

49:3-53

LEGISLATIVE HISTORY CHECKLIST

NJSA: 49:3-53 (Investment advisors-- registered-- permit performance investing fees)

LAWS OF: 1987 **CHAPTER:** 424

BILL NO: A3031

Sponsor(s): Kern

Date Introduced: September 11, 1987

Committee: **Assembly:** Financial Institutions
Senate: Labor, Industry and Professions

Amended during passage: Yes Amendments during passage denoted by asterisks.

Date of Passage: **Assembly:** June 25, 1987
Senate: January 11, 1988

Date of Approval: January 14, 1988

following statements are attached if available:

Sponsor statement: Yes

Committee statement: **Assembly** Yes
Senate Yes

Fiscal Note: No

Veto Message: No

Message on Signing: No

Following were printed:

Reports: No

Hearings: No

Federal Regulations, mentioned in statement:
17 C.F.R. 275.205-3 (1985).

P. L. 1987, CHAPTER 424, *approved January 14, 1988*1986 Assembly No. 3031 (*Official Copy Reprint*)

AN ACT allowing certain performance investing fees for investment advisors and amending P. L. 1967, c. 93.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. Section 6 of P. L. 1967, c. 93 (C. 49:3-53) is amended to read
2 as follows:

3 6. (a) It shall be unlawful for any person who receives any con-
4 sideration from another person primarily for advising the other
5 person as to the value of securities or their purchase or sale,
6 whether through the issuance of analyses or reports or otherwise,

7 (1) to employ any device, scheme or artifice to defraud the
8 other person; or

9 (2) to engage in any act, practice, or course of business which
10 operates or would operate as a fraud or deceit upon the other
11 person;

12 (b) It shall be unlawful for any investment advisor or regis-
13 tered broker-dealer acting as an investment advisor to enter into,
14 extend, or renew any investment advisory contract unless it pro-
15 vides in writing

16 (1) that the investment advisor shall not be compensated on
17 the basis of a share of capital gains upon or capital appreciation
18 of the funds or any portion of the funds of the client, *except as*
19 *may be authorized by regulations issued by the bureau chief*^{*} *[*
20 *which regulations shall be in conformity with similar regulations*
21 *promulgated by the Securities and Exchange Commission*^{*}*];*

22 (2) that no assignment of the contract may be made by the in-

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill
is not enacted and is intended to be omitted in the law.

Matter printed in italics *thus* is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

*—Assembly committee amendment adopted January 12, 1987.

23 vestment advisor without the consent of the other party to the
24 contract; and

25 (3) that the investment advisor, if a partnership shall notify
26 the other party to the contract of any change in the membership
27 of the partnership within a reasonable time after the change;

28 (c) Paragraph (b) (1) does not prohibit an investment advisory
29 contract which provides for compensation based upon the total
30 value of a fund averaged over a definite period, or as of definite
31 dates or taken as of a definite date. "Assignment," as used in
32 paragraph (b) (2), includes any direct or indirect transfer or
33 hypothecation of an investment advisory contract by the assignor
34 or of a controlling block of the assignor's outstanding voting secu-
35 rities by a security holder of the assignor; but, if the investment
36 advisor is a partnership, no assignment of an investment advisory
37 contract is considered to result from the death or withdrawal of
38 a minority of the members of the investment advisor having only
39 a minority interest in the business of the investment advisor, or
40 from the admission to the investment advisor of one or more mem-
41 bers who, after admission, will be only a minority of the members
42 and will have only a minority interest in the business.

1 2. This act shall take effect immediately.

23 vestment advisor without the consent of the other party to the
24 contract; and

25 (3) that the investment advisor, if a partnership shall notify
26 the other party to the contract of any change in the membership
27 of the partnership within a reasonable time after the change;

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39 a minority interest in the business of the investment advisor, or
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42 and will have only a minority interest in the business.

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STATEMENT

This bill permits the Chief of the New Jersey Bureau of Securities to issue regulations which would allow registered investment advisors to be compensated on the basis of a share of capital gains on or capital appreciation of client assets. This brings New Jersey's Uniform Securities Law into agreement with comparable federal regulations.

BANKING AND FINANCIAL INSTITUTIONS

Permits performance investing fees for registered investment advisors.

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ASSEMBLY FINANCIAL INSTITUTIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3031

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 12, 1987

This bill would permit the Bureau Chief of the Bureau of Securities within the Department of Law and Public Safety to promulgate regulations which would permit investment advisors to be compensated on the basis of a percentage share of capital gains or a percentage share of capital appreciation of funds. The committee deleted the requirement in the bill that the regulations would be required to be in conformity with similar regulations which are promulgated by the federal Securities and Exchange Commission. The deletion would allow the Bureau Chief to promulgate regulations which are more restrictive than those adopted by the Securities and Exchange Commission.

SENATE LABOR, INDUSTRY AND PROFESSIONS
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3031

[OFFICIAL COPY REPRINT]

STATE OF NEW JERSEY

DATED: OCTOBER 26, 1987

This bill would permit the bureau chief of the Bureau of Securities within the Department of Law and Public Safety to promulgate regulations which would permit investment advisers to be compensated on the basis of a percentage share of capital gains or a percentage share of capital appreciation of funds. The Assembly Financial Institutions Committee deleted the requirement in the bill that the regulations would be required to be in conformity with similar regulations which are promulgated by the federal Securities and Exchange Commission. The deletion would allow the bureau chief to promulgate regulations which are more restrictive than those adopted by the Securities and Exchange Commission.

The purpose of the bill is to bring New Jersey law into conformity with present federal regulations. As of 1985 the regulations of the Securities and Exchange Commission no longer prohibit any registered investment adviser from entering into, performing, renewing or extending an investment advisory contract which provides for compensation to the investment adviser on the basis of a share of the capital gains upon, or the capital appreciation of, the funds, or any portion of the funds, of a client if certain criteria are met. This criteria concerns a compensation formula, arms-length contracts, disclosure, and the nature of the client. Under the regulations, the client must have invested \$500,000.00 or more with the registered investment adviser or have a net worth exceeding \$1,000,000.00.