

1 HB290
2 190162-1
3 By Representative Clouse
4 RFD: Ways and Means General Fund
5 First Read: 25-JAN-18

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8 SYNOPSIS: Under existing law, a person may not
9 transact business in the state as a dealer or agent
10 for securities unless he or she is registered with
11 the Alabama Securities Commission.

12 Also under existing law, a person may not
13 offer or sell any security in the state unless the
14 security is registered with the commission or is
15 statutorily exempt from registration.

16 This bill would increase the initial and
17 renewal registration fee for an agent and for an
18 investment adviser representative.

19 This bill would also add a bracket to its
20 filing fee tier structure for an open-end
21 management investment company that, by paying the
22 filing fee, allows the company to issue certain
23 securities exempt from registration by the
24 commission.

25
26 A BILL
27 TO BE ENTITLED

1 AN ACT

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3 Relating to securities; to amend Sections 8-6-3 and
4 8-6-10, Code of Alabama 1975; to increase the registration fee
5 for an agent and for an investment adviser representative; and
6 to add a bracket to the filing fee tier structure for open-end
7 management companies that issue securities that are exempt
8 from registration by the Alabama Securities Commission.

9 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

10 Section 1. Sections 8-6-3 and 8-6-10, Code of
11 Alabama 1975, are amended to read as follows:

12 "§8-6-3.

13 "(a) It is unlawful for any person to transact
14 business in this state as a dealer or agent for securities
15 unless he or she is registered under this article. It is
16 unlawful for any dealer or issuer to employ an agent unless
17 the agent is registered.

18 "(b) It is unlawful for any person to transact
19 business in this state as an investment adviser or as an
20 investment adviser representative unless:

21 "(1) He or she is so registered under this article;

22 "(2) His or her only clients in this state are
23 investment companies as defined in the Investment Company Act
24 of 1940, other investment advisers, broker-dealers, banks,
25 trust companies, savings and loan associations, insurance
26 companies, employee benefit plans with assets of not less than
27 \$1,000,000, and governmental agencies or instrumentalities,

1 whether acting for themselves or as trustees with investment
2 control, or other institutional investors as are designated by
3 rule or order of the commission; or

4 "(3) He or she has no place of business in this
5 state and during any period of 12 consecutive months does not
6 direct business communications in this state in any manner to
7 more than five clients, other than those specified in
8 subdivision (2), whether or not he, she, or any of the persons
9 to whom the communications are directed is then present in
10 this state.

11 "(c) It is unlawful for any investment adviser
12 required to be registered to employ an investment adviser
13 representative unless the investment adviser representative is
14 registered under this article. The registration of an
15 investment adviser representative is not effective during any
16 period when he or she is not employed by an investment adviser
17 registered under this article. When an investment adviser
18 representative begins or terminates employment with an
19 investment adviser, the investment adviser shall promptly
20 notify the commission.

21 "(d) A dealer, agent, investment adviser, or
22 investment adviser representative may apply for registration
23 by filing with the Securities Commission, or its designee, an
24 application, together with a consent to service of process
25 pursuant to Section 8-6-12 and payment of the fee prescribed
26 in subsection (h) of this section. The application shall

1 contain whatever information the commission requires
2 concerning such matters as:

3 "(1) The applicant's form and place of organization;

4 "(2) The applicant's proposed method of doing
5 business;

6 "(3) The qualifications and business history of the
7 applicant and, in the case of a dealer or investment adviser,
8 any partner, officer, or director, any person occupying a
9 similar status or performing similar functions, or any person
10 directly or indirectly controlling the dealer or investment
11 adviser;

12 "(4) Any injunction or administrative order or
13 conviction of a misdemeanor involving moral turpitude, a
14 security or any aspect of the securities business, any
15 conviction of a felony;

16 "(5) The applicant's financial condition and
17 history; and

18 "(6) Any information to be furnished or disseminated
19 to any client or prospective client, if the applicant is an
20 investment adviser.

21 "(e) The commission shall by rule or order require
22 all or any class of applicants to post surety bonds, or cash,
23 in an amount not less than \$50,000, and shall determine their
24 conditions.

25 "(f) If no order to the contrary is in effect and no
26 proceeding is pending under subsection (j) of this section,
27 registration becomes effective at 5:00 P.M. on the sixtieth

1 day after an application is filed. The Securities Commission
2 may specify an earlier effective date, and it may by order
3 defer the effective date until 5:00 P.M. of the sixtieth day
4 after the filing of any amendment. The commission shall
5 require as conditions of registration that:

6 "(1) All or any class of applicants and, in the case
7 of a corporation or partnership, the officers or partners,
8 pass an examination, either written or oral, the form,
9 content, and conduct of which the commission shall prescribe
10 by rule or order.

11 "(2) A dealer shall have and maintain a minimum net
12 capital as the commission shall prescribe by rule or order.
13 The commission may by rule establish minimum financial
14 requirements for investment advisers, which may include
15 different requirements for those investment advisers who
16 maintain custody of clients' funds or securities or who have
17 discretionary authority over same and those investment
18 advisers who do not.

19 "(3) Every registration expires December 31 unless
20 renewed as hereinafter provided.

21 "(g) Registration of a dealer, agent, investment
22 adviser, or investment adviser representative may be renewed
23 by filing with the Securities Commission, or its designee,
24 prior to the expiration thereof, a renewal application. The
25 renewal application shall contain such information as the
26 commission may require to indicate any material change in the
27 information contained in the original application or any

1 renewal application for registration filed with the
2 commission, or its designee, by the applicant, payment of the
3 prescribed fee and a bond as provided in subsection (e) of
4 this section, if the financial condition of the registrant
5 requires such bond. In order to continue the effectiveness of
6 registration and to entitle the dealer or adviser to a renewal
7 thereof, such registrant shall file a financial statement
8 prepared in accordance with generally accepted accounting
9 principles and certified by an independent certified public
10 accountant showing the financial condition of such registrant
11 at the close of its fiscal period. This statement shall be
12 filed with the commission, or its designee, within 60 days
13 after the close of the registrant's fiscal period unless an
14 extension of time is granted by the commission. The commission
15 shall accept for filing a financial statement in the form
16 required to be filed with the United States Securities and
17 Exchange Commission from those registrants who are registered
18 therewith.

19 "(h) The fee for initial or renewal registration
20 shall be two hundred fifty dollars (\$250) for a dealer, ~~sixty~~
21 ~~dollars (\$60)~~ seventy dollars (\$70) for an agent, two hundred
22 fifty dollars (\$250) for an investment adviser and ~~sixty~~
23 ~~dollars (\$60)~~ seventy dollars (\$70) for an investment adviser
24 representative. The fee for initial or renewal registration of
25 an investment adviser or investment adviser representative
26 shall be deposited in the Alabama Securities Commission Fund
27 in the State Treasury to be drawn upon by the commission for

1 its use in administration of this article. When an application
2 is denied or withdrawn, the Securities Commission shall retain
3 the fee.

4 "(i) Every registered dealer and investment adviser
5 shall make and keep such accounts and other records as the
6 Securities Commission by rule prescribes. All records so
7 required shall be preserved for five years unless the
8 commission prescribes otherwise for particular types of
9 records. The commission may require that certain information
10 be furnished or disseminated by a registrant as necessary or
11 appropriate in the public interest or for the protection of
12 investors and advisory clients. To the extent determined by
13 the commission in its discretion, information furnished to
14 clients or prospective clients of an investment adviser
15 pursuant to the Investment Advisers Act of 1940 and the rules
16 thereunder may be used in whole or partial satisfaction of
17 this requirement. All the records of any registrant are
18 subject at any time or from time to time to such reasonable
19 periodic, special, or other examinations by representatives of
20 the commission, within or without this state, as the
21 commission deems necessary or appropriate in the public
22 interest or for the protection of investors.

23 "(j) The Securities Commission may by order deny,
24 suspend, or revoke any registration, or censor or bar any
25 applicant or registrant or any officer, director, partner, or
26 person occupying a similar status or performing similar
27 functions for a registrant, from employment with a dealer or

1 investment adviser, or restrict or limit a registrant as to
2 any function or activity of the business for which
3 registration is required in this state if the commission finds
4 that the order is in the public interest and that the
5 applicant or registrant or, in the case of a dealer or
6 investment adviser, any partner, officer, or director, any
7 person occupying a similar status or performing similar
8 functions, or any person directly or indirectly controlling
9 the dealer or investment adviser:

10 "(1) Has filed an application for registration under
11 this section which, as of its effective date or as of any date
12 after filing in the case of an order denying effectiveness,
13 was incomplete in any material respect or contained any
14 statement which was, in the light of the circumstance under
15 which it was made, false or misleading with respect to any
16 material fact;

17 "(2) Has willfully violated or willfully failed to
18 comply with any provisions of this article, or a predecessor
19 act, or any rule or order under this article, or a predecessor
20 act;

21 "(3) Has been convicted of any misdemeanor involving
22 moral turpitude, a security, or any aspect of the securities
23 business or any felony;

24 "(4) Is permanently or temporarily enjoined by any
25 court of competent jurisdiction from engaging in or continuing
26 any conduct or practice involving any aspect of the securities
27 business;

1 "(5) Is the subject of an order of the commission
2 denying, suspending, or revoking registration as a dealer,
3 agent, investment adviser, or investment adviser
4 representative;

5 "(6) Is the subject of an order, adjudication, or
6 determination entered within the past 10 years by a securities
7 or commodities agency or a national securities exchange or
8 association registered under the Securities Exchange Act of
9 1934, or an administrator of another state, or a court of
10 competent jurisdiction that the person has violated the
11 Securities Act of 1933, the Securities Exchange Act of 1934,
12 the Investment Advisers Act of 1940, the Investment Company
13 Act of 1940, the Commodity Exchange Act, or the federal mail
14 and wire fraud statutes, or the securities, investment
15 adviser, or commodities law of any other state; but the
16 commission may not enter any order under this subsection on
17 the basis of an order unless that order was based on facts
18 which would currently constitute a ground for an order under
19 this section;

20 "(7) Has engaged in dishonest or unethical practices
21 in the securities business;

22 "(8) Is insolvent, either in the sense that his or
23 her liabilities exceed his or her assets or in the sense that
24 he or she cannot meet his or her obligations as they mature,
25 but the commission may not enter an order against a dealer or
26 investment adviser under this subsection without a finding of
27 insolvency as to the dealer or investment adviser;

1 "(9) Has not complied with a condition imposed by
2 the commission under subsection (f) of this section, or is not
3 qualified on the basis of such factors as training,
4 experience, or knowledge of the securities business;

5 "(10) Has failed reasonably to supervise his or her
6 agents or employees if he or she is a dealer, or his or her
7 investment adviser representatives or employees if he or she
8 is an investment adviser to assure their compliance with this
9 article; or

10 "(11) Has failed to pay the proper filing fee, but
11 the commission may enter only a denial order under this
12 subsection, and it shall vacate any such order when the
13 deficiency has been corrected.

14 "The commission may by order summarily postpone or
15 suspend registration pending final determination of any
16 proceeding under this subsection.

17 "(k) If the Securities Commission finds that any
18 registrant or applicant for registration is no longer in
19 existence, has ceased to do business as a dealer, agent,
20 investment adviser, or investment adviser representative, is
21 subject to an adjudication of mental incompetence or to the
22 control of a committee, conservator, or guardian, or cannot be
23 located after reasonable search, the commission may by order
24 cancel the registration or application.

25 "§8-6-10.

26 "Sections 8-6-4 through 8-6-9 shall not apply to any
27 of the following securities:

1 "(1) Any security, including a revenue obligation,
2 issued or guaranteed by the United States, any state, any
3 political subdivision of a state, any agency, corporate, or
4 other instrumentality of one or more of the foregoing; or any
5 certificate of deposit for any of the foregoing.

6 "(2) Any security issued or guaranteed by Canada,
7 any Canadian province, any political subdivision of any
8 province, any agency, corporate, or other instrumentality of
9 one or more of the foregoing or any other foreign government
10 with which the United States currently maintains diplomatic
11 relations if the security is recognized as a valid obligation
12 by the issuer or guarantor.

13 "(3) Any security issued by and representing an
14 interest in or a debt of, or guaranteed by, any bank organized
15 under the laws of the United States or any bank, savings
16 institution, or trust company organized and supervised under
17 the laws of this state.

18 "(4) Any security issued by and representing an
19 interest in, a debt of, or guaranteed by any federal savings
20 and loan association or any building and loan or similar
21 association organized under the laws of this state.

22 "(5) Any security issued or guaranteed by any
23 federal credit union or any credit union, industrial loan
24 association, or similar association organized and supervised
25 under the laws of this state.

1 "(6) Any security issued or guaranteed by any
2 railroad, other common carrier, public utility, or holding
3 company which is any of the following:

4 "a. Subject to the jurisdiction of the Interstate
5 Commerce Commission.

6 "b. A registered holding company under the Public
7 Utility Holding Company Act of 1935 or a subsidiary of a
8 company within the meaning of that act.

9 "c. Regulated in respect to its rates and charges by
10 a governmental authority of the United States or any state.

11 "d. Regulated in respect to the issuance or
12 guarantee of the security by a governmental authority of the
13 United States, any state, Canada, or any Canadian province.

14 "(7) Any national market system security under
15 Section 11A of the Securities Exchange Act of 1934 (including
16 any other security of the same issuer which is of senior or
17 substantially equal rank; any security called for by
18 subscription rights or warrants so designated or approved; and
19 any warrant or right to purchase or subscribe to any of the
20 foregoing) which is so designated or approved for designation
21 upon notice of issuance on an interdealer quotation system
22 operated by a national securities association registered under
23 Section 15A of the Securities Exchange Act of 1934, or any
24 security (including any other security of the same issuer
25 which is of senior or substantially equal rank; any security
26 called for by subscription rights or warrants so designated or
27 approved; and any warrant or right to purchase or subscribe to

1 any of the foregoing) which is listed or approved for listing
2 upon notice of issuance on a national securities exchange
3 registered under Section 6 of the Securities Exchange Act of
4 1934, if the listing or designation criteria applicable to the
5 issuer of that security provide minimum corporate governance
6 standards substantially equivalent to those applicable to
7 securities on the New York Stock Exchange, the American Stock
8 Exchange, or the National Association of Securities Dealers
9 National Market System as of January 1, 1991. The commission
10 may by order deny, revoke, or suspend the exemption of a
11 specific issue of securities or by rule any category of
12 securities when necessitated by the public interest and for
13 the protection of investors.

14 "(8) Any security issued by any person organized and
15 operated not for private profit but exclusively for religious,
16 educational, benevolent, charitable, fraternal, social,
17 athletic, or reformatory purposes or as a chamber of commerce,
18 trade, or professional association, provided the issuer first
19 files with the commission a written notice specifying the
20 terms of the offer and the commission does not by order
21 disallow the exemption within 15 days thereof.

22 "(9) Any commercial paper which arises out of a
23 current transaction or the proceeds of which have been or are
24 to be used for current transactions and which evidences an
25 obligation to pay cash within nine months of the date of
26 issuance, exclusive of days of grace, or any renewal of the

1 paper which is likewise limited or any guarantee of the paper
2 or of any renewal.

3 "(10) Any investment contract issued in connection
4 with an employee's stock purchase, savings, pension,
5 profit-sharing, or similar benefit plan.

6 "(11) A security issued by an issuer registered as
7 an open-end management investment company or unit investment
8 trust under Section 8 of the Investment Company Act of 1940
9 if:

10 "a. The Securities Commission has received prior to
11 the offer or sale of the securities:

12 "1. A notice of intention to sell which has been
13 executed by the issuer and which sets forth the name and
14 address of the issuer and the description of the securities to
15 be offered in this state; and

16 "2. A nonrefundable filing fee of three hundred
17 fifty dollars (\$350) for an open-end management investment
18 company with total net assets of \$25,000,000 or less; a
19 nonrefundable filing fee of seven hundred dollars (\$700) for
20 an open-end management investment company with total net
21 assets of more than \$25,000,000 but less than \$100,000,000; a
22 nonrefundable filing fee of one thousand two hundred dollars
23 (\$1,200) for an open-end management investment company with
24 total net assets equal to or greater than \$100,000,000 but
25 less than \$250,000,000; a nonrefundable filing fee of two
26 thousand dollars (\$2,000) for an open-end management
27 investment company with total net assets equal to or greater

1 than \$250,000,000; or a nonrefundable filing fee of \$200 for a
2 unit investment trust. Fees collected under this section shall
3 be deposited in the Alabama Securities Commission Fund in the
4 State Treasury for the use of the Alabama Securities
5 Commission in the administration of this article.

6 "b. In the event any offer or sale of a security of
7 an open-end management investment company is to be made more
8 than 12 months after the date notice under paragraph ~~(b)~~a. is
9 received by the director, another notice and payment of the
10 applicable fee shall be required.

11 "c. For the purpose of this subdivision an
12 investment adviser is affiliated with another investment
13 adviser if it controls, is controlled by, or is under common
14 control with the other investment adviser."

15 Section 2. This act shall become effective on the
16 first day of the third month following its passage and
17 approval by the Governor, or its otherwise becoming law.