment adviser; (J) is not qualified on the basis of such factors as training, experience, and knowledge of the securities business, except as otherwise provided in subsection (b) of this section; (K) has failed reasonably to supervise: (i) The agents or investment adviser agents of such applicant or registrant, if the applicant or registrant is a broker-dealer or investment adviser; or (ii) the agents of a broker-dealer or investment adviser agents of an investment adviser, if such applicant, registrant or other person is or was an agent, investment adviser agent or other person charged with exercising supervisory authority on behalf of a broker-dealer or investment adviser; (L) in connection with any investigation conducted pursuant to section 36b-26, as amended by this act, or any examination under subsection (d) of section 36b-14, as amended by this act, has made any material misrepresentation to the commissioner or upon request made by the commissioner, has withheld or concealed material information from, or refused to furnish material information to the commissioner, provided, there shall be a rebuttable presumption that any records, including, but not limited to, written, visual, audio, magnetic or electronic records, computer printouts and software, and any other documents, that are withheld or concealed from the commissioner in connection with any such investigation or examination are material, unless such presumption is rebutted by substantial evidence; [or] (M) has wilfully aided, abetted, counseled, commanded, induced or procured a violation of any provision of sections 36b-2 to 36b-33, inclusive, as amended by this act, or a predecessor statute or any regulation or order under such sections or a predecessor statute; or (N) has failed to pay the proper filing fee; but the commissioner may enter only a denial order under this

**Substitute House Bill No. 6829**

subparagraph, and the commissioner shall vacate any such order when the deficiency has been corrected. The commissioner may not institute a suspension or revocation proceeding on the basis of a fact or transaction known to the commissioner when the registration became effective unless the proceeding is instituted within one hundred eighty days of the effective date of such registration.

Sec. 6. Section 36b-21 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2005*):

(a) The following securities are exempted from sections 36b-16 and 36b-22, as amended by this act: (1) Any security including a revenue obligation issued or guaranteed by the United States, any state, any political subdivision of a state, or any agency or corporate or other instrumentality of one or more of the foregoing; or any certificate of deposit for any of the foregoing; (2) any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, any agency or corporate or other instrumentality of one or more of the foregoing, or any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor; (3) any security that is not a "covered security" under Sections 3(a)(2) and 18(b)(4)(C) of the Securities Act of 1933 and that is issued by and [representing] represents or will represent an interest in or a debt of, or guaranteed by, any international banking institution, any bank, savings bank or savings and loan association organized under the laws of the United States, or any bank, savings institution or trust company organized and supervised under the laws of any state; (4) any security issued by and representing or that will represent an interest in or a debt of, or guaranteed by, any federal savings and loan association, or any savings and loan or similar association organized under the laws of any state; (5) any security issued by and representing an interest in or a debt of, or guaranteed by, any insurance company organized

**Substitute House Bill No. 6829**

under the laws of any state and authorized to do business in this state; (6) any security issued or guaranteed by any federal credit union or any credit union, industrial loan association or similar association organized and supervised under the laws of this state; (7) any security issued or guaranteed by any railroad, other common carrier, public utility or public utility holding company [which] that is (A) [subject to the jurisdiction of the Interstate Commerce Commission or its successor agency] regulated with respect to its rates and charges by the United States or any state; (B) a public utility holding company registered [holding company] under the Public Utility Holding Company Act of 1935 or a subsidiary of such a registered holding company within the meaning of [that] said act; or (C) [regulated in respect of its rates and charges by a governmental authority of the United States or any state; or (D)] regulated [in] with respect [of] to the issuance or guarantee of the security by [a governmental authority of] the United States, any state, Canada or any Canadian province or territory; (8) (A) any security appearing on the list of over-the-counter and foreign securities approved for margin by the Board of Governors of the Federal Reserve System which is not otherwise a covered security, (B) any warrant or right to purchase or subscribe to any security described in subparagraph (A) of this subdivision, and (C) any warrant or right to purchase or subscribe to any security listed or approved for listing upon notice of issuance on (i) the New York Stock Exchange, the American Stock Exchange, the Chicago Board Options Exchange and such other securities exchanges as may be designated by the commissioner from time to time, (ii) the list of over-the-counter securities approved for margin by the Board of Governors of the Federal Reserve System where such security is a covered security, or (iii) the national market system of the National Association of Securities Dealers Automated Quotation System established pursuant to the Securities Exchange Act of 1934; (9) any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social,

***Substitute House Bill No. 6829***

athletic or reformatory purposes, or as a chamber of commerce or trade or professional association; (10) any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which evidences an obligation to pay cash within nine months of the date of issuance, exclusive of days of grace, or any renewal of such paper which is likewise limited, or any guarantee of such paper or of any such renewal; (11) any security issued in connection with an employees' stock purchase, stock option, savings, pension, profit-sharing or similar benefit plan; (12) any security issued by any cooperative apartment corporation incorporated under the laws of this state, located in and operating wholly within the borders of this state, in conjunction with the execution of proprietary leases; (13) any security issued by any person, organized and located in this state and operating exclusively for the purpose of promoting the industrial or commercial development of this state, or such development of any political subdivision thereof or such development of any regional planning area within this state, if such persons are approved by the Commissioner of Economic and Community Development and such approval has been certified, in writing, by said Commissioner of Economic and Community Development to the commissioner; such approval and certification shall be conclusive as to the nature and purpose of such person; (14) any security issued by the Connecticut Development Credit Corporation; (15) any security issued by any nonstock corporation, which is incorporated under the laws of this state as a cooperative marketing corporation and has its principal place of business in this state, and which is a farmers' cooperative organization, as defined in Section 521 of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as from time to time amended, if such corporation has been certified, in writing, by the Connecticut Department of Agriculture to the commissioner to be a bona fide cooperative marketing corporation; such certification shall be conclusive as to the nature and purpose of such corporation; (16) any security issued by all

**Substitute House Bill No. 6829**

cooperative associations organized or existing under chapter 595; (17) any security issued by any person organized, located and operating within or from the borders of this state, when selling or offering for sale an interest in real estate limited partnerships or real estate syndications exclusively, if such person has obtained a permit from the Real Estate Commission; (18) any security which, prior to or within sixty days after October 1, 1977, has been sold or disposed of by the issuer or bona fide offered to the public, but this exemption shall not apply to any new offer of any such security by an issuer or underwriter subsequent to such sixty days; (19) any interest or participation in any common trust fund or similar fund established and maintained by a bank, or by one or more banks under common control as otherwise authorized by general statute, exclusively for the collective investment and reinvestment of assets contributed thereto by such bank in its fiduciary capacity; (20) any security issued by a worker cooperative corporation formed under the provisions of sections 33-418f to 33-418o, inclusive; (21) 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 "covered security" under Section 18(b)(1) of the Securities Act of 1933; and (22) any other security that the commissioner may exempt, conditionally or unconditionally, on a finding that registration is not necessary or appropriate in the public interest or for the protection of investors.

(b) The following transactions are exempted from sections 36b-16 and 36b-22, as amended by this act: (1) Any isolated nonissuer transaction, whether effected through a broker-dealer or not; (2) any nonissuer transaction by a registered agent of a registered broker-dealer in a security of a class that has been outstanding in the hands of the public for at least ninety days provided, at the time of the transaction: (A) The security is sold at a price reasonably related to the current market price of the security; (B) the security does not constitute

***Substitute House Bill No. 6829***

the whole or part of an unsold allotment to, or a subscription or participation by, the broker-dealer as an underwriter of the security; (C) a nationally recognized securities manual contains (i) a description of the business and operations of the issuer; (ii) the names of the issuer's officers and directors or, in the case of a [non-United-States] non-United States issuer, the corporate equivalents of such persons in the issuer's country of domicile; (iii) an audited balance sheet of the issuer as of a date within eighteen months, or in the case of a reorganization or merger where the parties to the reorganization or merger had such audited balance sheet, a pro forma balance sheet; and (iv) an audited income statement for each of the issuer's immediately preceding two fiscal years, or for the period of existence of the issuer, if in existence for less than two years, or in the case of a reorganization or merger where the parties to the reorganization or merger had such audited income statement, a pro forma income statement; and (D) the issuer of the security has a class of equity securities listed on a national securities exchange registered under the Securities Exchange Act of 1934, or designated for trading on the National Association of Securities Dealers Automated Quotation System, unless the issuer, including any predecessors of the issuer (i) has been engaged in continuous business for at least three years or (ii) has total assets of at least two million dollars based on an audited balance sheet of the issuer as of a date within eighteen months, or in the case of a reorganization or merger where the parties to the reorganization or merger had such audited balance sheet, a pro forma balance sheet. The exemption in this subdivision shall not be available for any distribution of securities issued by a blank check company, shell company, dormant company or any issuer that has been merged or consolidated with or has bought out a blank check company, shell company or dormant company unless the issuer or any predecessor has continuously operated its business for at least the preceding five years and has had gross operating revenue in each of the preceding five years, including gross operating revenue of at least five hundred

**Substitute House Bill No. 6829**

thousand dollars per year in three of the preceding five years; (3) any nonissuer distribution of an outstanding security if the security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year or within the three preceding fiscal years, or during the existence of the issuer and any predecessors if less than three years, in the payment of principal, interest or dividends on the security; (4) any nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy; but the commissioner may by regulation require that the customer acknowledge upon a specified form that the sale was unsolicited, and that a signed copy of each such form be preserved by the broker-dealer for a specified period or that the confirmation delivered to the purchaser or a memorandum delivered in connection therewith shall confirm that such purchase was unsolicited by the broker-dealer or any agent of the broker-dealer; (5) any transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters; (6) any transaction in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust or by an agreement for the sale of real estate or chattels, if the entire mortgage, deed of trust or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a unit; (7) any transaction by an executor, administrator, state marshal, marshal, receiver, trustee in bankruptcy, creditors' committee in a proceeding under the Bankruptcy Act, guardian or conservator; (8) any transaction executed by a bona fide pledgee without any purpose of evading sections 36b-2 to 36b-33, inclusive, as amended by this act; (9) any offer or sale to a bank and trust company, a national banking association, a savings bank, a savings and loan association, a federal savings and loan association, a federal savings bank, a credit union, a federal credit union, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer,

***Substitute House Bill No. 6829***

or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity; (10) (A) subject to the provisions of this subdivision, any transaction not involving a public offering within the meaning of Section 4(2) of the Securities Act of 1933, but not including any transaction specified in the rules and regulations thereunder. (B) Subject to the provisions of this subdivision, any transaction made in accordance with the uniform exemption from registration for small issuers authorized in Section 19(d)(3)(C) of the Securities Act of 1933. (C) The exemptions set forth in subparagraphs (A) and (B) of this subdivision shall not be available for transactions in securities issued by any blank check company, shell company or dormant company. (D) The exemptions set forth in subparagraphs (A) and (B) of this subdivision may, with respect to any security or transaction or any type of security or transaction, be modified, withdrawn, further conditioned or waived as to conditions, in whole or in part, conditionally or unconditionally, by the commissioner, acting by regulation, rule or order, on a finding that such regulation, rule or order is necessary or appropriate in the public interest or for the protection of investors. (E) A nonrefundable fee of one hundred fifty dollars shall accompany any filing made with the commissioner pursuant to this subdivision; (11) any offer or sale of a preorganization certificate or subscription if (A) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber, (B) the number of subscribers does not exceed ten, and (C) no payment is made by any subscriber; (12) any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants or transferable warrants exercisable within not more than ninety days of their issuance, if (A) no commission or other remuneration other than a standby commission is paid or given directly or indirectly for soliciting any security holder in this state, or (B) the issuer first files a notice, in such form and containing such information as the commissioner may by regulation prescribe,

**Substitute House Bill No. 6829**

specifying the terms of the offer and the commissioner does not by order disallow the exemption within the next ten full business days; (13) any offer, but not a sale, of a security for which registration statements have been filed under both sections 36b-2 to 36b-33, inclusive, as amended by this act, and the Securities Act of 1933, if no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending under either said sections or the Securities Act of 1933; (14) any transaction exempt under Section 4(6) of the Securities Act of 1933, and the rules and regulations thereunder. The issuer shall, prior to the first sale, file with the commissioner a notice, in such form and containing such information as the commissioner may by regulation, rule or order prescribe. A nonrefundable fee of one hundred fifty dollars shall accompany any such filing made pursuant to this subdivision; (15) any transaction if all the following conditions are satisfied: (A) The offer and sale is effectuated by the issuer of the security; (B) the total number of purchasers of all securities of the issuer does not exceed ten. A subsequent sale of securities that (i) is registered under sections 36b-2 to 36b-33, inclusive, as amended by this act, (ii) is sold pursuant to an exemption under said sections other than this subdivision, or (iii) involves covered securities, shall not be integrated with a sale pursuant to this exemption in computing the number of purchasers hereunder. For the purpose of this subdivision, each of the following is deemed to be a single purchaser of a security: A husband and wife, a child and the parent or guardian of such child when the parent or guardian holds the security for the benefit of the child, a corporation, a partnership, an association or other unincorporated entity, a joint stock company or a trust, but only if the corporation, partnership, association, unincorporated entity, joint stock company or trust was not formed for the purpose of purchasing the security; (C) no advertisement, article, notice or other communication published in any newspaper, magazine or similar medium, [or] broadcast over television or radio [,] or communicated by other electronic means or

**Substitute House Bill No. 6829**

any other general solicitation is used in connection with the sale; and (D) no commission, discount or other remuneration is paid or given directly or indirectly in connection with the offer and sale, and the total expenses, excluding legal and accounting fees, in connection with the offer and sale do not exceed one per cent of the total sales price of the securities. For purposes of this subdivision, a difference in the purchase price among the purchasers shall not, in and of itself, be deemed to constitute indirect remuneration; (16) any transaction exempt under Rule 701, 17 CFR Section 230.701 promulgated under Section 3(b) of the Securities Act of 1933; and (17) any other transaction that the commissioner may exempt, conditionally or unconditionally, on a finding that registration is not necessary or appropriate in the public interest or for the protection of investors.

(c) (1) Any person who offers or sells a security that is a covered security under Section 18(b)(2) of the Securities Act of 1933 shall file with the commissioner, or with any other depository that the commissioner may designate by regulation or order, a notice for each series or portfolio prior to the initial offer of such security in this state, provided such notice requirement does not apply to any offer or sale described in subdivision (9) or (12) of subsection (b) of this section. The notice shall contain such information as the commissioner may require and shall be accompanied by a consent to service of process as required by subsection (g) of section 36b-33, as amended by this act, and a nonrefundable fee of five hundred dollars; (2) any notice filed pursuant to this subsection relating to a security issued by a face-amount certificate company or unit investment trust, as such terms are defined in the Investment Company Act of 1940, shall be valid for a period of one year from the date that such security is declared effective by the Securities and Exchange Commission, without limitation as to the number of shares or aggregate amount. Such notice may be renewed annually thereafter upon submission of such information as the commissioner may require, not earlier than

**Substitute House Bill No. 6829**

thirty days nor later than five days prior to the date upon which such previously filed notice is due to expire, together with a nonrefundable fee of five hundred dollars; (3) any notice filed pursuant to this subsection relating to a redeemable security issued by an open-end management company, as defined in the Investment Company Act of 1940, shall be valid until December thirty-first of the calendar year in which it was first filed, without limitation as to the number of shares or aggregate amount. Such notice may be renewed annually thereafter upon submission of such information as the commissioner may require together with a nonrefundable fee of five hundred dollars.

(d) Any person who offers or sells a security that is a covered security under Section 18(b)(3) of the Securities Act of 1933 shall file a consent to service of process with the commissioner as required by subsection (g) of section 36b-33, as amended by this act, prior to the first offer or sale of such security in this state.

(e) Any person who offers or sells a security that is a covered security under Section 18(b)(4)(D) of the Securities Act of 1933 shall file a notice with the commissioner within fifteen days after the first sale of such a security in this state. Such notice shall contain such information as the commissioner may require and shall be accompanied by a consent to service of process as required by subsection (g) of section 36b-33, as amended by this act, and a nonrefundable fee of one hundred fifty dollars.

(f) The commissioner may by order (1) deny or revoke any exemption specified in subdivision (9) or (11) of subsection (a) of this section or in subsection (b) of this section with respect to a specific security or transaction, (2) suspend the offer or sale of a covered security in this state if any person who offers a covered security fails to comply with any of the requirements set forth in subsections (c), (d) or (e) of this section, or (3) require any person who offers a covered security in this state and refuses to pay any fee required by subsections

**Substitute House Bill No. 6829**

(c) or (e) of this section to register such security pursuant to section 36b-16. For purposes of this subsection, a delay in the payment of a fee or underpayment of a fee that is promptly remedied shall not constitute a refusal to pay such fee. No such order may be entered without appropriate prior notice to all interested parties, opportunity for hearing and written findings of fact and conclusions of law, except that the commissioner may by order summarily deny or revoke any of the specified exemptions or summarily suspend the offer or sale of any covered security subject to any of the requirements set forth in subsections (c), (d) or (e) of this section pending final determination of any proceeding under this subsection. Upon the entry of a summary order, the commissioner shall promptly notify all interested parties that it has been entered and of the reasons therefor and that within fifteen days of the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner after notice of, and opportunity for, hearing to all interested persons may modify or vacate the order or extend it until final determination. No order under this subsection may operate retroactively. No person may be considered to have violated sections 36b-16 and 36b-22, as amended by this act, by reason of any offer or sale effected after the entry of an order under this subsection if [he] such person sustains the burden of proof that [he] such person did not know, and in the exercise of reasonable care could not have known, of the order.

(g) In any proceeding under sections 36b-2 to 36b-33, inclusive, as amended by this act, the burden of proving an exemption, preemption, exclusion or an exception from a definition is upon the person claiming it.

Sec. 7. Section 36b-22 of the general statutes is repealed and the

**Substitute House Bill No. 6829**

following is substituted in lieu thereof (*Effective October 1, 2005*):

The commissioner may, by regulation adopted, in accordance with chapter 54, or order, require the filing of any prospectus, pamphlet, circular, form letter, advertisement or other sales literature or advertising communication addressed or intended for distribution to prospective investors, including clients or prospective clients of an investment adviser registered or required to be registered under sections 36b-2 to 36b-33, inclusive, as amended by this act, unless the security or transaction is (1) exempted by subsection (a) or (b) of section 36b-21, as amended by this act, except for transactions exempted by subdivision (13) of subsection (b) of said section 36b-21, or (2) a covered security.

Sec. 8. Section 36b-23 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2005*):

No person shall make or cause to be made orally or in any document filed with the commissioner or in any proceeding, investigation or examination under sections 36b-2 to 36b-33, inclusive, as amended by this act, any statement [which] that is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect or, in connection with the statement, 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.

Sec. 9. Subsection (a) of section 36b-26 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2005*):

(a) The commissioner [, in his discretion,] may, subject to the provisions of the Freedom of Information Act, as defined in section 1-200: (1) Make such public or private investigations within or outside of

**Substitute House Bill No. 6829**

this state as [he] the commissioner deems necessary to determine whether any person has violated, is violating or is about to violate any provision of sections 36b-2 to 36b-33, inclusive, as amended by this act, or any regulation or order thereunder, or to aid in the enforcement of said sections or in the prescribing of rules and forms thereunder, (2) require or permit any person to testify, produce a record or file a statement in writing, under oath or otherwise as the commissioner determines, as to all the facts and circumstances concerning the matter to be investigated or about which an action or proceeding is to be instituted, and (3) publish information concerning any violation of said sections or any regulation or order thereunder.

Sec. 10. Section 36b-27 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2005*):

(a) Whenever it appears to the commissioner after an investigation that any person [or persons have] has violated, [are] is violating or [are] is about to violate any of the provisions of sections 36b-2 to 36b-33, inclusive, as amended by this act, or any regulation, rule or order adopted or issued under said sections, or that the further sale or offer to sell securities would constitute a violation of said sections or any such regulation, rule or order, or that any person [or persons have] has engaged in a dishonest or unethical practice in the securities or commodities business within the meaning of sections 36b-31-15a to 36b-31-15d, inclusive, of the regulations of Connecticut state agencies, the commissioner may, in the commissioner's discretion, order [the] (1) the person, [or persons or] (2) any other person that directly or indirectly controls such person and that is, was or would be a cause of the violation of such sections or any such regulation, rule or order, due to an act or omission such other person knew or should have known would contribute to such violation, or (3) any other person that has materially aided, is materially aiding or is about to materially aid in such violation, to cease and desist from the violations or the causing of

***Substitute House Bill No. 6829***

or aiding in the violations of the provisions of said sections or of the regulations, rules or orders thereunder, or from the further sale or offer to sell securities constituting or which would constitute a violation of the provisions of said sections or of the regulations, rules or orders thereunder, or from further engaging in such dishonest or unethical practice. After such an order is issued, the person [or persons] named in the order may, within fourteen days after receipt of the order, file a written request for a hearing. Any such hearing shall be held in accordance with the provisions of chapter 54.

(b) Whenever it appears to the commissioner, after an investigation, that any person [or persons have] has violated any of the provisions of sections 36b-2 to 36b-33, inclusive, as amended by this act, or any regulation, rule or order adopted or issued under said sections, or that the further sale or offer to sell securities would constitute a violation of said sections or any such regulation, rule or order, or that such person [or persons have] has engaged in a dishonest or unethical practice in the securities or commodities business within the meaning of sections 36b-31-15a to 36b-31-15d, inclusive, of the regulations of Connecticut state agencies, the commissioner may, in addition to any other remedy under this section, order the person [or persons] to (1) make restitution of any sums shown to have been obtained in violation of any of the provisions of said sections or any such regulation, rule or order or as a result of such dishonest or unethical practice plus interest at the legal rate set forth in section 37-1, (2) provide disgorgement of any sums shown to have been obtained in violation of any of the provisions of said sections or any such regulation, rule or order or as a result of such dishonest or unethical practice, or (3) both make restitution and provide disgorgement. After such an order is issued, the person [or persons] named in the order may, [within] not later than fourteen days after receipt of the order, file a written request for a hearing. Any such hearing shall be held in accordance with the provisions of chapter 54.

**Substitute House Bill No. 6829**

(c) The commissioner, in the commissioner's discretion, may order any person who directly or indirectly controls a person liable under subsection (b) of this section or who has materially aided a person liable under subsection (b) of this section in violation of any of the provisions of sections 36b-2 to 36b-33, inclusive, as amended by this act, or any regulation, rule or order adopted or issued under said sections 36b-2 to 36b-33, inclusive, to make restitution, provide disgorgement, or both, of any sums shown to have been obtained as a result of a dishonest or unethical practice or in violation of any of the provisions of said sections 36b-2 to 36b-33, inclusive, or any regulation, rule or order adopted or issued under said sections. Such controlling person or aider shall be liable jointly and severally with and to the same extent as the person liable under subsection (b) of this section, unless such controlling person or aider allegedly liable under this subsection sustains the burden of proof that such person did not know, and in the exercise of reasonable care could not have known, of the existence of facts by reason of which the liability is alleged to exist. After such an order is issued, the person [or persons] named in the order may, within fourteen days after receipt of the order, file a written request for a hearing. Any such hearing shall be held in accordance with the provisions of chapter 54. There shall be contribution as in cases of contract among the several persons so liable. [under this subsection.]

(d) (1) Whenever the commissioner finds as the result of an investigation that any person [or persons have] has violated any of the provisions of sections 36b-2 to 36b-33, inclusive, as amended by this act, or any regulation, rule or order adopted or issued under said sections, the commissioner may send a notice to (A) such person, [or persons] (B) any other person that directly or indirectly controls such person and that was a cause of the violation of said sections or any such regulation, rule or order, due to an act or omission such other person knew or should have known would contribute to such

**Substitute House Bill No. 6829**

violation, or (C) any other person that has materially aided in such violation, by registered mail, return receipt requested, or by any express delivery carrier that provides a dated delivery receipt. Any such notice shall include: [(A)] (i) A reference to the title, chapter, regulation, rule or order alleged to have been violated; [(B)] (ii) a short and plain statement of the matter asserted or charged; [(C)] (iii) the maximum fine that may be imposed for such violation; and [(D)] (iv) the time and place for the hearing. Any such hearing shall be fixed for a date not earlier than fourteen days after the notice is mailed.

(2) The commissioner shall hold a hearing upon the charges made unless such person [or persons fail] fails to appear at the hearing. Any such hearing shall be held in accordance with the provisions of chapter 54. After the hearing if the commissioner finds that the person [or persons have] has violated, caused a violation or materially aided in the violation of any of the provisions of sections 36b-2 to 36b-33, inclusive, as amended by this act, or any regulation, rule or order adopted or issued under said sections, the commissioner may, in the commissioner's discretion and in addition to any other remedy authorized by said sections, order that a fine not exceeding one hundred thousand dollars per violation be imposed upon such person. [or persons.] If such person [or persons fail] fails to appear at the hearing, the commissioner may, as the facts require, order that a fine not exceeding one hundred thousand dollars per violation be imposed upon such person. [or persons.] The commissioner shall send a copy of any order issued pursuant to this subsection by registered mail, return receipt requested, or by any express delivery carrier that provides a dated delivery receipt, to any person [or persons] named in such order.

(e) Whenever it appears to the commissioner that any person [or persons have] has violated, [are] is violating or [are] is about to violate any of the provisions of sections 36b-2 to 36b-33, inclusive, as amended by this act, or any regulation, rule or order adopted or issued under

**Substitute House Bill No. 6829**

said sections, or that the further sale or offer to sell securities would constitute a violation of said sections or any such regulation, rule or order, the commissioner may, in the commissioner's discretion and in addition to any other remedy authorized by this section, [(1) Bring] bring an action in the superior court for the judicial district of Hartford [to enjoin] to: (1) Enjoin the acts or practices and to enforce compliance with sections 36b-2 to 36b-33, inclusive, as amended by this act, or any such regulation, rule or order against (A) such person; (B) any other person who directly or indirectly controls such person and who is, was or would be a cause of the violation of said sections 36b-2 to 36b-33, inclusive, or any such regulation, rule or order due to an act or omission such other person knew or should have known would contribute to such violation; or (C) any other person who has materially aided, is materially aiding or is about to materially aid in such violation. Upon a proper showing, the court may issue a permanent or temporary injunction, restraining order or writ of mandamus [shall be granted] and may order other appropriate or ancillary relief, which may include: (i) An asset freeze, accounting, writ of attachment, writ of general or specific execution, and appointment of a receiver or conservator, [may be appointed] who may be the commissioner or a person recommended by the commissioner, for the defendant or the defendant's assets. If a person other than the commissioner is appointed receiver or conservator, the commissioner shall be a party to the receivership proceeding or conservatorship with standing to initiate or contest any motion, and the views of the commissioner shall be entitled to deference unless they are inconsistent with the plain meaning of sections 36b-2 to 36b-33, inclusive, as amended by this act. The commissioner may appoint such employees and retain such consultants as the commissioner deems necessary for liquidating or administering the affairs of the defendant; (ii) an order directing the commissioner to take charge and control of a defendant's property, including investment accounts and accounts in a depository institution, rents, and profits; to collect debts; and to

**Substitute House Bill No. 6829**

acquire and dispose of property; (iii) an order directing the payment of pre-judgment and post-judgment interest; or (iv) an order covering such other relief as the court considers appropriate. The court shall not require the commissioner to post a bond; (2) seek a court order imposing a fine not to exceed one hundred thousand dollars per violation against [any] the person found to have violated, caused a violation or materially aided in the violation of any [order issued by the commissioner] provision of sections 36b-2 to 36b-33, inclusive, as amended by this act, or any regulation, rule or order adopted or issued under said sections 36b-2 to 36b-33, inclusive; [or] (3) apply [to the superior court for the judicial district of Hartford] for an order [of restitution] whereby the [defendants in such action] person that violated any of the provisions of said sections 36b-2 to 36b-33, inclusive, or any regulation, rule or order adopted or issued under said sections shall be ordered to: [make] (A) Make restitution of those sums shown by the commissioner to have been obtained by [them] such person in violation of any of the provisions of said sections [36b-2 to 36b-33, inclusive,] or any such regulation, rule or order, plus interest at the rate set forth in section 37-3a; (B) provide disgorgement of any sums shown to have been obtained in violation of any of the provisions of said sections or any such regulation, rule or order; (C) both make restitution and provide disgorgement; or (4) apply for an order whereby any person who directly or indirectly controls a person liable under subdivision (3) of this subsection, or who has materially aided a person liable under subdivision (3) of this subsection in a violation of any of the provisions of sections 36b-2 to 36b-33, inclusive, as amended by this act, or any regulation, rule or order adopted or issued under said sections, to make restitution, provide disgorgement, or both, of any sums shown to have been obtained as a result of such violation. Such controlling person or aider shall be liable jointly and severally with and to the same extent as the person liable under subdivision (3) of this subsection, unless such controlling person or aider allegedly liable under this subdivision sustains the burden of

**Substitute House Bill No. 6829**

proof that such person did not know, and in the exercise of reasonable care could not have known, of the existence of facts by reason of which the liability is alleged to exist. Such restitution or disgorgement shall, at the option of the court, be payable to the receiver or conservator appointed pursuant to this subsection, or directly to the persons whose assets were obtained in violation of any provision of sections 36b-2 to 36b-33, inclusive, as amended by this act, or any such regulation, rule or order.

(f) Any time after the issuance of an order or notice provided for in subsection (a), (b) or (c) or subdivision (1) of subsection (d) of this section, the commissioner may accept an agreement by any respondent named in such order or notice to enter into a written consent order in lieu of an adjudicative hearing. The acceptance of a consent order shall be within the complete discretion of the commissioner. The consent order provided for in this subsection shall contain (1) an express waiver of the right to seek judicial review or otherwise challenge or contest the validity of the order or notice; (2) a provision that the order or notice may be used in construing the terms of the consent order; (3) a statement that the consent order shall become final when issued; (4) a specific assurance that none of the violations [or dishonest or unethical practices] alleged in the order or notice shall occur in the future; (5) such other terms and conditions as are necessary to further the purposes and policies of sections 36b-2 to 36b-33, inclusive, as amended by this act; (6) the signature of each of the individual respondents evidencing such respondent's consent; and (7) the signature of the commissioner or of the commissioner's authorized representative.

Sec. 11. Section 36b-31 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2005*):

(a) The commissioner may from time to time make, amend and rescind such regulations, forms and orders as are necessary to carry

***Substitute House Bill No. 6829***

out the provisions of sections 36b-2 to 36b-33, inclusive, as amended by this act, including regulations, forms and orders governing registration statements, notice filings, applications, and reports, and defining any terms, whether or not used in said sections, insofar as the definitions are not inconsistent with the provisions of said sections. For the purpose of regulations, forms and orders, the commissioner may classify securities, persons and matters within his or her jurisdiction, and prescribe different requirements for different classes.

(b) No regulation, form or order may be made, amended or rescinded unless the commissioner finds that the action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of sections 36b-2 to 36b-33, inclusive, as amended by this act. In prescribing regulations, forms and orders, the commissioner may cooperate with the securities administrators of the other states and the Securities and Exchange Commission with a view to effectuating the policy of said sections to achieve maximum uniformity in the form and content of registration statements, notice filings, applications and reports wherever practicable.

(c) To encourage uniform interpretation and administration of sections 36b-2 to 36b-33, inclusive, as amended by this act, and effective securities regulation and enforcement, the commissioner may cooperate with the securities agencies or administrators of other states, Canadian provinces or territories, or other countries, the Securities and Exchange Commission, the Commodity Futures Trading Commission, the Securities Investor Protection Corporation, any self-regulatory organization, any national or international organization of securities officials or agencies, and any governmental law enforcement or regulatory agency. The cooperation authorized by this subsection includes, but is not limited to, the following actions: (1) Establishing central depositories for the registration of securities or securities

**Substitute House Bill No. 6829**

industry personnel under sections 36b-2 to 36b-33, inclusive, as amended by this act, and for documents or records required or allowed to be filed with or maintained by the commissioner under sections 36b-2 to 36b-33, inclusive, as amended by this act; (2) conducting joint examinations and investigations; (3) sharing and exchanging information and documents subject to the restrictions of chapter 3; (4) sharing and exchanging personnel; and (5) executing joint agreements, memoranda of understanding and orders.

(d) [The] Subject to Section 15(h) of the Securities Exchange Act of 1934 and Section 222 of the Investment Advisers Act of 1940, the commissioner may, by regulation or order, prescribe: (1) The form and content of financial statements required under sections 36b-2 to 36b-33, inclusive, as amended by this act; (2) the circumstances under which consolidated financial statements shall be filed; and (3) whether any required financial statements shall be certified by independent [or] certified public accountants. All financial statements shall be prepared in accordance with generally accepted accounting principles.

(e) Any regulations issued pursuant to the provisions of sections 36b-2 to 36b-33, inclusive, as amended by this act, shall be adopted in accordance with the provisions of chapter 54.

(f) The commissioner, or employees of the Department of Banking authorized by [him] the commissioner, may, whether or not requested by any person, issue declaratory rulings pursuant to section 4-176 or written advisory interpretations of sections 36b-2 to 36b-33, inclusive, as amended by this act, including interpretation of the applicability of any provision of said sections, or may issue determinations that the commissioner will not institute a proceeding or an action under sections 36b-2 to 36b-33, inclusive, as amended by this act, against a specified person for engaging in a specified act, practice or course of business if the determination is consistent with the purposes fairly intended by the policy and provisions of said sections 36b-2 to 36b-33,

**Substitute House Bill No. 6829**

inclusive.

(g) Every hearing in an administrative proceeding shall be public.

(h) No provision of sections 36b-2 to 36b-33, inclusive, as amended by this act, imposing any liability applies to any act done or omitted in good faith in conformity with any regulation, form, order, [or] advisory interpretation or no action determination of the commissioner, notwithstanding that the regulation, form, order, [or] advisory interpretation or no action determination may later be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

Sec. 12. Subsection (d) of section 36b-32 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2005*):

(d) Upon request and at such charges as provided for in the Freedom of Information Act, as defined in section 1-200, the commissioner shall furnish to any person photostatic or other copies, certified under [his] the commissioner's seal of office if requested, of any entry in the register or any document which is a matter of public record or a certification that such public record does not exist. In any proceeding or prosecution under sections 36b-2 to 36b-33, inclusive, as amended by this act, any copy so certified is prima facie evidence of the contents of the entry or document certified and a certificate by the commissioner of a record's nonexistence is prima facie evidence of the nonexistence of such record.

Sec. 13. Section 36b-33 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2005*):

(a) Sections 36b-4, 36b-5, 36b-6, as amended by this act, 36b-16, 36b-24 and 36b-29 apply to persons who sell or offer to sell when an offer to sell is made in this state, or when an offer to buy is made and

**Substitute House Bill No. 6829**

accepted in this state.

(b) Sections 36b-4, 36b-5, 36b-6, as amended by this act, and 36b-24 apply to persons who buy or offer to buy when an offer to buy is made in this state, or when an offer to sell is made and accepted in this state.

(c) For the purpose of this section, an offer to sell or to buy is made in this state, whether or not either party is then present in this state, when the offer originates from this state or is directed by the offeror to this state and received at the place to which it is directed or at any post office in this state in the case of a mailed offer.

(d) For the purpose of this section, an offer to buy or to sell is accepted in this state when acceptance is communicated to the offeror in this state and has not previously been communicated to the offeror, orally or in writing, outside this state; and acceptance is communicated to the offeror in this state, whether or not either party is then present in this state, when the offeree directs it to the offeror in this state reasonably believing the offeror to be in this state and it is received at the place to which it is directed or any post office in this state in the case of a mailed acceptance.

(e) An offer to sell or to buy is not made in this state when the publisher circulates or there is circulated on the publisher's behalf in this state any bona fide newspaper or other publication of general, regular, and paid circulation which is not published in this state, or which is published in this state but has had more than two-thirds of its circulation outside this state during the past twelve months, or when a radio or television program or other electronic communication originating outside this state is received in this state. A radio or television program or other electronic communication is considered as having originated in this state if either the broadcast studio or the originating source of transmission is located in this state, unless: (1) The program or communication is syndicated and distributed from

***Substitute House Bill No. 6829***

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) Sections 36b-5, 36b-6, as amended by this act, 36b-23, as amended by this act, and 36b-24, so far as they apply to investment advisers and investment adviser agents, apply when any act instrumental in effecting prohibited conduct is done in this state, whether or not either party is then present in this state.

(g) Every applicant for registration under sections 36b-2 to 36b-33, inclusive, as amended by this act, every investment adviser exempt under subsection (e) of section 36b-6, as amended by this act, and every issuer, other than the United States, any state, Canada, any other foreign government with which the United States currently maintains diplomatic relations, or any issuer of covered securities under Section 18(b)(1) of the Securities Act of 1933, which proposes to offer a security in this state through any person acting on an agency basis in the common-law sense shall file with the commissioner, in such form as the commissioner by regulation prescribes, an irrevocable consent appointing the commissioner or the commissioner's successor in office to be his or her attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against him or her or his or her successor executor or administrator which arises under sections 36b-2 to 36b-33, inclusive, as amended by this act, or any regulation or order

**Substitute House Bill No. 6829**

thereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. A person who has filed such a consent in connection with a previous registration need not file another. Service may be made by leaving a copy of the process in the office of the commissioner, but it is not effective unless (1) the plaintiff, who may be the commissioner in a suit, action, or proceeding instituted by [him or her] the commissioner, forthwith sends notice of the service and a copy of the process by registered mail, return receipt requested, or by any express delivery carrier that provides a dated delivery receipt, to the defendant or respondent at the defendant's or respondent's last address on file with the commissioner, and (2) the plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

(h) When any person, including any nonresident of this state, engages in conduct prohibited or made actionable by sections 36b-2 to 36b-33, inclusive, as amended by this act, or any regulation or order thereunder, and such person has not filed a consent to service of process under subsection (g) of this section and personal jurisdiction over such person cannot otherwise be obtained in this state, that conduct shall be considered equivalent to such person's appointment of the commissioner or the commissioner's successor in office to be such person's attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against such person or such person's successor executor or administrator which grows out of that conduct and which is brought under said sections or any regulation or order thereunder, with the same force and validity as if served on such person personally. Service may be made by leaving a copy of the process in the office of the commissioner, and it is not effective unless (1) the plaintiff, who may be the commissioner in a suit, action, or proceeding instituted by [him or her] the commissioner, forthwith sends notice of the service and a copy of the process by registered mail,

***Substitute House Bill No. 6829***

return receipt requested, or by any express delivery carrier that provides a dated delivery receipt, to the defendant or respondent at the defendant's or respondent's last known address or takes other steps which are reasonably calculated to give actual notice, and (2) the plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

(i) Service pursuant to subsection (g) or (h) of this section may be made by the commissioner in an investigation or administrative proceeding in which the commissioner is the moving party.

Approved July 1, 2005