

49:3-50

11/25/86

LEGISLATIVE HISTORY CHECKLIST

NJSA: 49:3-50

(Securities--unsolicited sales--modify record keeping)

LAWS OF: 1986

CHAPTER 101

BILL NO: A2466

Sponsor(s): Rodey and Randall

Date Introduced: May 8, 1986

Committee: Assembly: Financial Institutions

Senate: -----

Amended during passage: No

Substituted for S1966 (not attached since identical to A2466)

Date of Passage:

Assembly:

June 26, 1986

Senate:

June 30, 1986

Date of Approval:

Aug. 27, 1986

Following statements are attached if available:

Sponsor statement:

Yes

Committee statement:

Assembly

Yes

Senate

No

Fiscal Note:

No

Veto Message:

No

Message on Signing:

Yes

Following were printed:

Reports:

No

Hearings:

No

Handwritten: 11/25/86

ASSEMBLY, No. 2466
STATE OF NEW JERSEY

INTRODUCED MAY 8, 1986

By Assemblyman ROONEY and Assemblywoman RANDALL

An Act modifying the reporting requirement for certain unsolicited, nonissuer security transactions 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 3 of P. L. 1967, c. 93 (C. 49:3-50) is amended to read
2 as follows:

3 3. (a) The following securities are exempted from the provisions
4 of sections 13 and 16 of this act:

5 (1) Any security (including a revenue obligation) issued or
6 guaranteed by the United States, any state, any political subdivi-
7 sion of a state, or any agency or corporate or other instrumen-
8 tality of one or more of the foregoing; or any certificate of deposit
9 for any of the foregoing;

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

16 (3) Any security issued by and representing an interest in or a
17 debt of, or guaranteed by, any bank, savings institution, or trust
18 company organized and supervised under the laws of any state or
19 under the laws of the United States;

20 (4) Any security issued by and representing an interest in or a
21 debt of, or guaranteed by, any State or Federal Savings and Loan

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

22 Association, or any building and loan or similar association orga-
23 nized under the laws of any state and authorized to do business in
24 this State;

25 (5) Any security issued by and representing an interest in or a
26 debt of, or guaranteed by, any issuance company organized under
27 the laws of any state and authorized to do business in this State;

28 (6) Any security issued or guaranteed by any Federal Credit
29 Union or any credit union, industrial loan association, or similar
30 association organized and supervised under the laws of this State;

31 (7) Any security issued or guaranteed by any railroad, other
32 common carrier, public utility, or holding company which is (A)
33 subject to the jurisdiction of the Interstate Commerce Commis-
34 sion; (B) a registered holding company under the Public Utility
35 Holding Company Act of 1935 or a subsidiary of such a company
36 within the meaning of that act; (C) regulated in respect to its
37 rates and charges by a governmental authority of the United
38 States or any state; or (D) regulated in respect of the issuance or
39 guarantee of the security by a governmental authority of the
40 United States, any state, Canada or any Canadian province;

41 (8) Any security listed or approved for listing upon notice of
42 issuance on the New York Stock Exchange or the American Stock
43 Exchange, and such other exchanges as the bureau chief may from
44 time to time designate by rule or order; any security designated or
45 approved for designation upon notice of issuance as a National
46 Market System security on the National Association of Securities
47 Dealers' Automated Quotation System or any other national quota-
48 tion system as the bureau chief from time to time may designate
49 by rule or order; any other security of the same issuer which is of
50 senior or substantially equal rank; any security called for by
51 subscription rights or warrants so listed or approved; or any
52 warrant or right to purchase or subscribe to any of the foregoing;

53 (9) Any security issued by a person organized and operated
54 exclusively for religious, educational, benevolent, fraternal, chari-
55 table or reformatory purposes and not for pecuniary profit, and
56 no part of the net earnings of which inures to the benefit of any
57 person, private stockholder, or individual;

58 (10) Any commercial paper which arises out of a current trans-
59 action or the proceeds of which have been or are to be used for
60 current transactions, and which evidences an obligation to pay cash
61 within 12 months of the date of issuance, exclusive of days of grace,
62 or any renewal of such paper which is likewise limited, or any
63 guarantee of such paper or of any such renewal;

64 (11) Any investment contract issued in connection with an em-
65 ployees' or professional stock purchase, savings, pension, profit-
66 sharing, retirement or similar benefit plan if the bureau chief is
67 notified in writing 30 days before the inception of the plan or, with
68 respect to plans which are in effect on the effective date of this
69 act, within 60 days thereafter (or within 30 days before they are
70 reopened if they are closed on the effective date of this act):

71 (12) Any security issued by an issuer registered as an open-end
72 management investment company or unit investment trust pur-
73 suant to section 8 of the "Investment Company Act of 1940,"
74 (15 U. S. C. 80a-8), if:

75 (a) The issuer is advised by an investment advisor that is
76 a depository institution exempt from registration under the
77 "Investment Advisors Act of 1940" or that is currently regis-
78 tered as an investment advisor, and has been registered, or is
79 affiliated with an advisor that has been registered, as an in-
80 vestment advisor under the "Investment Advisors Act of
81 1940" for at least three years immediately before an offer or
82 sale of the security; and has acted, or is affiliated with an in-
83 vestment advisor that has acted, as investment advisor to one
84 or more registered investment companies or unit investment
85 trusts for at least three years immediately before an offer or
86 sale of the security; or

87 (b) The issuer has a principal sponsor that has at all times
88 throughout three years before an offer or sale of the security
89 been the principal sponsor for one or more registered invest-
90 ment companies or unit investment trusts, the aggregate total
91 assets of which have exceeded \$100,000,000.00.

92 For the purposes of this paragraph (12), and notwithstanding
93 subsection (g) of section 2 of P. L. 1967, c. 93 (C. 49:3-49), "in-
94 vestment advisor" shall have the same meaning that it has pur-
95 suant to the "Investment Advisors Act of 1940." For the purposes
96 of this paragraph (12), an investment advisor is affiliated with
97 another investment advisor if it controls, is controlled by, or is
98 under common control with the other advisor. For the purposes
99 of this paragraph (12), "sponsor" of a unit investment trust
100 means the person primarily responsible for the organization of the
101 unit investment trust or who has continuing responsibilities for the
102 administration of the affairs of the unit investment trust other
103 than the trustee or custodian. "Sponsor" includes the depositor
104 of the unit investment trust.

105 (b) The following transactions are exempted from the provi-
106 sions of sections 13 and 16 of this act:

- 107 (1) Any isolated nonissuer transaction, whether effected through
108 a broker-dealer or not;
- 109 (2) Any non-issuer transaction of an outstanding security if
110 (A) a recognized securities manual contains the names of the
111 issuer's officers and directors, a balance sheet of the issuer as of
112 a date within 18 months, and a profit and loss statement for either
113 the fiscal year preceding that date or the most recent year of
114 operation, or (B) the security has a fixed maturity or a fixed in-
115 terest or dividend provision and there has been no default during
116 the current fiscal year or within the three preceding fiscal years,
117 or during the existence of the issuer and any predecessors if less
118 than three years, in the payment of principal, interest, or divi-
119 dends on the security;
- 120 (3) Any nonissuer transaction effected by or through a regis-
121 tered broker-dealer pursuant to an unsolicited order or offer to
122 buy; but *the bureau chief may by rule require that* the customer
123 **[shall]** acknowledge upon a form prescribed by the bureau chief
124 that the sale was unsolicited, and *that* a signed copy of *each* such
125 form **[shall be filed with the Bureau of Securities]** *be preserved*
126 *by the broker-dealer for a specified period;*
- 127 (4) Any transaction between the issuer or other person on whose
128 behalf the offering is made and an underwriter, or among under-
129 writers;
- 130 (5) Any transaction on a bond or other evidence of indebted-
131 ness secured by a real or chattel mortgage or deed of trust, or by
132 an agreement for the sale of real estate or chattels, if the entire
133 mortgage, deed of trust, or agreement, together with all the bonds
134 or other evidences of indebtedness secured thereby, is offered and
135 sold as a single unit;
- 136 (6) Any transaction by an executor, administrator, sheriff, mar-
137 shal, receiver, trustee in bankruptcy, guardian, or conservator;
- 138 (7) Any transaction executed by a bona fide pledgee without
139 any purpose of evading this act;
- 140 (8) Any offer or sale to a bank, savings institution, trust com-
141 pany, insurance company, investment company as defined in the
142 Investment Company Act of 1940, pension or profit-sharing trust,
143 or other financial institution or institutional buyer, or to a broker-
144 dealer, whether the purchaser is acting for itself or in some
145 fiduciary capacity;
- 146 (9) Any transaction pursuant to an offer directed by the offeror
147 to not more than 10 persons (other than those designated in para-
148 graph (b)(8)) in this State during any period of 12 consecutive

149 months, whether or not the offeror or any of the offerees is then
150 present in this State, if (i) the seller reasonably believes that all
151 buyers are purchasing for investment, and (ii) no commission
152 or other remuneration is paid or given directly or indirectly
153 for soliciting any prospective buyer in this State; but the bureau
154 chief may by rule or order, as to any transaction, withdraw or
155 further condition this exemption, or increase or decrease the num-
156 ber of offerees permitted, or waive the conditions in subdivisions
157 (i) and (ii);

158 (10) Any offer or sale of a preorganization certificate or sub-
159 scription if (i) no commission or other remuneration is paid or
160 given directly or indirectly for soliciting any prospective sub-
161 scriber, (ii) the number of subscribers does not exceed 10, and
162 (iii) no payment is made by any subscriber;

163 (11) Any transaction pursuant to an offer to existing security
164 holders of the issuer, including persons who at the time of the
165 transaction are holders of convertible securities, nontransferable
166 warrants, or transferable warrants exercisable within not more
167 than 90 days of their issuance, if (i) no commission or other re-
168 munerat ion (other than a standby commission) is paid or given
169 directly or indirectly for soliciting any security holder in this
170 State, or (ii) the issuer first files a notice specifying the terms of
171 the offer and the bureau chief does not by order disallow the
172 exception within the next five full business days;

173 (12) Any nonpublic transaction by or on behalf of an issuer if
174 (i) the issuer has reasonable grounds to believe and, after making
175 reasonable inquiry, believes, immediately prior to making any sale,
176 that there are no more than 35 purchasers of the issue in this State
177 during any period of 12 consecutive months and that each pur-
178 chaser either alone or with his representative has the knowledge
179 and experience in financial and business matters that he is or they
180 are capable of evaluating the merits and risks of the prospective
181 investment; (ii) a written offering statement or prospectus is
182 furnished to each offeree which provides the offeree with sub-
183 stantially the same information as is required by section 14(b) of
184 P. L. 1967, c. 93 (C. 49:3-61); and (iii) a report of the offering
185 is filed with the bureau within 30 days of the completion date of
186 the offering setting forth the name and address of the issuer,
187 the total amount of the securities sold under this subsection (12),
188 the price at which the securities were sold, the total number of
189 purchasers of the securities, and the names and addresses of the
190 purchasers of the securities indicating the number and amount of

191 the securities each purchased. The fee for filing the report with
192 the bureau shall be \$250.00. The information on the report of sale
193 shall be deemed confidential and shall not be disclosed to the public
194 except by order of the court or in court proceedings. In calculating
195 the number of purchasers permitted under this paragraph, ac-
196 credited investors shall be excluded;

197 (c) The bureau chief may by order deny or revoke any exemp-
198 tion specified in paragraph (9), (10) or (11) of subsection (a)
199 or in subsection (b) with respect to a specific security or trans-
200 action. No such order may be entered without appropriate prior
201 notice to all interested parties, opportunity for hearing, and
202 written findings of fact and conclusions of law, except that the
203 bureau chief may by order summarily deny or revoke any of
204 the specified exemptions pending final determination of any pro-
205 ceeding under this subsection. Upon the entry of a summary
206 order, the bureau chief shall promptly notify all interested parties
207 that it has been entered and of the reasons therefor and that
208 within 15 days of the receipt of a written request the matter will
209 be set down for hearing. The order will remain in effect until
210 it is modified or vacated upon notice to all interested parties
211 by the bureau chief. No order under this subsection may operate
212 retroactively;

213 (d) In any proceeding under this act, the burden of proving an
214 exemption or an exception from a definition is upon the person
215 claiming it.

1 2. This act shall take effect immediately.

STATEMENT

This bill clarifies that a confirmation of an unsolicited sale of a security shall be kept on file at the broker-dealer's office, as is the current practice.

COMMERCE AND INDUSTRY

Modifies the record keeping for certain unsolicited sales of securities.

191 the securities each purchased. The fee for filing the report with
 192 the bureau shall be \$250.00. The information on the report of sale
 193 shall be deemed confidential and shall not be disclosed to the public
 194 except by order of the court or in court proceedings. In calculating
 195 the number of purchasers permitted under this paragraph, ac-
 196 credited investors shall be excluded;

197 (c) The bureau chief may by order deny or revoke any exemp-
 198 tion specified in paragraph (9), (10) or (11) of subsection (a)
 199 or in subsection (b) with respect to a specific security or trans-
 200 action. No such order may be entered without appropriate prior
 201 notice to all interested parties, opportunity for hearing, and
 202 written findings of fact and conclusions of law, except that the
 203 bureau chief may by order summarily deny or revoke any of
 204 the specified exemptions pending final determination of any pro-
 205 ceeding under this subsection. Upon the entry of a summary
 206 order, the bureau chief shall promptly notify all interested parties
 207 that it has been entered and of the reasons therefor and that
 208 within 15 days of the receipt of a written request the matter will
 209 be set down for hearing. The order will remain in effect until
 210 it is modified or vacated upon notice to all interested parties
 211 by the bureau chief. No order under this subsection may operate
 212 retroactively;

213 (d) In any proceeding under this act, the burden of proving an
 214 exemption or an exception from a definition is upon the person
 215 claiming it.

1 2. This act shall take effect immediately.

Sponsors STATEMENT

This bill clarifies that a confirmation of an unsolicited sale of
 a security shall be kept on file at the broker-dealer's office, as
 is the current practice.

COMMERCE AND INDUSTRY

Modifies the record keeping for certain unsolicited sales of
 securities.

ASSEMBLY FINANCIAL INSTITUTIONS COMMITTEE
STATEMENT TO
ASSEMBLY, No. 2466

STATE OF NEW JERSEY

DATED: JUNE 16, 1986

The Assembly Financial Institutions Committee reports Assembly Bill No. 2466 favorably.

The "Uniform Securities Law (1967)" provides an exemption from its registration requirement for those securities transactions involving unsolicited orders or offers to buy securities. For this exemption to apply, the customer must acknowledge on a prescribed form that the sale was unsolicited and then the form must be filed with the Bureau Chief of the Bureau of Securities. This bill would amend this provision to allow the bureau chief to require that an acknowledgment form be submitted and that it be maintained at the office of the broker-dealer rather than be filed with the bureau chief.

A-2466, sponsored by Assemblyman John Rooney, R-Bergen, to conform a section of New Jersey securities law to a section of the 1956 Uniform Securities Act regarding requirements for exempting unsolicited security transactions involving non-issuer, registered brokers and dealers. An identical bill, S-1966, was introduced in the Senate by Senator John Russo, D-Ocean.

A-1444, sponsored by Assemblyman Robert Shinn, R-Burlington, to increase the license, examination and renewal fees for license of convalescent and private nursing home administrators and to extend to license life from one year to two years. The license fee is raised from \$25 to \$100; the examination fee from \$50 to \$75, and the renewal fee from \$25 to \$100. The additional revenue will help defray to estimated \$50,000 annual cost to the State of licensing, relicensing and testing applicants.

#####