

1 SB203  
2 190162-1  
3 By Senator Pittman  
4 RFD: Banking and Insurance  
5 First Read: 23-JAN-18

2  
3  
4  
5  
6  
7  
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

2  
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.