

49:3-49

LEGISLATIVE HISTORY CHECKLIST

NJSA: 49:3-49, 49:3-50, 49:3-57

(Securities Law - limited registration for brokers/agents certain tax sheltered securities)

LAWS OF: 1983

CHAPTER: 292

Bill No: S1887

Sponsor(s): Feldman

Date Introduced: November 8, 1982

Committee: Assembly: Commerce and Industry

Senate: Labor, Industry and Professions

Amended during passage: Yes

Amendments during passage denoted by asterisks

Date of Passage: Assembly: June 20, 1983

Senate: February 24, 1983

Date of Approval: August 4, 1983

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

Regulation D, referred to in Assembly statement: 17 CFR 230.501 et seq

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SENATE, No. 1887

STATE OF NEW JERSEY

INTRODUCED NOVEMBER 8, 1982

By Senator FELDMAN

Referred to Committee on Labor, Industry and Professions

AN ACT to amend the "Uniform Securities Law (1967)," approved
June 8, 1967 (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 2 of P. L. 1967, c. 93 (C. 49:3-49) is amended to read
2 as follows:

3 2. When used in this act, unless the context otherwise requires:

4 (a) "Bureau" means the agency designated in section 19(a);

5 (b) "Agent" means any individual other than a broker-dealer
6 who represents a broker-dealer or issuer in effecting or attempt-
7 ing to effect purchases or sale of securities. "Agent" does not
8 include an individual who represents an issuer in (1) effecting
9 transactions in a security exempted by subdivision (1), (2), (3),
10 or (11) of section 3(a); (2) effecting transactions exempted by
11 section 3(b); or (3) effecting transactions with existing employees,
12 partners, or directors of the issuer if no commission or other re-
13 munerations is paid or given directly or indirectly for soliciting
14 any person in this State. A partner, officer, or director of a broker-
15 dealer or issuer, or a person occupying a similar status or per-
16 forming similar functions, is an agent only if he otherwise comes
17 within this definition;

18 (c) "Broker-dealer" means any person engaged in the business
19 of effecting or attempting to effect transactions in securities for
20 the account of others or for his own account. "Broker-dealer"
21 does not include (1) an agent, (2) an issuer, (3) a person who
22 effects transactions in this State exclusively in securities described

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:

*—Senate committee amendments adopted January 27, 1983.

23 in subdivision (1) and (2) of section 3(a), (4) a bank, savings
24 institution, or trust company, or (5) a person who (i) effects trans-
25 actions in this State exclusively with or through (A) the issuers
26 of the securities involved in the transactions, (B) other broker-
27 dealers or (C) banks, savings institutions, trust companies, in-
28 surance companies, investment companies as defined in the
29 Investment Company Act of 1940, pension or profit-sharing trusts,
30 or other financial institutions or institutional buyers, whether act-
31 ing for themselves or as trustees, or (ii) during any period of 12
32 consecutive months does not direct more than 15 offers to sell or
33 to buy into this State in any manner to persons other than those
34 specified in paragraph (c)(5)(i), whether or not the offeror or
35 any of the offerees is then present in this State;

36 (d) "Capital" shall mean net capital as defined and adjusted
37 under the formula established by the Securities and Exchange
38 Commission in Rule 15c3-1, made pursuant to the Securities Ex-
39 change Act of 1934, prescribing a minimum permissible ratio of
40 aggregate indebtedness to net capital as such formula presently
41 exists or as it may hereafter be amended;

42 (e) "Fraud," in addition to the usual construction placed on
43 it and accepted in courts of law and equity, shall include the follow-
44 ing, provided, however, that any promise, representation, mis-
45 representation or omission be made with knowledge and with
46 intent to deceive and result in a detriment to the purchaser:

47 (1) Any misrepresentation by word, conduct or in any
48 manner of any material fact, either present or past, and any
49 omission to disclose any such fact;

50 (2) Any promise or representation as to the future which
51 is beyond reasonable expectation or is unwarranted by exist-
52 ing circumstances;

53 (3) The gaining of, or attempt to gain, directly or indirectly,
54 through a trade in any security, a commission, fee or gross
55 profit so large and exorbitant as to be unconscionable and un-
56 reasonable;

57 (4) Generally any course of conduct or business which is
58 calculated or put forward with intent to deceive the public or
59 the purchaser of any security as to the nature of any trans-
60 action or the value of such security;

61 (5) Any artifice, agreement, device or scheme to obtain
62 money, profit or property by any of the means herein set forth
63 or otherwise prohibited by this law.

64 (f) "Guaranteed" means guaranteed as to payment of principal,
65 interest or dividends;

66 (g) "Investment advisor" means any person who, for compen-
67 sation, engages in the business of advising others, either directly
68 or through publications or writings, as to the value of securities
69 or as to the advisability of investing in, purchasing, or selling secu-
70 rities, or who, for compensation and as a part of a regular busi-
71 ness, issues or promulgates analyses or reports concerning
72 securities. "Investment advisor" does not include (1) a bank,
73 savings institution, or trust company; (2) a lawyer, accountant,
74 engineer, or teacher whose performance of these services is solely
75 incidental to the practice of his profession; (3) a broker-dealer
76 registered under this law; (4) a publisher of any bona fide news-
77 paper, news magazine, or business or financial publication of gen-
78 eral, regular, and paid circulation; (5) a person whose advice,
79 analyses, or reports relate only to securities exempted by section 3,
80 paragraph (a) (1) and (2); (6) a person who has no place of
81 business in this State if (a) his only clients in this State are other
82 investment advisors, broker-dealers, banks, savings institutions,
83 trust companies, insurance companies, investment companies as
84 defined in the Investment Company Act of 1940, pension or profit-
85 sharing trusts, or other financial institutions or institutional buy-
86 ers, whether acting for themselves or as trustees, or (b) during
87 any period of 12 consecutive months he does not direct business
88 communications into this State in any manner to more than five
89 clients other than those specified in subparagraph (6) (a) of this
90 paragraph, whether or not he or any of the persons to whom the
91 communications are directed is then present in this State; or (7)
92 such other persons not otherwise within the intent of this para-
93 graph (g) as the bureau chief may by rule or order designate;

94 (h) "Issuer" means any person who issues or proposes to issue
95 any security, except that (1) with respect to certificates of deposit,
96 voting-trust certificates, or collateral-trust certificates, or with re-
97 spect to certificates of interest or shares in an unincorporated
98 investment trust not having a board of directors (or persons per-
99 forming similar functions) or of the fixed, restricted management,
100 or unit type, the term "issuer" means the person or persons per-
101 forming the acts and assuming the duties of depositor or manager
102 pursuant to the provisions of the trust or other agreement or in-
103 strument under which the security is issued; and (2) with respect
104 to certificates of interest in oil, gas, or mining titles or leases, there
105 is not considered to be any "issuer";

106 (i) "Person" means an individual, a corporation, a partnership,
107 an association, a joint-stock company, a trust where the interest
108 of the beneficiaries are evidenced by a security, an unincorporated

109 organization, a government, or a political subdivision of a govern-
110 ment;

111 (j) (1) "Sale" or "sell" includes every contract of sale of,
112 contract to sell, or disposition of, a security or interest in a security
113 for value;

114 (2) "Offer" or "offer to sell" includes every attempt or offer
115 to dispose of, or solicitation of an offer to buy, a security or inter-
116 est in a security for value;

117 (3) Any security given or delivered with, or as a bonus on ac-
118 count of, any purchase of securities or any other thing is consid-
119 ered to constitute part of the subject of the purchase and to have
120 been offered and sold for value;

121 (4) A purported gift of assessable stock is considered to involve
122 an offer and sale;

123 (5) Every sale or offer of a warrant or right to purchase or
124 subscribe to another security of the same or another issuer, as well
125 as every sale or offer of a security which gives the holder a present
126 or future right or privilege to convert into another security of the
127 same or another issuer, is considered to include an offer of the other
128 security;

129 (6) The terms defined in this paragraph (j) do not include (a)
130 any bona fide pledge or loan; (b) any stock dividend, whether the
131 corporation distributing the dividend is the issuer of the stock or
132 not, if nothing of value is given by stockholders for the dividend
133 other than the surrender of a right to a cash or property dividend
134 when each stockholder may elect to take the dividend in cash or
135 property or in stock; (c) any act incident to a class vote by stock-
136 holders, pursuant to the certificate of incorporation or the applica-
137 ble corporation statute, on a merger, consolidation, reclassification
138 of securities, or sale of corporate assets in consideration of the
139 issuance of securities of another corporation; or (d) any act inci-
140 dent to a judicially approved reorganization in which a security is
141 issued in exchange for one or more outstanding securities, claims,
142 or property interests, or partly in such exchange and partly for
143 cash;

144 (k) "Savings institutions" shall mean any savings and loan as-
145 sociation or building and loan association operating pursuant to
146 the Savings and Loan Act of New Jersey, and any federal savings
147 and loan association and any association organized under the laws
148 of any state whose accounts are insured by the Federal Savings
149 and Loan Insurance Corporation and who are subject to supervi-
150 sion and examination by the Federal Home Loan Bank Board, and
151 any credit union licensed and supervised under the Credit Union

152 Act of New Jersey or licensed and supervised by the Bureau of
153 Federal Credit Unions.

154 (l) "Securities Act of 1933," "Securities Exchange Act of
155 1934," "Public Utility Holding Company Act of 1935" and "In-
156 vestment Company Act of 1940" mean the federal statutes of
157 those names as amended or supplemented before or after the effec-
158 tive date of this act;

159 (m) "Security" means any note; stock, treasury stock; bond;
160 debenture; evidence of indebtedness; certificate of interest or par-
161 ticipation in any profit-sharing agreement including but not lim-
162 ited to certificates of interest or participation in real or personal
163 property; collateral-trust certificate; preorganization certificate or
164 subscription; transferable share; investment contract; voting-trust
165 certificate; certificate of deposit for a security; certificate of inter-
166 est in an oil, gas or mining title or lease; or, in general, any interest
167 or instrument commonly known as a "security," or any certificate
168 of interest or participation in, temporary or interim certificate for,
169 guarantee of, or warrant or right to subscribe to or purchase, any
170 of the foregoing. "Security" does not include any insurance or
171 endowment policy or annuity contract under which an insurance
172 company promises to pay a fixed or variable number of dollars
173 either in a lump sum or periodically for life or some other specified
174 period;

175 (n) "State" means any state, territory, or possession of the
176 United States, as well as the District of Columbia and Puerto Rico;

177 (o) "Nonissuer" means secondary trading not involving the
178 issuer of the securities nor any person in a control relationship
179 with the issuer;

180 (p) "*Accredited investor*" means any person who comes within
181 any of the following categories, or who the issuer reasonably be-
182 lieves comes within any of the following categories, at the time of
183 the sale of the security to that person:

184 (1) *Any bank, savings institution, trust company, insurance*
185 *company, investment company as defined in the Investment*
186 *Company Act of 1940, pension or profit sharing trust, or other*
187 *financial institution or institutional buyer, or to a broker-dealer,*
188 *whether the purchaser is acting for itself or in some fiduciary*
188A *capacity;*

189 (2) *Any private business development company as defined*
190 *in section 202(a)(22) of the Investment Advisers Act of 1940;*

191 (3) *Any organization described in Section 501(c)(3) of*
192 *the Internal Revenue Code with total assets in excess of*
193 *\$5,000,000.00;*

194 (4) Any director, executive officer, or general partner of the
 195 issuer of the securities being offered or sold, or any director,
 196 executive officer, or general partner of a general partner of that
 197 issuer;

198 (5) Any person who purchases at least \$150,000.00 of the
 199 securities being offered, where the purchaser's total purchase
 200 price does not exceed 20% of the purchaser's net worth at the
 201 time of sale, or joint net worth with that person's spouse, for
 202 one or any combination of the following: (i) cash, (ii) securi-
 203 ties for which market quotations are readily available, (iii) an
 204 unconditional obligation to pay cash or securities for which
 205 market quotations are readily available which obligation is to
 206 be discharged within five years of the sale of the securities to
 207 the purchaser, or (iv) the cancellation of any indebtedness
 208 owed by the issuer to the purchaser;

209 (6) Any natural person whose individual net worth, or joint
 210 net worth with that person's spouse, at the time of his pur-
 211 chase exceeds \$1,000,000.00; and

212 (7) Any natural person who had an individual income in ex-
 213 cess of \$200,000.00 in each of the two most recent years and who
 214 reasonably expects an income in excess of \$200,000.00 in the
 215 current year.

216 The bureau chief may rule, or order, waive or modify the condi-
 217 tions in this subsection (p) and shall interpret and apply this sub-
 218 section (p) so as to effectuate greater uniformity and coordination
 219 in federal-state securities registration exemptions;

220 (q) "Direct participation security" means a security which pro-
 221 vides for flow-through tax consequences (tax shelter) regardless of
 222 the structure of the legal entity or vehicle for distribution, includ-
 223 ing, but not limited to, a security representing an interest in gas,
 224 oil, real estate, agricultural property, cattle, a condominium, or
 225 subchapter **[5]** *s* corporate offerings and all other securities of
 226 a similar nature, regardless of the industry represented by the
 227 security, or any combination thereof. Excluded from this definition
 228 are real estate investment trusts, tax qualified pension and profit
 229 sharing plans pursuant to sections 401 and 403(a) of the Internal
 230 Revenue Code and individual retirement plans under Section 408 of
 231 the Internal Revenue Code, tax sheltered annuities pursuant to the
 232 provisions of Section 403(b) of the Internal Revenue Code and any
 233 company including separate accounts registered pursuant to the
 234 Investment Company Act of 1940.

1 2. 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 agency
12 or corporate or other instrumentality of one or more of the fore-
13 going, 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
22 Association, or any building and loan or similar association organ-
23 ized 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 insurance 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 Commission;
34 (B) a registered holding company under the Public Utility Holding
35 Company Act of 1935 or a subsidiary of such a company within
36 the meaning of that act; (C) regulated in respect to its rates and
37 charges by a governmental authority of the United States or any
38 state; or (D) regulated in respect of the issuance or guarantee of
39 the security by a governmental authority of the United States,
40 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 other security of the
45 same issuer which is of senior or substantially equal rank; any secu-

46 rity called for by subscription rights or warrants so listed or ap-
47 proved; or any warrant or right to purchase or subscribe to any
48 of the foregoing;

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

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

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

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

69 (1) Any isolated nonissuer transaction, whether effected through
70 a broker-dealer or not;

71 (2) Any nonissuer transaction of an outstanding security if (A)
72 a recognized securities manual contains the names of the issuer's
73 officers and directors, a balance sheet of the issuer as of a date
74 within 18 months, and a profit and loss statement for either the
75 fiscal year preceding that date or the most recent year of opera-
76 tions, or (B) the security has a fixed maturity or a fixed interest
77 or dividend provision and there has been no default during the
78 current fiscal year or within the three preceding fiscal years, or
79 during the existence of the issuer and any predecessors if less than
80 three years, in the payment of principal, interest, or dividends on
81 the security;

82 (3) Any nonissuer transaction effected by or through a regis-
83 tered broker-dealer pursuant to an unsolicited order or offer to
84 buy; but the customer shall acknowledge upon a form prescribed
85 by the bureau chief that the sale was unsolicited, and a signed
86 copy of such form shall be filed with the Bureau of Securities;

87 (4) Any transaction between the issuer or other person on whose
88 behalf the offering is made and an underwriter, or among under-
89 writers;

90 (5) Any transaction in a bond or other evidence of indebtedness
91 secured by a real or chattel mortgage or deed of trust, or by an
92 agreement for the sale of real estate or chattels, if the entire mort-
93 gage, deed or trust, or agreement, together with all the bonds or
94 other evidences of indebtedness secured thereby, is offered and
95 sold as a single unit;

96 (6) Any transaction by an executor, administrator, sheriff, mar-
97 shal, receiver, trustee in bankruptcy, guardian, or conservator;

98 (7) Any transaction executed by a bona fide pledgee without
99 any purpose of evading this act;

100 (8) Any offer or sale to a bank, savings institution, trust com-
101 pany, insurance company, investment company as defined in the
102 Investment Company Act of 1940, pension or profit-sharing trust,
103 or other financial institution or institutional buyer, or to a broker-
104 dealer, whether the purchaser is acting for itself or in some fiduci-
105 ary capacity;

106 (9) Any transaction pursuant to an offer directed by the offeror
107 to not more than 10 persons (other than those designated in para-
108 graph (b)(8) in this State during any period of 12 consecutive
109 months, whether or not the offeror or any of the offerees is then
110 present in this State, if (i) the seller reasonably believes that all
111 buyers are purchasing for investment, and (ii) no commission or
112 other remuneration is paid or given directly or indirectly for
113 soliciting any prospective buyer in this State; but the bureau chief
114 may by rule or order, as to any transaction, withdraw or further
115 condition this exemption, or increase or decrease the number of
116 offerees permitted, or waive the conditions in subdivision (i) and
117 (ii);

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

123 (11) Any transaction pursuant to an offer to existing security
124 holders of the issuer, including persons who at the time of the
125 transaction are holders of convertible securities, nontransferable
126 warrants, or transferable warrants exercisable within not more
127 than 90 days of their issuance, if (i) no commission or other re-
128 remuneration (other than a standby commission) is paid or given
129 directly or indirectly for soliciting any security holder in this
130 State, or (ii) the issuer first files a notice specifying the terms of
131 the offer and the bureau chief does not by order disallow the ex-
132 ception within the next five full business days;

133 (12) *Any transaction by or on behalf of an issuer if (i) the issuer*
134 *has reasonable grounds to believe and, after making reasonable in-*
135 *quiry, believes, immediately prior to making any sale, that there*
136 *are no more than 35 purchasers of the issue in this State during*
137 *any period of 12 consecutive months and that each purchaser either*
138 *alone or with his representative has the knowledge and experience*
139 *in financial and business matters that he is or they are capable of*
140 *evaluating the merits and risks of the prospective investment; (ii)*
141 *a written offering statement or prospectus is furnished to each*
142 *offeree which provides the offeree with substantially the same in-*
143 *formation as is required by section 14(b) of P. L. 1967, c. 93 (C.*
144 *49:3-61) or, in the case of securities representing an interest in*
145 *real estate, the same information as is required by section 4 of P. L.*
146 *1963, c. 192 (C. 49:3-30); and (iii) a report of the offering is filed*
147 *with the bureau within 30 days of the completion date of the offer-*
148 *ing setting forth the name and address of the issuer, the total*
149 *amount of the securities sold under this subsection (12), the price*
150 *at which the securities were sold, the total number of purchasers of*
151 *the securities, and the names and addresses of the purchasers of*
152 *the securities indicating the number and amount of the securities*
153 *each purchased. The fee for filing the report with the bureau shall*
154 *be \$100.00. The information on the report of sale shall be deemed*
155 *confidential and shall not be disclosed to the public except by order*
156 *of the court or in court proceedings. In calculating the number of*
157 *purchasers permitted under this paragraph, accredited investors*
158 *shall be excluded;*

159 (c) The bureau chief may by order deny or revoke any exemp-
160 tion specified in subdivision (9), (10) or (11) or subsection (a)
161 or in subsection (b) with respect to a specific security or trans-
162 action. No such order may be entered without appropriate prior
163 notice to all interested parties, opportunity for hearing, and writ-
164 ten findings of fact and conclusions of law, except that the bureau
165 chief may by order summarily deny or revoke any of the specified
166 exemptions pending final determination of any proceeding under
167 this subsection. Upon the entry of a summary order, the bureau
168 chief shall promptly notify all interested parties that it has been
169 entered and of the reasons therefor and that within 15 days of
170 the receipt of a written request the matter will be set down for
171 hearing. The order will remain in effect until it is modified or
172 vacated upon notice to all interested parties by the bureau chief.
173 No order under this subsection may operate retroactively.

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

1 3. Section 10 of P. L. 1967, c. 93 (C. 49:3-57) is amended to read
2 as follows:

3 10. (a) A broker-dealer, agent, or investment advisor may ob-
4 tain an initial or renewal registration by filing with the bureau
5 an application together with a consent to service of process pur-
6 suant to section 26 (a). The application shall contain whatever
7 information the bureau chief by rule requires concerning such mat-
8 ters as (1) the applicant's form and place of organization; (2) the
9 applicant's proposed method of doing business; (3) the qualifica-
10 tions and business history of the applicant; in the case of a broker-
11 dealer or investment advisor, the qualifications and business history
12 of any partner, officer, or director, any person occupying a similar
13 status or performing similar functions, or any person directly or
14 indirectly controlling the broker-dealer or investment advisor; and,
15 in the case of an investment advisor or registered broker-dealer
16 acting as an investment advisor, the qualifications and business
17 history of any employee who is to give investment advice; (4) any
18 injunction or administrative order or conviction of a **[misde-**
19 **meanor]** *crime of the fourth degree or its equivalent in any other*
20 *jurisdiction* involving a security or any aspect of the securities
21 business and any conviction of a **[high misdemeanor or felony]**
22 *crime of the first, second or third degree or its equivalent in any*
23 *other jurisdiction*; and (5) the applicant's financial condition. If
24 no denial, postponement or suspension order is in effect and no
25 proceeding is pending under section 11, registration becomes ef-
26 fective at noon of the thirtieth day after an application is filed. The
27 bureau chief may by rule or order specify an earlier effective date,
28 or he may by order defer the effective date until the first day of the
29 next calendar month after the thirtieth day after the filing of the
30 application. The time limits herein provided shall run anew from
31 the filing of any amendment. Registration of a broker-dealer auto-
32 matically constitutes registration of any agent who is a partner,
33 officer, or director, or a person occupying a similar status or per-
34 forming similar functions;

35 (b) Every applicant for initial or renewal registration shall pay
36 a filing fee of ***[\$125.00]*** **\$500.00** in the case of a broker-dealer,
37 plus \$5.00 for each partner, officer, director, or principal doing busi-
38 ness in this State, \$30.00 in the case of an agent, \$50.00 in the case
39 of an investment advisor and \$50.00 in the case of an issuer. When
40 Application is denied or withdrawn, the bureau shall retain the fee.
41 Whenever any supplemental filing, for the purpose of keeping cur-
42 rent the information furnished to the bureau chief, is made there
43 shall be a supplemental filing fee of \$5.00;

44 (c) A registered broker-dealer or investment advisor may file
45 an application for registration of a successor, whether or not the
46 successor is then in existence, for the unexpired portion of the
47 registration period. There shall be no filing fee;

48 (d) The bureau chief may by rule require a minimum capital
49 for registered broker-dealers; provided that the bureau chief shall
50 not in any case require a minimum capital in excess of \$10,000.00
51 in the case of a registered broker-dealer; and provided, further,
52 that the minimum capital requirement of a broker-dealer engaged
53 exclusively in the sale of investment company shares shall not be
54 in excess of \$5,000.00;

55 (e) The bureau chief may by rule require registered investment
56 advisors who have custody of clients' funds or securities and reg-
57 istered broker-dealers to post surety bonds in amounts up to
58 \$25,000.00, and may determine their conditions; provided that no
59 such surety bond shall be required of an investment advisor or a
60 broker-dealer who has a minimum capital of at least \$25,000.00 or
61 of a broker-dealer engaged exclusively in the sale of investment
62 company shares who has a minimum capital of \$5,000.00; except
63 that, notwithstanding the provisions of this or any other section
64 of this law, the bureau chief may by rule require registered broker-
65 dealers and investment advisors if such registrant or any partner,
66 officer or director, any person occupying a similar status or per-
67 forming similar functions; or any person directly or indirectly
68 controlling such registrant has ever been convicted of any **[misde-**
69 **meanor]** *crime of the fourth degree or its equivalent in any other*
70 *jurisdiction* involving a security or any aspect of the securities busi-
71 ness, or any **[high misdemeanor or felony]** *crime of the first, second*
72 *or third degree or its equivalent in any other jurisdiction* to post
73 surety bonds in amounts up to \$200,000.00. Any appropriate de-
74 posit of cash or securities shall be accepted in lieu of any bond so
75 required. Every bond shall provide for suit thereon by any person
76 who has a cause of action under section 24. Every bond shall pro-
77 vide that no suit may be maintained to enforce any liability on the
78 bond unless brought within two years after the sale or other act
79 upon which it is based, or within two years of the time when the
80 person aggrieved knew or should have known of the existence of
81 his cause of action, whichever is later**[.]**;

82 (f) (1) The bureau chief may by rule provide for an exam-
83 ination which may be written or oral or both, to be taken by any
84 class of or all applicants, as well as persons who represent or will
85 represent an investment advisor in doing any of the acts which
86 makes him an investment advisor;

87 (2) Each applicant for such examination shall pay examination
 88 fees as follows: broker-dealer, *~~[\$15.00]~~* *\$50.00*; partner, officer,
 89 or director doing business in this State, *~~[\$15.00]~~* *\$50.00*; agent,
 90 *~~[\$15.00]~~* *\$50.00*; and investment advisor, *~~[\$15.00]~~* *\$50.00*.

91 When an application for an examination is denied or withdrawn,
 91A the bureau shall retain the fee;

92 (g) *Registration as a broker-dealer or agent under this act for*
 93 *the limited purpose of engaging in the business of effecting or at-*
 94 *tempting to effect transactions in direct participation securities for*
 95 *the account of others or for his own account shall be permitted. All*
 96 *the requirements of this act and the "Real Estate Syndication Of-*
 97 *ferings Law," P. L. 1963, c. 192 (C. 49:3-27 et seq.) shall apply to*
 98 *these limited registrations except that any examination or other*
 99 *evaluation of proficiency or knowledge required by the bureau for*
 100 *this registration shall be limited to matters relating to direct par-*
 101 *ticipation securities and to the requirements of law and regulation*
 102 *applicable to this registrant.*

103 *Any applicant for a limited registration shall acknowledge in*
 104 *writing to the bureau prior to registration that he understands (i)*
 105 *the limitations on the scope of his authority to do business pursuant*
 106 *to this limited registration; and (ii) that any activity which exceeds*
 107 *the limitations of the registration shall violate the provisions of*
 108 *this act and may result in disciplinary action by the bureau, prose-*
 109 *cution under this act or other laws, or civil liability to the same*
 110 *extent as if he was not registered under this act.*

1 4. This act shall take effect immediately.

87 (2) Each applicant for such examination shall pay examination
 88 fees as follows: broker-dealer, \$15.00; partner, officer, or director
 89 doing business in this State, \$15.00; agent, \$15.00; and investment
 90 advisor, \$15.00. When an application for an examination is denied
 91 or withdrawn, the bureau shall retain the fee;

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 110 *extent as if he was not registered under this act.*

1 4. This act shall take effect immediately.

STATEMENT

This bill would allow realtors and others to seek a limited registration as a broker-dealer or agent under the securities laws to sell certain tax-sheltered securities. These persons would be required to pass an examination on their knowledge of these securities and the relevant securities laws and regulations. At the present time, the Bureau of Securities requires a person to obtain a full securities brokerage registration to sell these securities and this entails a complete study of all aspects of the securities field and passing an examination on this knowledge. As a practical matter, requiring full securities brokerage registration excludes realtors and others who wish to sell real estate securities or other tax-sheltered securities as an extension of their regular business. This bill would allow these people to secure a limited broker-dealer or agent registration to sell these particular securities.

This bill would also expand the private offering exemptions under the securities law by exempting private offerings involving as many as 35 investors and by exempting accredited investors, as defined by the bill, from being counted in that total.

S 1887 (1982)

ASSEMBLY COMMERCE AND INDUSTRY COMMITTEE

STATEMENT TO

SENATE, No. 1887

STATE OF NEW JERSEY

DATED: APRIL 25, 1983

The purpose of this bill is two-fold. First, the bill would permit a person to obtain a limited registration with the Bureau of Securities as a broker-dealer under the "Uniform Securities Law" for the purpose of selling direct participation securities. These are types of securities which provide for certain flow-through tax consequences, or tax shelters, including securities representing an interest in gas, oil, real estate, agricultural properties and condominiums.

Direct participation securities often involve the purchasing of a share of a limited partnership in a venture in order to take advantage of depreciation and other tax deductions. Condominiums, for example, do not fall into this category if they are a principal residence, but a condominium which is purchased as a vacation home and which is rented during most of the year might fall under this category. The bill provides that the New Jersey Bureau of Securities could require an examination or could use other means of determining the proficiency or knowledge of the person applying for limited registration.

Currently, the Bureau of Securities has but one category of registration for broker-agents, and it requires all applicants to take an examination which tests a general knowledge of the securities business. After registration with the bureau, an agent may sell any type of security. This bill is designed to provide for a type of limited registration for individuals such as realtors who desire to sell direct participation securities but who do not wish to sell securities generally.

Second, the bill provides an exemption for certain types of transactions from the registration requirements of the Uniform Securities Law. Thus, the sale of securities would be exempted from registration if:

a. There are no more than 35 purchases of the issue in this State during any 12-month period and if each purchaser has the knowledge and experience in financial matters to evaluate the merits and risks of the prospective investment;

b. A written offering statement or prospectus is furnished to each offeree which provides substantially the same information as is required by current State law; and

c. A report of the offering is filed with the Bureau of Securities within 30 days of the completion of the offering.

The bill also establishes a category of "accredited investor," which are principally institutional investors and those individual investors who invest large amounts of capital. These accredited investors would not be included in any calculation of the 35 or fewer investors required for the exemption from registration.

The provisions of the bill which provide exemption from registration for certain securities transactions are designed to conform to Regulation D of the Securities and Exchange Commission, which permits the raising of capital through limited securities offerings which do not involve public solicitation. In general, federal law does not require registration for these transactions.

SENATE LABOR, INDUSTRY AND PROFESSIONS
COMMITTEE

STATEMENT TO
SENATE, No. 1887

with Senate committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 27, 1983

This bill provides for the limited registration of persons as broker-dealers or agents under the State securities law for the purpose of allowing them to sell direct participation securities for the account of others or for their own account. The examination for this limited registration would be limited to matters relating to direct participation securities and to the requirements of law and regulation applicable to these limited registrants (section 3).

Direct participation securities are securities which provide for flow-through tax consequences, including securities in gas, oil, real estate, agricultural property, cattle, condominiums, and subchapter s corporations, and all other securities of a similar nature (section 1).

Section 2 of the bill exempts from registration under the State securities law the sale of securities by or on behalf of an issuer if:

a. There are no more than 35 purchasers of the issue in this State during any 12-month period and each purchaser has the knowledge and experience in financial and business matters to evaluate the merits and risks of the prospective investment;

b. A written offering statement or prospectus is furnished to each offeree which provides substantially the same information as is required by current State law; and

c. A report of the offering is filed with the Bureau of Securities within 30 days of the completion of the offering.

Accredited investors, defined in section 1 of the bill, which include institutional investors and persons who are capable of investing large amounts of capital are not included in calculating the number of purchasers allowed under this provision.

The committee amended the bill to raise the registration fee of a broker-dealer from \$125.00 to \$500.00. It also raised examination fees for broker-dealers, associates, agents and investment advisors from \$15.00 to \$50.00.