

Bill as Introduced

HB 292-FN - AS INTRODUCED

2011 SESSION

11-0632

09/04

HOUSE BILL **292-FN**
AN ACT relative to securities regulation.
SPONSORS: Rep. Gidge, Hills 24
COMMITTEE: Commerce and Consumer Affairs

ANALYSIS

This bill makes various changes to securities regulation laws, including removing duties of the attorney general for securities regulations and increasing criminal penalties.

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears [~~in brackets and struck through,~~
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Eleven

AN ACT relative to securities regulation.

Be it Enacted by the Senate and House of Representatives in General Court convened:

- 1 1 Definitions. Amend the introductory paragraph of RSA 421-B:2 to read as follows:
 2 421-B:2 Definitions. When used in this chapter, unless the context *of the section within*
 3 *which the term is used* otherwise requires:
 4 2 Definitions. Amend RSA 421-B:2, III-IV-b to read as follows:
 5 III. "Broker-dealer" means any person engaged in the business of effecting transactions in
 6 securities for the account of others or for his own account. "Broker-dealer" does not include:
 7 (a) An agent;
 8 (b) An issuer;
 9 (c) ~~[A bank, savings institution or trust company;~~
 10 ~~(d)]~~ A person who has no place of business in this state if he effects transactions in this
 11 state exclusively with or through:
 12 (1) The issuers of the securities involved in the transactions,
 13 (2) Other broker-dealers, or
 14 (3) Banks, savings institutions, trust companies, insurance companies, investment
 15 companies as defined in the Investment Company Act of 1940, pension or profit sharing trusts, or
 16 other financial institutions or institutional buyers, or to broker-dealers, whether the purchaser is
 17 acting for itself or in some fiduciary capacity;
 18 ~~[(e)]~~ (d) A designated matching service; or
 19 ~~[(f)]~~ (e) Other persons not within the intent of this paragraph whom the secretary of
 20 state by rule or order designates.
 21 IV. ~~["Attorney general" means the attorney general or delegatee.~~
 22 IV-a.](a) "Branch office" means:
 23 (1) With regard to an investment adviser, any location other than the main office,
 24 identified by any means to broker-dealers or other investment advisers or to the public, customers,
 25 or clients as a location at which an investment adviser conducts an investment advisory business.
 26 (2) With regard to a broker-dealer, any location where one or more agents, as defined
 27 in paragraph II, regularly conducts the business of effecting any transactions in, or inducing or
 28 attempting to induce the purchase or sale of, any security, or is held out as such, excluding:
 29 (A) Any location that is established solely for customer service and/or back-office-
 30 type functions where no sales activities are conducted and that is not held out to the public as a
 31 branch office;

- 1 (B) Any location that is the agent's primary residence; provided that:
- 2 (i) Only one agent, or multiple agents who reside at that location and are
- 3 members of the same immediate family, conduct business at the location;
- 4 (ii) The location is not held out to the public as an office and the agent does
- 5 not meet with customers at the location;
- 6 (iii) Neither customer funds nor securities are handled at that location;
- 7 (iv) The agent is assigned to a designated branch office, and such designated
- 8 branch office is reflected on all business cards, stationery, advertisements, and other
- 9 communications to the public by such agent;
- 10 (v) The agent's correspondence and communications with the public are
- 11 subject to the broker-dealer's supervision;
- 12 (vi) Electronic communications, such as e-mail are made through the
- 13 electronic system of the broker-dealer;
- 14 (vii) All orders for securities are entered through the designated branch
- 15 office or an electronic system established by the broker-dealer that is reviewable at the branch office;
- 16 (viii) Written supervisory procedures pertaining to supervision of activities
- 17 conducted at the residence are maintained by the broker-dealer; and
- 18 (ix) A list of the residence locations are maintained by the broker-dealer;
- 19 (C) Any location, other than a primary residence, that is used for securities
- 20 business for less than 30 business days in any one calendar year, provided the broker-dealer
- 21 complies with the provisions of [IV-a] *subparagraph IV(a)(2)(B)(ii)* through (viii);
- 22 (D) Any office of convenience, where associated persons occasionally and
- 23 exclusively by appointment meet with customers, which is not held out to the public as an office;
- 24 (E) Any location that is used primarily to engage in non-securities activities and
- 25 from which the agent effects no more than 25 securities transactions in any one calendar year;
- 26 provided that any advertisement or sales literature identifying such location also sets forth the
- 27 address and telephone number of the location from which the agent conducting business at the non-
- 28 branch locations is directly supervised;
- 29 (F) The floor of a registered national securities exchange where a broker-dealer
- 30 conducts a direct access business with public customers;
- 31 (G) A temporary location established in response to the implementation of a
- 32 business continuity plan; or
- 33 (H) Any other location not within the intent of this paragraph as the secretary of
- 34 state may determine.
- 35 (b) Notwithstanding the exclusions provided in subparagraph [IV-a] *IV(a)(2)*, any
- 36 location that is responsible for supervising the activities of agents of the broker dealer at one or more
- 37 non-branch locations of the broker-dealer shall be a branch office.

1 (c) "Business day" as used in this paragraph shall not include any partial day provided
2 that the agent or investment adviser representative spends at least 4 hours of such day at his or her
3 designated branch office during the hours that such office is normally open for business.

4 *IV-a. "Bureau" means the bureau of securities regulation within the department of*
5 *state.*

6 *IV-b. "Common enterprise" means an enterprise in which the fortunes of the*
7 *investor are interwoven with those of either the person offering the investment, a third*
8 *party, or other investors.*

9 [~~IV-b.~~] *IV-c. "Complaint" means a written statement submitted within a reasonable time*
10 *following the incident complained of by a person, association, partnership, corporation, state agency*
11 *(including the staff of the department) or by any other legal entity that sets forth specific allegations*
12 *and requests administrative action by the department.*

13 3 New Paragraph; Definitions. Amend RSA 421-B:2 by inserting after paragraph IX-b the
14 following new paragraph:

15 IX-c. "Investment contract" means an investment in a common enterprise with the
16 expectation of profits to be derived primarily from the efforts of a person other than the investor.

17 4 New Paragraph; Definitions. Amend RSA 421-B:2 by inserting after paragraph XXII the
18 following new paragraph:

19 XXIII. "Willful" or "willfully," especially in connection with RSA 421-B:24, but not limited
20 thereto, means an intentional act or omission to perform an act in that the person was aware of what
21 he or she was doing or failing to do. However, evil motive, scienter, intent to violate this title, or
22 knowledge that this title was being violated is not required.

23 5 Sales and Purchases. The introductory paragraph of RSA 421-B:3, II is repealed and
24 reenacted to read as follows:

25 II. For purposes of paragraph I(c), to engage in any act, practice, or course of business which
26 operates or would operate as a fraud or deceit upon any person, shall include but not be limited to:

27 6 Uniform Limited Offering Registration. Amend RSA 421-B:15-a to read as follows:

28 421-B:15-a Uniform Limited Offering Registration. The [~~attorney general~~] *bureau* shall adopt
29 rules, pursuant to RSA 541-A, relative to adoption in this state of Form ULOR-C, the general
30 registration form for corporations registering under state securities law securities that are exempt
31 from registration with the Securities and Exchange Commission under Rule 504 of Regulation D.

32 7 Cease and Desist Orders; Injunctions; Receivers. Amend RSA 421-B:23, I(b)-II to read as
33 follows:

34 (b) The [~~attorney general or~~] secretary of state or his or her designee may, with or
35 without prior administrative action by the secretary of state, bring an action in the superior court to
36 enjoin the acts or practices and to enforce compliance with this chapter or any rule or order under
37 this chapter. Upon a proper showing, a permanent or temporary injunction, restraining order, or

1 writ of mandamus shall be granted. In addition, the court may issue an order for other appropriate
 2 or ancillary relief, to include an asset freeze, accounting, writ of attachment, writ of general or
 3 specific execution, and an appointment of a receiver or conservator, that may be the administrator,
 4 for the defendant or the defendant's assets. The court shall not require the ~~[attorney-general or]~~
 5 secretary of state to post a bond; and

6 (c) The ~~[attorney-general or]~~ secretary of state or his or her designee may bring an action
 7 for injunctive relief and civil penalties for violations of any provision of this chapter. In any action
 8 brought by the ~~[attorney-general or]~~ secretary of state or his or her designee, the civil penalties shall
 9 not exceed \$5,000 for each violation in the case of knowing violations, or \$2,500 for each violation in
 10 the case of negligent violations, and each of the acts specified shall constitute a separate violation.
 11 The action may be brought in the superior court of the county in which the defendant resides or has
 12 his or her principal place of business, or, with the consent of the parties or if the defendant is a
 13 nonresident and has no place of business within the state, in the superior court of Merrimack county.

14 II. In a proceeding in superior court under this section where the state prevails, the
 15 secretary of state ~~[and the attorney-general]~~ shall be entitled to recover all costs and expenses of
 16 investigation, and the court shall include the costs in its final judgment.

17 8 Criminal Penalty. Amend RSA 421-B:24 to read as follows:

18 421-B:24 Criminal Penalty.

19 I. Any person who willfully, *as defined in RSA 421-B:2, XXIII*, violates any provisions of
 20 RSA 421-B:3, **421-B:3-a**, 421-B:4, 421-B:5 or fails to comply with an order from the secretary of state
 21 to cease and desist or for an injunction issued pursuant to RSA 421-B:23, or who fails to comply with
 22 an order to pay a fine, penalty, rescission, restitution, or disgorgement greater than \$10,000
 23 pursuant to RSA 421-B:10, 421-B:23, or 421-B:26, or who violates RSA 421-B:19 knowing that the
 24 statement was false or misleading in any material respect, shall be guilty of a class B felony. Each of
 25 the acts specified shall constitute a separate offense and a prosecution or conviction for any one of
 26 such offenses shall not bar prosecution or conviction for any other offense.

27 II. Any person who willfully violates RSA 421-B:6, 421-B:11 or 421-B:20 shall be guilty of a
 28 ~~[class A misdemeanor if a natural person, and guilty of a]~~ **class B** felony ~~[if any other person]~~. Each
 29 of the acts specified shall constitute a separate offense and a prosecution or conviction for any one of
 30 such offenses shall not bar prosecution or conviction for any other offense. ~~[For any subsequent~~
 31 ~~offense, any person shall be guilty of a class B felony.]~~

32 III. [Repealed.]

33 IV. Nothing in this chapter limits the power of the state to punish any person for any
 34 conduct which constitutes a crime by statute.

35 V. *The crimes established in paragraphs I and II of this section are public welfare*
 36 *offenses.*

37 9 Hearing Procedures. Amend RSA 421-B:26-a, XXI-XXVIII to read as follows:

1 XXI. Within a reasonable time after the hearing, the presiding officer shall issue a written
 2 decision stating the action to be taken by the department and may set forth findings of fact,
 3 conclusions of law, and disposition. All decisions shall be reached upon the basis of a preponderance
 4 of the evidence. ~~[The decision of the presiding officer shall be construed as the decision of the~~
 5 ~~secretary of state.]~~

6 XXII. Any party to whom notice has been forwarded pursuant to and in accordance with
 7 these rules who fails to appear shall have a default judgment rendered against him.

8 XXIII.(a) *Within 30 days after a final decision or disposition of a motion for*
 9 *reconsideration by the presiding officer:*

10 (1) *Any party, including the bureau staff, may file an appeal of the presiding*
 11 *officer's decision to the secretary of state; or*

12 (2) *Upon his or her own motion, the secretary of state may elect to review a*
 13 *presiding officer's decision.*

14 (b) *In either case, the procedure for such proceeding shall be the same as in*
 15 *paragraph XXVI.*

16 (c) *The secretary of state may elect to conduct the proceeding de novo, on the*
 17 *record, with or without allowing the parties to supplement the record. In the latter case,*
 18 *the procedure shall be the same as that provided for in paragraph XVII.*

19 (d) *At the conclusion of the proceedings, by written decision, the secretary of*
 20 *state may accept or reject the presiding officer's decision, in whole or in part, substitute his*
 21 *or her own findings of fact and conclusions of law, or return the case to the original*
 22 *presiding officer, or to a substitute presiding officer, for action consistent with the*
 23 *secretary's instruction.*

24 XXIV. The presiding officer may take judicial notice.

25 ~~[XXIV.]~~ XXV. Where the interests of justice will be better served without prejudice to the
 26 substantial rights of any party, a presiding officer may sever one case from another or may
 27 consolidate 2 or more cases, preserving to all parties the right of appeal from the single or several
 28 decisions rendered.

29 ~~[XXV.]~~ XXVI. Once a hearing notice has been issued commencing an adjudicatory
 30 proceeding, no party shall communicate with the presiding officer or the secretary of state
 31 concerning the merits of the case except upon notice to all parties nor shall any party cause another
 32 person to make such communications.

33 ~~[XXVI.]~~ XXVII. Within 30 days after [a] *the presiding officer's* final decision, any party
 34 *including the bureau's staff, may but is not required to* file a motion for reconsideration which
 35 shall serve as a petition for rehearing under RSA 541. No distinctions shall be made between the
 36 terms "reconsideration" and "rehearing." A motion for reconsideration shall:

1 ~~[(1)]~~ (a) Identify each error of law, error of reasoning, or erroneous conclusion
2 contained in the final order which the moving party wishes the ~~[secretary of state]~~ **presiding officer**
3 to reconsider.

4 ~~[(2)]~~ (b) Concisely state the correct factual finding, correct reasoning, and correct
5 conclusion being advocated.

6 ~~[(3)]~~ (c) Include any memorandum of law the petitioner wishes to submit.

7 ~~[XXVII.]~~ **XXVIII.** Within 30 days after a final decision, the presiding officer may reconsider,
8 revise or reverse any final action on the presiding officer's own motion. If reconsideration is based
9 upon the existing record, prior notice shall not be given to the parties. If the presiding officer
10 believes further information or argument should be considered, the parties shall be provided with an
11 appropriate notice and opportunity to be heard before any revision is made in the previous action.

12 ~~[XXVIII.—The filing of a motion for reconsideration shall not operate as a stay of any order or~~
13 ~~decision, but a motion for stay may be combined with a motion for reconsideration.]~~

14 **XXIX.** *During the process outlined in this section, any preliminary order, such as a*
15 *summary cease and desist order, shall remain in full force and effect. Further, during the*
16 *process of reconsideration or appeal, any order or decision shall not be stayed. However, the*
17 *presiding officer or the secretary before whom the case is may consider a motion for stay.*

18 10 Rulemaking Authority; Authority to Issue Orders and Statements; Forms. Amend RSA 421-
19 B:28 to read as follows:

20 421-B:28 Rulemaking Authority; Forms; Orders.

21 I. The secretary of state may adopt rules pursuant to RSA 541-A relative to:

22 (a) Registration statements;

23 (b) Applications; *and*

24 (c) Reports[*s*].

25 ~~[(d) Definitions of terms consistent with this chapter, whether or not they are used in~~
26 ~~the chapter;~~

27 ~~(e) Classification of securities, persons and matters within the jurisdiction of the~~
28 ~~secretary of state and different requirements for different classes; and~~

29 ~~(f) Any other matter reasonably necessary to carry out the provisions of this title.]~~

30 II.(a) *The secretary of state may adopt rules, orders, or interpretive releases relative to:*

31 (1) *Definitions or interpretations of terms consistent with this chapter,*
32 *whether or not they are used in the chapter; and*

33 (2) *Classifications of securities, persons, and matters within the jurisdiction*
34 *of this chapter and different requirements for different categories of securities or persons.*

35 (b) *When exercising the authority granted in subparagraph (a) the secretary of*
36 *state shall not be bound by RSA 541-A.*

1 **III.** The secretary of state may prepare, alter or withdraw such forms as are necessary to
2 comply with the provisions of this title.

3 ~~[III.]~~ **IV.** The ~~[attorney-general]~~ *secretary of state* may issue, amend or rescind such orders
4 as are reasonably necessary to carry out the provisions of this chapter.

5 ~~[IV.]~~ **V.** All actions undertaken by the secretary of state pursuant to this section shall be
6 taken only when the secretary of state finds such action necessary or appropriate to the public
7 interest or for the protection of investors and consistent with the purposes fairly intended by the
8 policy and provisions of this title. In adopting rules, preparing forms, setting standards, and
9 reviewing offerings, the secretary of state may cooperate with the securities administrators of other
10 states, self regulatory organizations, and the Securities and Exchange Commission in order to
11 implement the policy of this chapter in an efficient and effective manner and to achieve maximum
12 uniformity in the form and content of registration statements, applications, reports, and
13 requirements for issuers, broker-dealers, and investment advisors, where practicable.

14 ~~[V.]~~ **VI.** The secretary of state may use a standard form widely used in the industry,
15 including forms promulgated by the Securities and Exchange Commission, provided such forms are
16 incorporated by reference in rules adopted by the secretary of state pursuant to RSA 541-A.

17 11 Repeal. RSA 421-B:17, II(d), relative to an exemption for non-issuer sale of notes or bonds
18 sold to a single purchaser at a single sale.

19 12 Effective Date. This act shall take effect January 1, 2012.

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11-0632
01/18/11

HB 292-FN - FISCAL NOTE

AN ACT relative to securities regulation.

FISCAL IMPACT:

Due to time constraints, the Office of Legislative Budget Assistant is unable to provide a fiscal note for this bill at this time. When completed, the fiscal note will be forwarded to the House Clerk's Office.

HB 292 FISCAL NOTE

AN ACT relative to securities regulation.

FISCAL IMPACT:

The Judicial Branch, Judicial Council, Department of Corrections, and the New Hampshire Association of Counties state this bill may increase state and county expenditures by an indeterminable amount in FY 2012 and each fiscal year thereafter. There will be no fiscal impact on state, county, and local revenues, or local expenditures.

METHODOLOGY:

The Judicial Branch states this bill will amend various sections of RSA chapter 421-B, related to securities regulation. The Branch states this bill adds criminal penalties for violations of RSA 421:B-3-a and increases all criminal penalties for a natural person under chapter 421-B from a class A misdemeanor to a class B felony. The Branch states the average cost of a class A misdemeanor charge in the district courts will be \$60.03 in FY 2012 and \$60.88 in FY 2013 and the average cost for a routine felony case in superior court will be \$394.13 in FY 2012 and \$399.33 in FY 2013. The difference in costs to the Judicial Branch between processing a routine felony case in superior court and a class A misdemeanor in district court will be \$334.10 (\$394.13 - \$60.03) in FY 2012 and \$338.45 (\$399.33 - \$60.88) in FY 2013. The Branch states it has no information on which to estimate how many new felonies will be brought as a result to the change in RSA 421:B-3-a or how many charges would be effected by the change from class A misdemeanor to class B felony, but states all such charges will result to increased costs to the Branch.

The Judicial Council states this bill may result in an indeterminable increase in general fund expenditures. The Council states this bill increases the criminal penalty in RSA 421-B:24 from misdemeanor to a class B felony. The Council states this potentially increases indigent defense representation costs from \$275 (misdemeanor) to \$756.25 (felony), a difference of \$481.25. If an assigned counsel attorney is used the fee is \$60 per hour with a cap of \$1,400 for a misdemeanor charge. The Council also states additional costs could be incurred if an appeal is filed. The public defender, contract attorney and assigned counsel rates for Supreme Court appeals is \$2,000 per case, with many assigned counsel attorneys seeking permission to exceed the fee cap. Requests to exceed the fee cap are seldom granted. Expenditures would also increase if services other than counsel are requested and approved by the court during the

defense of a case or during an appeal. Finally, the Council states it cannot determine if this bill would increase the number of cases where a party is eligible for indigent defense, but it believes it will be minimal impact as those persons engaged in the securities regulation are less likely than the average citizen to be eligible for indigent defense representation.

The Department of Corrections states the average annual cost of incarcerating an individual in the general prison population for the fiscal year ending June 30, 2010 was \$32,492 and the average cost to supervise an offender by the division of field services for the fiscal year ending June 30, 2010 was \$659. The Department states this bill may increase expenditures by an indeterminable amount, but is unable to predict the number of individuals that might be impacted.

The New Hampshire Association of Counties states the average annual cost of incarcerating an individual in a county correctional facility is approximately \$35,000. The Association states this bill's fiscal impact cannot be determined as it cannot predict how many individuals may be incarcerated under this bill.

The Department of State states this bill makes definitional changes and eliminates the Attorney General's authority to make certain actions giving sole authority to the Bureau of Securities. The Department states none of the changes in this bill will result in a fiscal impact on state revenues or expenditures.

The Department of Justice states this bill would make various changes to securities regulation laws including removing the authority from the Attorney General to bring an action to superior court to seek an injunction or otherwise to enforce compliance with the securities act or obtain civil penalties for violation of the securities act. The Department does not anticipate any fiscal impact as a result of this bill.

HB 292-FN - AS AMENDED BY THE HOUSE

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HOUSE BILL

292-FN

AN ACT relative to securities regulation.

SPONSORS: Rep. Gidge, Hills 24

COMMITTEE: Commerce and Consumer Affairs

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5 *IV-b. "Bureau" means the bureau of securities regulation within the department of*
6 *state.*

7 *IV-c. "Common enterprise" means an enterprise in which the fortunes of the*
8 *investor are interwoven with those of either the person offering the investment, a third*
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10 ~~[IV-b.]~~ *IV-d. "Complaint" means a written statement submitted within a reasonable time*
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12 *(including the staff of the department) or by any other legal entity that sets forth specific allegations*
13 *and requests administrative action by the department.*

14 3 New Paragraph; Definitions. Amend RSA 421-B:2 by inserting after paragraph IX-b the
15 following new paragraph:

16 IX-c. "Investment contract" means an investment in a common enterprise with the
17 expectation of profits to be derived primarily from the efforts of a person other than the investor.

18 4 Definitions. Amend RSA 421-B:2, XX(a) to read as follows:

19 XX.(a) "Security" means *the investment of money or money's worth including goods*
20 *furnished and/or services performed in the risk capital of a venture with the expectation of*
21 *some benefit to the investor where the investor has no direct control over the investment or*
22 *policy decisions of the venture. "Security" shall include any note; stock; treasury stock; bond;*
23 *debenture; evidence of indebtedness; certificate of interest or participation in any profit sharing*
24 *agreement; membership interest in a limited liability company; partnership interest in a registered*
25 *limited liability partnership; partnership interest in a limited partnership; collateral trust*
26 *certificate; preorganization certificate or subscription; transferable shares; investment contract;*
27 *investment metal contract or investment gem contract; voting trust certificate; certificate of deposit*
28 *for a security; certificate of interest or participation in an oil, gas or mining right, title or lease or in*
29 *payments out of production under such a right, title or lease; or, in general, any interest or*
30 *instrument commonly known as a security, or any certificate of interest or participation in,*

1 temporary or interim certificate for, receipt for guarantee of, or warrant or right to subscribe to or
 2 purchase, any of the foregoing. "Security" does not include any insurance or endowment policy or
 3 annuity contract under which an insurance company promises to pay money either in a lump sum or
 4 periodically for life or for some other specified period.

5 5 New Paragraph; Definitions. Amend RSA 421-B:2 by inserting after paragraph XXII the
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 19 to cease and desist or for an injunction issued pursuant to RSA 421-B:23, or who fails to comply with
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 21 pursuant to RSA 421-B:10, 421-B:23, or 421-B:26, or who violates RSA 421-B:19 knowing that the
 22 statement was false or misleading in any material respect, shall be guilty of a class B felony. Each of
 23 the acts specified shall constitute a separate offense and a prosecution or conviction for any one of
 24 such offenses shall not bar prosecution or conviction for any other offense.

25 II. Any person who willfully violates RSA 421-B:6, 421-B:11 or 421-B:20 shall be guilty of a
 26 [~~class A misdemeanor if a natural person, and guilty of a~~] *class B* felony [~~if any other person~~]. Each
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 28 such offenses shall not bar prosecution or conviction for any other offense. [~~For any subsequent~~
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30 III. [Repealed.]

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4 XXII. Any party to whom notice has been forwarded pursuant to and in accordance with
 5 these rules who fails to appear shall have a default judgment rendered against him.

6 XXIII.(a) *Within 30 days after a final decision or disposition of a motion for*
 7 *reconsideration by the presiding officer:*

8 (1) *Any party, including the bureau staff, may file an appeal of the presiding*
 9 *officer's decision to the secretary of state; or*

10 (2) *Upon his or her own motion, the secretary of state may elect to review a*
 11 *presiding officer's decision.*

12 (b) *In either case, the procedure for such proceeding shall be the same as in*
 13 *paragraph XXVI.*

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 15 *record, with or without allowing the parties to supplement the record. In the latter case,*
 16 *the procedure shall be the same as that provided for in paragraph XVII.*

17 (d) *At the conclusion of the proceedings, by written decision, the secretary of*
 18 *state may accept or reject the presiding officer's decision, in whole or in part, substitute his*
 19 *or her own findings of fact and conclusions of law, or return the case to the original*
 20 *presiding officer, or to a substitute presiding officer, for action consistent with the*
 21 *secretary's instruction.*

22 XXIV. The presiding officer may take judicial notice.

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 24 substantial rights of any party, a presiding officer may sever one case from another or may
 25 consolidate 2 or more cases, preserving to all parties the right of appeal from the single or several
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 28 proceeding, no party shall communicate with the presiding officer or the secretary of state
 29 concerning the merits of the case except upon notice to all parties nor shall any party cause another
 30 person to make such communications.

31 [~~XXVI.~~] XXVII. Within 30 days after [a] *the presiding officer's* final decision, any party
 32 *including the bureau's staff, may but is not required to* file a motion for reconsideration which
 33 shall serve as a petition for rehearing under RSA 541. No distinctions shall be made between the
 34 terms "reconsideration" and "rehearing." A motion for reconsideration shall:

35 [(4)] (a) Identify each error of law, error of reasoning, or erroneous conclusion
 36 contained in the final order which the moving party wishes the [~~secretary of state~~] *presiding officer*
 37 to reconsider.

1 ~~[(2)]~~ (b) Concisely state the correct factual finding, correct reasoning, and correct
2 conclusion being advocated.

3 ~~[(3)]~~ (c) Include any memorandum of law the petitioner wishes to submit.

4 ~~[XXVII.]~~ XXVIII. Within 30 days after a final decision, the presiding officer may reconsider,
5 revise or reverse any final action on the presiding officer's own motion. If reconsideration is based
6 upon the existing record, prior notice shall not be given to the parties. If the presiding officer
7 believes further information or argument should be considered, the parties shall be provided with an
8 appropriate notice and opportunity to be heard before any revision is made in the previous action.

9 ~~[XXVIII. The filing of a motion for reconsideration shall not operate as a stay of any order or
10 decision, but a motion for stay may be combined with a motion for reconsideration.]~~

11 *XXIX. During the process outlined in this section, any preliminary order, such as a
12 summary cease and desist order, shall remain in full force and effect. Further, during the
13 process of reconsideration or appeal, any order or decision shall not be stayed. However,
14 the presiding officer or the secretary before whom the case is may consider a motion for
15 stay.*

16 9 Effective Date. This act shall take effect January 1, 2012.

LBAO
11-0632
Revised 02/14/11

HB 292 FISCAL NOTE

AN ACT relative to securities regulation.

FISCAL IMPACT:

The Judicial Branch, Judicial Council, Department of Corrections, and the New Hampshire Association of Counties state this bill may increase state and county expenditures by an indeterminable amount in FY 2012 and each fiscal year thereafter. There will be no fiscal impact on state, county, and local revenues, or local expenditures.

METHODOLOGY:

The Judicial Branch states this bill will amend various sections of RSA chapter 421-B, related to securities regulation. The Branch states this bill adds criminal penalties for violations of RSA 421:B-3-a and increases all criminal penalties for a natural person under chapter 421-B from a class A misdemeanor to a class B felony. The Branch states the average cost of a class A misdemeanor charge in the district courts will be \$60.03 in FY 2012 and \$60.88 in FY 2013 and the average cost for a routine felony case in superior court will be \$394.13 in FY 2012 and \$399.33 in FY 2013. The difference in costs to the Judicial Branch between processing a routine felony case in superior court and a class A misdemeanor in district court will be \$334.10 (\$394.13 – \$60.03) in FY 2012 and \$338.45 (\$399.33 - \$60.88) in FY 2013. The Branch states it has no information on which to estimate how many new felonies will be brought as a result to the change in RSA 421:B-3-a or how many charges would be effected by the change from class A misdemeanor to class B felony, but states all such charges will result to increased costs to the Branch.

The Judicial Council states this bill may result in an indeterminable increase in general fund expenditures. The Council states this bill increases the criminal penalty in RSA 421-B:24 from misdemeanor to a class B felony. The Council states this potentially increases indigent defense representation costs from \$275 (misdemeanor) to \$756.25 (felony), a difference of \$481.25. If an assigned counsel attorney is used the fee is \$60 per hour with a cap of \$1,400 for a misdemeanor charge. The Council also states additional costs could be incurred if an appeal is filed. The public defender, contract attorney and assigned counsel rates for Supreme Court appeals is \$2,000 per case, with many assigned counsel attorneys seeking permission to exceed the fee cap. Requests to exceed the fee cap are seldom granted. Expenditures would also

increase if services other than counsel are requested and approved by the court during the defense of a case or during an appeal. Finally, the Council states it cannot determine if this bill would increase the number of cases where a party is eligible for indigent defense, but it believes it will be minimal impact as those persons engaged in the securities regulation are less likely than the average citizen to be eligible for indigent defense representation.

The Department of Corrections states the average annual cost of incarcerating an individual in the general prison population for the fiscal year ending June 30, 2010 was \$32,492 and the average cost to supervise an offender by the division of field services for the fiscal year ending June 30, 2010 was \$659. The Department states this bill may increase expenditures by an indeterminable amount, but is unable to predict the number of individuals that might be impacted.

The New Hampshire Association of Counties states the average annual cost of incarcerating an individual in a county correctional facility is approximately \$35,000. The Association states this bill's fiscal impact cannot be determined as it cannot predict how many individuals may be incarcerated under this bill.

The Department of State states this bill makes definitional changes and eliminates the Attorney General's authority to make certain actions giving sole authority to the Bureau of Securities. The Department states none of the changes in this bill will result in a fiscal impact on state revenues or expenditures.

The Department of Justice states this bill would make various changes to securities regulation laws including removing the authority from the Attorney General to bring an action to superior court to seek an injunction or otherwise to enforce compliance with the securities act or obtain civil penalties for violation of the securities act. The Department does not anticipate any fiscal impact as a result of this bill.

Amendments

Rep. Gidge, Hills. 24
February 4, 2011
2011-0196h
09/04

Amendment to HB 292-FN

1 Amend the bill by replacing all after the enacting clause with the following:

2

3 1 Definitions. Amend the introductory paragraph of RSA 421-B:2 to read as follows:

4 421-B:2 Definitions. When used in this chapter, unless the context *of the section within*
5 *which the term is used* otherwise requires:

6 2 Definitions. Amend RSA 421-B:2, IV-b to read as follows:

7 *IV-b. "Bureau" means the bureau of securities regulation within the department of*
8 *state.*

9 *IV-c. "Common enterprise" means an enterprise in which the fortunes of the*
10 *investor are interwoven with those of either the person offering the investment, a third*
11 *party, or other investors.*

12 ~~[IV-b.]~~ *IV-d. "Complaint" means a written statement submitted within a reasonable time*
13 *following the incident complained of by a person, association, partnership, corporation, state agency*
14 *(including the staff of the department) or by any other legal entity that sets forth specific allegations*
15 *and requests administrative action by the department.*

16 3 New Paragraph; Definitions. Amend RSA 421-B:2 by inserting after paragraph IX-b the
17 following new paragraph:

18 IX-c. "Investment contract" means an investment in a common enterprise with the
19 expectation of profits to be derived primarily from the efforts of a person other than the investor.

20 4 Definitions. Amend RSA 421-B:2, XX(a) to read as follows:

21 XX.(a) "Security" means *the investment of money or money's worth including goods*
22 *furnished and/or services performed in the risk capital of a venture with the expectation of*
23 *some benefit to the investor where the investor has no direct control over the investment or*
24 *policy decisions of the venture. "Security" shall include any note; stock; treasury stock; bond;*
25 *debenture; evidence of indebtedness; certificate of interest or participation in any profit sharing*
26 *agreement; membership interest in a limited liability company; partnership interest in a registered*
27 *limited liability partnership; partnership interest in a limited partnership; collateral trust*
28 *certificate; preorganization certificate or subscription; transferable shares; investment contract;*
29 *investment metal contract or investment gem contract; voting trust certificate; certificate of deposit*
30 *for a security; certificate of interest or participation in an oil, gas or mining right, title or lease or in*
31 *payments out of production under such a right, title or lease; or, in general, any interest or*
32 *instrument commonly known as a security, or any certificate of interest or participation in,*

Amendment to HB 292-FN

- Page 2 -

1 temporary or interim certificate for, receipt for guarantee of, or warrant or right to subscribe to or
2 purchase, any of the foregoing. "Security" does not include any insurance or endowment policy or
3 annuity contract under which an insurance company promises to pay money either in a lump sum or
4 periodically for life or for some other specified period.

5 5 New Paragraph; Definitions. Amend RSA 421-B:2 by inserting after paragraph XXII the
6 following new paragraph:

7 XXIII. "Willful" or "willfully," especially in connection with RSA 421-B:24, but not limited
8 thereto, means an intentional act or omission to perform an act in that the person was aware of what
9 he or she was doing or failing to do. However, evil motive, scienter, intent to violate this title, or
10 knowledge that this title was being violated is not required.

11 6 Sales and Purchases. The introductory paragraph of RSA 421-B:3, II is repealed and
12 reenacted to read as follows:

13 II. For purposes of paragraph I(c), to engage in any act, practice, or course of business which
14 operates or would operate as a fraud or deceit upon any person, shall include but not be limited to:

15 7 Criminal Penalty. Amend RSA 421-B:24 to read as follows:

16 421-B:24 Criminal Penalty.

17 I. Any person who willfully, *as defined in RSA 421-B:2, XXIII*, violates any provisions of
18 RSA 421-B:3, ~~421-B:3-a~~, 421-B:4, 421-B:5 or fails to comply with an order from the secretary of state
19 to cease and desist or for an injunction issued pursuant to RSA 421-B:23, or who fails to comply with
20 an order to pay a fine, penalty, rescission, restitution, or disgorgement greater than \$10,000
21 pursuant to RSA 421-B:10, 421-B:23, or 421-B:26, or who violates RSA 421-B:19 knowing that the
22 statement was false or misleading in any material respect, shall be guilty of a class B felony. Each of
23 the acts specified shall constitute a separate offense and a prosecution or conviction for any one of
24 such offenses shall not bar prosecution or conviction for any other offense.

25 II. Any person who willfully violates RSA 421-B:6, 421-B:11 or 421-B:20 shall be guilty of a
26 ~~[class A misdemeanor if a natural person, and guilty of a]~~ **class B** felony ~~[if any other person]~~. Each
27 of the acts specified shall constitute a separate offense and a prosecution or conviction for any one of
28 such offenses shall not bar prosecution or conviction for any other offense. ~~[For any subsequent~~
29 ~~offense, any person shall be guilty of a class B felony.]~~

30 III. [Repealed.]

31 IV. Nothing in this chapter limits the power of the state to punish any person for any
32 conduct which constitutes a crime by statute.

33 V. *The crimes established in paragraphs I and II of this section are public welfare*
34 *offenses.*

35 8 Hearing Procedures. Amend RSA 421-B:26-a, XXI-XXVIII to read as follows:

36 XXI. Within a reasonable time after the hearing, the presiding officer shall issue a written
37 decision stating the action to be taken by the department and may set forth findings of fact,

1 conclusions of law, and disposition. All decisions shall be reached upon the basis of a preponderance
2 of the evidence. [~~The decision of the presiding officer shall be construed as the decision of the~~
3 ~~secretary of state.~~]

4 XXII. Any party to whom notice has been forwarded pursuant to and in accordance with
5 these rules who fails to appear shall have a default judgment rendered against him.

6 XXIII.(a) *Within 30 days after a final decision or disposition of a motion for*
7 *reconsideration by the presiding officer:*

8 (1) *Any party, including the bureau staff, may file an appeal of the presiding*
9 *officer's decision to the secretary of state; or*

10 (2) *Upon his or her own motion, the secretary of state may elect to review a*
11 *presiding officer's decision.*

12 (b) *In either case, the procedure for such proceeding shall be the same as in*
13 *paragraph XXVI.*

14 (c) *The secretary of state may elect to conduct the proceeding de novo, on the*
15 *record, with or without allowing the parties to supplement the record. In the latter case,*
16 *the procedure shall be the same as that provided for in paragraph XVII.*

17 (d) *At the conclusion of the proceedings, by written decision, the secretary of*
18 *state may accept or reject the presiding officer's decision, in whole or in part, substitute his*
19 *or her own findings of fact and conclusions of law, or return the case to the original*
20 *presiding officer, or to a substitute presiding officer, for action consistent with the*
21 *secretary's instruction.*

22 XXIV. The presiding officer may take judicial notice.

23 [~~XXIV.~~] XXV. Where the interests of justice will be better served without prejudice to the
24 substantial rights of any party, a presiding officer may sever one case from another or may
25 consolidate 2 or more cases, preserving to all parties the right of appeal from the single or several
26 decisions rendered.

27 [~~XXV.~~] XXVI. Once a hearing notice has been issued commencing an adjudicatory
28 proceeding, no party shall communicate with the presiding officer or the secretary of state
29 concerning the merits of the case except upon notice to all parties nor shall any party cause another
30 person to make such communications.

31 [~~XXVI.~~] XXVII. Within 30 days after [a] *the presiding officer's* final decision, any party
32 *including the bureau's staff, may but is not required to* file a motion for reconsideration which
33 shall serve as a petition for rehearing under RSA 541. No distinctions shall be made between the
34 terms "reconsideration" and "rehearing." A motion for reconsideration shall:

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37 to reconsider.

1 [(2)] (b) Concisely state the correct factual finding, correct reasoning, and correct
2 conclusion being advocated.

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6 upon the existing record, prior notice shall not be given to the parties. If the presiding officer
7 believes further information or argument should be considered, the parties shall be provided with an
8 appropriate notice and opportunity to be heard before any revision is made in the previous action.

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10 decision, but a motion for stay may be combined with a motion for reconsideration.]~~

11 **XXIX.** *During the process outlined in this section, any preliminary order, such as a
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13 process of reconsideration or appeal, any order or decision shall not be stayed. However,
14 the presiding officer or the secretary before whom the case is may consider a motion for
15 stay.*

16 9 Effective Date. This act shall take effect January 1, 2012.



2011-0196h

AMENDED ANALYSIS

This bill makes various changes to securities regulation laws, including increasing criminal penalties.

Amendment to HB 292-FN

1 Amend the bill by replacing all after the enacting clause with the following:

2

3 1 Definitions. Amend the introductory paragraph of RSA 421-B:2 to read as follows:

4 421-B:2 Definitions. When used in this chapter, unless the context *of the section within*
5 *which the term is used* otherwise requires:

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13 *following the incident complained of by a person, association, partnership, corporation, state agency*
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27 *limited liability partnership; partnership interest in a limited partnership; collateral trust*
28 *certificate; preorganization certificate or subscription; transferable shares; investment contract;*
29 *investment metal contract or investment gem contract; voting trust certificate; certificate of deposit*
30 *for a security; certificate of interest or participation in an oil, gas or mining right, title or lease or in*
31 *payments out of production under such a right, title or lease; or, in general, any interest or*
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Amendment to HB 292-FN

- Page 2 -

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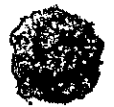
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21 *secretary's instruction.*

22 XXIV. The presiding officer may take judicial notice.

23 [~~XXIV.~~] XXV. Where the interests of justice will be better served without prejudice to the
24 substantial rights of any party, a presiding officer may sever one case from another or may
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13 process of reconsideration or appeal, any order or decision shall not be stayed. However,
14 the presiding officer or the secretary before whom the case is may consider a motion for
15 stay.*

16 9 Effective Date. This act shall take effect January 1, 2012.



2011-0196h

AMENDED ANALYSIS

This bill makes various changes to securities regulation laws, including increasing criminal penalties.

Amendment to HB 292-FN

1 7 Criminal Penalty. Amend RSA 421-B:24 to read as follows:

2 421-B:24 Criminal Penalty

3 I. Any person who willfully, *as defined in RSA 421-B:2, XXIII*, violates any provisions of
4 RSA 421-B:3, ~~421-B:3-a~~, 421-B:4, 421-B:5 or fails to comply with an order from the secretary of state
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6 an order to pay a fine, penalty, rescission, restitution, or disgorgement greater than \$10,000
7 pursuant to RSA 421-B:10, 421-B:23, or 421-B:24, or who violates RSA 421-B:19 knowing that the
8 statement was false or misleading in any material respect, shall be guilty of a class B felony. Each of
9 the acts specified shall constitute a separate offense and a prosecution or conviction for any one of
10 such offenses shall not bar prosecution or conviction for any other offense.

11 II. Any person who willfully violates RSA 421-B:6, 421-B:11 or 421-B:20 shall be guilty of a
12 class A misdemeanor if a natural person, and guilty of a felony if any other person. Each of the acts
13 specified shall constitute a separate offense and a prosecution or conviction for any one of such
14 offenses shall not bar prosecution or conviction for any other offense. For any subsequent offense,
15 any person shall be guilty of a class B felony.

16 III. [Repealed.]

17 IV. Nothing in this chapter limits the power of the state to punish any person for any
18 conduct which constitutes a crime by statute.

19 V. *The crimes established in paragraphs I and II of this section are public welfare*
20 *offenses.*

Rep. Welch, Rock. 8
March 22, 2011
2011-1126h
01/09

Amendment to HB 292-FN

1 Amend RSA 421-B:24, II as inserted by section 7 of the bill by replacing it with the following:

2

3 II. Any person who willfully violates RSA 421-B:6^[.] *or* 421-B:11 [~~or 421-B:20~~] shall be guilty
4 of a class A misdemeanor if a natural person, and guilty of a felony if any other person. *Any person*
5 *who willfully violates RSA 421-B:20 shall be guilty of a felony.* Each of the acts specified shall
6 constitute a separate offense and a prosecution or conviction for any one of such offenses shall not
7 bar prosecution or conviction for any other offense. For any subsequent offense *under RSA 421-B:6*
8 *or RSA 421-B:11*, any person shall be guilty of a class B felony.

Speakers

Hearing Minutes

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

PUBLIC HEARING ON HB 292-FN

BILL TITLE: relative to securities regulation.

DATE: 2-1-11

LOB ROOM: 302 **Time Public Hearing Called to Order:** 10:40 am

Time Adjourned: 10:55 am

(please circle if present)

Committee Members: Reps. Hunt, Coffey, Belanger, Flanders, Quandt, Headd, Nevins, Palfrey, Sullivan, Bergevin, Manuse, Mauro, McGuinness, Rice, Taylor, Meader, Gidge and Schlachman.

Bill Sponsors: Rep. Gidge

TESTIMONY

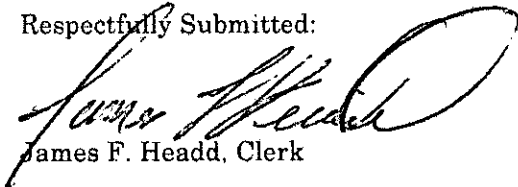
* Use asterisk if written testimony and/or amendments are submitted.

***Rep. Kenneth Gidge, sponsor** – Opened bill. Handed out written testimony and amendment. Discussion of the amendment followed. Amendment replaces the bill; brought amendment forward as a result of the FRM issue. Privacy Act precludes sharing of certain issues.

Kevin Moquin & Barry Glennon, NH Bureau of Securities – Support the bill with amendment. The highlighted provision of the amendment should not be changed. We are trying to change some definitions, also adding certain penalties at and change some of the hearing process. The Secretary of State is still hearing on the FRM process. Defining investment contract at definition of security. The appeal process is being refined.

Subcommittee appointed include Reps. Palfrey, Schlachman and Mauro.

Respectfully Submitted:


James F. Headd, Clerk

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

PUBLIC HEARING ON HB 292-FN

BILL TITLE: relative to securities regulation.

DATE: 2-1-11

LOB ROOM: 302

Time Public Hearing Called to Order: 1040

Time Adjourned: 1055

(please circle if present)

Committee Members: Reps. Hunt, Coffey, Belanger, Flanders, Quandt, Headd, Nevins, Palfrey, Sullivan, Bergevin, Manuse, Mauro, McGuinness, Rice, Taylor, Meader, Gidge and Schlachman.

Bill Sponsors: Rep. Gidge

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

- #1 Rep Gidge opened Bill - handed out written testimony ^{Amendment} - handed out Amendment - discussion of the amendment followed. Amendment replaces the Bill Brought Amendment forward as a result of the FRM issue - Privacy Act precludes sharing of certain issue.
- #2 Kevin Moquin & Barry Glenhou of the Bureau of Securities
The High Lighted Provision of the Amendment should not be changed

#2

HB 292

We are trying to change some
definitions - also adding certain
penalties w/ 3rd Party some of
the security process

The Secty of State is still
working on the PRM process

Defining uninvolved context
w/ definition of security -

The appeal process in Buy
Refined

SUB COM

Pal Frey
Schluchman
MAYRO

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

PUBLIC HEARING ON HB 292-FN

BILL TITLE: relative to securities regulation.

DATE: March 22, 2011

LOB ROOM: 204 Time Public Hearing Called to Order: 10:03 a.m.

Time Adjourned: 10:25 a.m.

(please circle if present)

Committee Members: Reps. Swinford, Gagne, Welch, Fields, Fesh, Charron, Villeneuve, Antosz, Greazzo, Kreis, Parsons, Tasker, Warden, Pantelakos, Berube, Shurtleff and Ginsburg.

Bill Sponsors: Rep. Gidge, Hills 24

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Rep. Gidge - Sponsor - Legislation penalties of securities, securities money get back from people taken from.

Barry Glennon Deputy and Kevin Mogiun, Staff Attorney - Support bill. Modify uniform penalty for fraud. We charge as misdemeanor - you need to change to felony.

Q: Rep. Tasker - Is this increase justified?

A: Mr. Glennon - Yes - would be significant penalty. Serious fraudulent things going on.

Q: Rep. Gagne - Grammatical error would be charged with fraud?

A: Barry Glennon - Review by staff of securities. Judgment of mistakes. 48 states do have felony statutes.

Q: Rep. Gagne - Are all states Class B?

A: Barry Glennon - Only Class B, but could be level of Class A.

Q: Rep. Warden - How many misdemeanors presently?

A: Barry Glennon - Only those rise to felonies, everything would be a felony.

Q: Rep. Shurtleff - Would this go to higher court?

A: Barry Glennon - Yes.

Q: Rep. Parsons - Would be charged knowingly or willfully?

A: Barry Glennon - Yes. Would be determined.

Q: Rep. Kreis - Would person know if violated act?

A: Barry Glennon - Knowingly, any responsible person would get laws - rules burden on the pardon of violation.

Q: Rep. Fesh - Only second offenses.

A: Barry Glennon - Yes, already offense - other offenses.

Q: Rep. Warden - Highly regulated. Are these already regulated by Feds?

A: Barry Glennon - FOC does look at market - Feds - state overlaps investment act.

Q: Rep. Shurtleff - Is ignorance of law?

A: Barry Glennon - Hearing officer would consider these issues.

Q: Rep. Warden - Who follows up on issues? Are mutual funds in line with other states?

A: Barry Glennon - Paper filing. Registration filing January 1. NH. We Give people three times to continue registration. We want to retain them in state. Yes, they are followed up by the staff personnel.

Respectfully Submitted:

Rep. Dennis Fields, Acting Clerk



HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

PUBLIC HEARING ON HB 292-FN

BILL TITLE: relative to securities regulation.

DATE: 3/22/2011

LOB ROOM: 204

Time Public Hearing Called to Order: 10:03 AM,

Time Adjourned: 10:25 AM.

(please circle if present)

Committee Members: (Reps. Swinford, Gagne, Welch, Fields, Pesh, Charron, Villeneuve, Antosz, Greazzo, Kreis, Parsons, Tasker, Warden, Pantelakos, Berube, Shurtleff and Ginsburg.)

Bill Sponsors: Rep. Gidge, Hills 24

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Rep: GIDGE sponsor = LEGISLATION PENALTIES OF SECURITIES,
SECURING MONEY GET BACK FROM PEOPLE TAKING FROM,
SEC STATE

{ BARRY CHENON DEPUTY
KEVIN MOGILAN STAFF ATTORNEY SUPPORT BILL
MODIFY UNIFORM PENALTY FOR FRAUD,
WE CHARGE AS MISDEAMOUR YOU NEED TO CHANGE TO FELONY,
Q: Rep: TASKER = IS THIS INCREASE JUSTIFIED,

ANITA CHENON = YES WOULD BE SIGNIFICANT PENALTY
SERIOUS FRAUDHEAT THINGS GOING ON,

Q REP: GAGNE = CRIMINAL ERROR WOULD BE CHARGED
WITH FRAUD,

A BARRY CHENON = REVIEW BY STAFF OF SECURITIES
JOB OF MISTAKE
49 STATES DO HAVE FELONY STATUTES,

Q REP: GAGNE = ARE ALL STATES CLASS B,

A: CHENON = ONLY CLASS B BUT COULD BEHAVE AT CLASS A,

Q REP: WARDEN = HOW MANY MISDEAMOURS PROSECUTE,

A: CHENON = ONLY THOSE RISE TO FELONIES,
EVERYTHING WOULD BE FELONY,

Q REP. SHURTLEFF = WOULD GO TO HIGHER COURT

A. GLENNON = YES.

Q. REP. HANSON = WOULD BE CHARGED KNOWINGLY OR WILLFULLY
GLENNON = YES WOULD BE DETERMINED.

Q. REP. KRIST = WOULD PERSON KNOW IT VIOLATED ACT.
A. GLENNON = KNOWINGLY, ONLY REASONABLE PERSON WOULD GET
LAW - RULES BURDEN IN THE PERSON OF VIOLATION.

Q REP. FISH = ONLY SECOND OFFENSES.

A GLENNON = YES ALREADY OFFENSE OTHER OFFENSES.

Q REP. WARDEN = HIGHLY REGULATED, ARE THOSE ALREADY REGULATED
BY FEDS,

A. GLENNON = FCC DOES LOOK AT MARKET FEES - STATE OVERLAP
INVESTMENT ACT

Q REP. SHURTLEFF = IS ENFORCEANCE OF LAW,

A. GLENNON = HEARING OFFICER WOULD CONSIDER THESE ISSUES.
REP. WARDEN = FOLLOW UP ON ISSUES,
MUTUAL FUNDS IN LINE OTHER STATES

A. GLENNON = PAPER FILING, REGISTRATION FILING TAX

MIH. WE GIVE PEOPLE 3 TIMES TO CONTINUE REGISTRATION.
WE WANT TO RETAIN THEM IN STATE

Sub-Committee Actions

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

SUBCOMMITTEE WORK SESSION ON HB 292-FN

BILL TITLE: relative to securities regulation.

DATE: 2-10-11

Subcommittee Members: Reps. Palfrey, Mauro and Schlachman

Comments and Recommendations:

Amendments:

Sponsor: Rep. Gidge	OLS Document #:	2011	0196h
Sponsor: Rep.	OLS Document #:		
Sponsor: Rep.	OLS Document #:		

Motions: OTP OTP/A, ITL, Retained (Please circle one.)

Moved by Rep. Schalchman

Seconded by Rep. Mauro

Vote: 3-0

Motions: OTP OTP/A ITL, Retained (Please circle one.)

Moved by Rep. Schlachman

Seconded by Rep. Mauro

Vote: 3-0

Respectfully submitted,

Rep. David J. Palfrey
Subcommittee Chairman/Clerk

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

SUBCOMMITTEE WORK SESSION ON HB 292-FN

BILL TITLE: relative to securities regulation.

DATE: 2-10-11

Subcommittee Members: Reps. PALFREY, MAURO, SCHLACHMAN

Comments and Recommendations:

Amendments:

Sponsor: Rep. GIDGE

OLS Document #: 0196h

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Motions: (OTP) OTP/A, ITL, Retained (Please circle one.) AMENDMENT 0196h

Moved by Rep. SCHLACHMAN

Seconded by Rep. MAURO

Vote: 3-0

Motions: OTP, (OTP/A) ITL, Retained (Please circle one.)

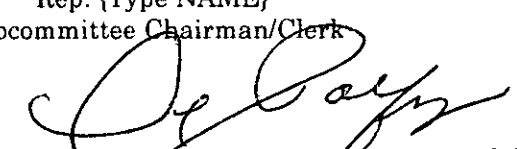
Moved by Rep. SCHLACHMAN

Seconded by Rep. MAURO

Vote: 3-0

Respectfully submitted,

Rep. {Type NAME}
Subcommittee Chairman/Clerk


DAVID J. PALFREY

Amendment to HB 292-FN

1 Amend the bill by replacing all after the enacting clause with the following:

2

3 1 Definitions. Amend the introductory paragraph of RSA 421-B:2 to read as follows:

4 421-B:2 Definitions. When used in this chapter, unless the context *of the section within*
5 *which the term is used* otherwise requires:

6 2 Definitions. Amend RSA 421-B:2, IV-b to read as follows:

7 *IV-b. "Bureau" means the bureau of securities regulation within the department of*
8 *state.*

9 *IV-c. "Common enterprise" means an enterprise in which the fortunes of the*
10 *investor are interwoven with those of either the person offering the investment, a third*
11 *party, or other investors.*

12 [~~IV-b.~~] *IV-d. "Complaint" means a written statement submitted within a reasonable time*
13 *following the incident complained of by a person, association, partnership, corporation, state agency*
14 *(including the staff of the department) or by any other legal entity that sets forth specific allegations*
15 *and requests administrative action by the department.*

16 3 New Paragraph; Definitions. Amend RSA 421-B:2 by inserting after paragraph IX-b the
17 following new paragraph:

18 IX-c. "Investment contract" means an investment in a common enterprise with the
19 expectation of profits to be derived primarily from the efforts of a person other than the investor.

20 4 Definitions. Amend RSA 421-B:2, XX(a) to read as follows:

21 XX(a) "Security" means *the investment of money or money's worth including goods*
22 *furnished and/or services performed in the risk capital of a venture with the expectation of*
23 *some benefit to the investor where the investor has no direct control over the investment or*
24 *policy decisions of the venture. "Security" shall include any note; stock; treasury stock; bond;*
25 *debenture; evidence of indebtedness; certificate of interest or participation in any profit sharing*
26 *agreement; membership interest in a limited liability company; partnership interest in a registered*
27 *limited liability partnership; partnership interest in a limited partnership; collateral trust*
28 *certificate; preorganization certificate or subscription; transferable shares; investment contract;*
29 *investment metal contract or investment gem contract; voting trust certificate; certificate of deposit*
30 *for a security; certificate of interest or participation in an oil, gas or mining right, title or lease or in*
31 *payments out of production under such a right, title or lease; or, in general, any interest or*
32 *instrument commonly known as a security, or any certificate of interest or participation in,*

1 temporary or interim certificate for, receipt for guarantee of, or warrant or right to subscribe to or
2 purchase, any of the foregoing. "Security" does not include any insurance or endowment policy or
3 annuity contract under which an insurance company promises to pay money either in a lump sum or
4 periodically for life or for some other specified period.

5 5 New Paragraph; Definitions. Amend RSA 421-B:2 by inserting after paragraph XXII the
6 following new paragraph:

7 XXIII. "Willful" or "willfully," especially in connection with RSA 421-B:24, but not limited
8 thereto, means an intentional act or omission to perform an act in that the person was aware of what
9 he or she was doing or failing to do. However, evil motive, scienter, intent to violate this title, or
10 knowledge that this title was being violated is not required.

11 6 Sales and Purchases. The introductory paragraph of RSA 421-B:3, II is repealed and
12 reenacted to read as follows:

13 II. For purposes of paragraph I(c), to engage in any act, practice, or course of business which
14 operates or would operate as a fraud or deceit upon any person, shall include but not be limited to:

15 7 Criminal Penalty. Amend RSA 421-B:24 to read as follows:

16 421-B:24 Criminal Penalty.

17 I. Any person who willfully, *as defined in RSA 421-B:2, XXIII*, violates any provisions of
18 RSA 421-B:3, ~~421-B:3-a~~, 421-B:4, 421-B:5 or fails to comply with an order from the secretary of state
19 to cease and desist or for an injunction issued pursuant to RSA 421-B:23, or who fails to comply with
20 an order to pay a fine, penalty, rescission, restitution, or disgorgement greater than \$10,000
21 pursuant to RSA 421-B:10, 421-B:23, or 421-B:26, or who violates RSA 421-B:19 knowing that the
22 statement was false or misleading in any material respect, shall be guilty of a class B felony. Each of
23 the acts specified shall constitute a separate offense and a prosecution or conviction for any one of
24 such offenses shall not bar prosecution or conviction for any other offense.

25 II. Any person who willfully violates RSA 421-B:6, 421-B:11 or 421-B:20 shall be guilty of a
26 ~~[class A misdemeanor if a natural person, and guilty of a]~~ *class B* felony ~~[if any other person]~~. Each
27 of the acts specified shall constitute a separate offense and a prosecution or conviction for any one of
28 such offenses shall not bar prosecution or conviction for any other offense. ~~[For any subsequent~~
29 ~~offense, any person shall be guilty of a class B felony.]~~

30 III. [Repealed.]

31 IV. Nothing in this chapter limits the power of the state to punish any person for any
32 conduct which constitutes a crime by statute.

33 V. *The crimes established in paragraphs I and II of this section are public welfare*
34 *offenses.*

35 8 Hearing Procedures. Amend RSA 421-B:26-a, XXI-XXVIII to read as follows:

36 XXI. Within a reasonable time after the hearing, the presiding officer shall issue a written
37 decision stating the action to be taken by the department and may set forth findings of fact,

1 conclusions of law, and disposition. All decisions shall be reached upon the basis of a preponderance
2 of the evidence. [~~The decision of the presiding officer shall be construed as the decision of the~~
3 ~~secretary of state.~~]

4 XXII. Any party to whom notice has been forwarded pursuant to and in accordance with
5 these rules who fails to appear shall have a default judgment rendered against him.

6 XXIII.(a) *Within 30 days after a final decision or disposition of a motion for*
7 *reconsideration by the presiding officer:*

8 (1) *Any party, including the bureau staff, may file an appeal of the presiding*
9 *officer's decision to the secretary of state; or*

10 (2) *Upon his or her own motion, the secretary of state may elect to review a*
11 *presiding officer's decision.*

12 (b) *In either case, the procedure for such proceeding shall be the same as in*
13 *paragraph XXVI.*

14 (c) *The secretary of state may elect to conduct the proceeding de novo, on the*
15 *record, with or without allowing the parties to supplement the record. In the latter case,*
16 *the procedure shall be the same as that provided for in paragraph XVII.*

17 (d) *At the conclusion of the proceedings, by written decision, the secretary of*
18 *state may accept or reject the presiding officer's decision, in whole or in part, substitute his*
19 *or her own findings of fact and conclusions of law, or return the case to the original*
20 *presiding officer, or to a substitute presiding officer, for action consistent with the*
21 *secretary's instruction.*

22 XXIV. The presiding officer may take judicial notice.

23 [~~XXIV.~~] XXV. Where the interests of justice will be better served without prejudice to the
24 substantial rights of any party, a presiding officer may sever one case from another or may
25 consolidate 2 or more cases, preserving to all parties the right of appeal from the single or several
26 decisions rendered.

27 [~~XXV.~~] XXVI. Once a hearing notice has been issued commencing an adjudicatory
28 proceeding, no party shall communicate with the presiding officer or the secretary of state
29 concerning the merits of the case except upon notice to all parties nor shall any party cause another
30 person to make such communications.

31 [~~XXVI.~~] XXVII. Within 30 days after [a] *the presiding officer's* final decision, any party
32 *including the bureau's staff, may but is not required to* file a motion for reconsideration which
33 shall serve as a petition for rehearing under RSA 541. No distinctions shall be made between the
34 terms "reconsideration" and "rehearing." A motion for reconsideration shall:

35 [(1)] (a) Identify each error of law, error of reasoning, or erroneous conclusion
36 contained in the final order which the moving party wishes the [~~secretary of state~~] *presiding officer*
37 to reconsider.

1 [(2)] (b) Concisely state the correct factual finding, correct reasoning, and correct
2 conclusion being advocated.

3 [(3)] (c) Include any memorandum of law the petitioner wishes to submit.

4 ~~[XXVII.]~~ **XXVIII.** Within 30 days after a final decision, the presiding officer may reconsider,
5 revise or reverse any final action on the presiding officer's own motion. If reconsideration is based
6 upon the existing record, prior notice shall not be given to the parties. If the presiding officer
7 believes further information or argument should be considered, the parties shall be provided with an
8 appropriate notice and opportunity to be heard before any revision is made in the previous action.

9 ~~[XXVIII. The filing of a motion for reconsideration shall not operate as a stay of any order or
10 decision, but a motion for stay may be combined with a motion for reconsideration.]~~

11 **XXIX.** *During the process outlined in this section, any preliminary order, such as a
12 summary cease and desist order, shall remain in full force and effect. Further, during the
13 process of reconsideration or appeal, any order or decision shall not be stayed. However,
14 the presiding officer or the secretary before whom the case is may consider a motion for
15 stay.*

16 9 Effective Date. This act shall take effect January 1, 2012.



2011-0196h

AMENDED ANALYSIS

This bill makes various changes to securities regulation laws, including increasing criminal penalties.

Testimony

Proposed Amendment to HB 292

Highlighted provisions should not be changed; keep existing law

At the end of this proposed amendment is a suggested change to RSA 421-B:2, XX

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Eleven

AN ACT relative to securities regulation.

*Be it Enacted by the Senate and House of Representatives in General Court
convened:*

1 Definitions. Amend the introductory paragraph of RSA 421-B:2 to read as follows:

421-B:2 Definitions. When used in this chapter, unless the context *of the section within which the term is used* otherwise requires:

2 Definitions. Amend RSA 421-B:2, III-IV-b to read as follows:

III. "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for his own account. "Broker-dealer" does not include:

(a) An agent;

(b) An issuer;

(c) ~~[A bank, savings institution or trust company;~~

~~(d)]~~ A person who has no place of business in this state if he effects transactions in this state exclusively with or through:

(1) The issuers of the securities involved in the transactions,

(2) Other broker-dealers, or

(3) Banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit sharing trusts, or other financial institutions or institutional buyers, or to broker-dealers, whether the purchaser is acting for itself or in some fiduciary capacity;

~~[(e)]~~ (d) A designated matching service; or

~~[(f)]~~ (e) Other persons not within the intent of this paragraph whom the secretary of state by rule or order designates.

IV. ~~["Attorney general" means the attorney general or delegatee.]~~

~~IV-a.]~~(a) "Branch office" means:

(1) With regard to an investment adviser, any location other than the main office, identified by any means to broker-dealers or other investment advisers or to the public, customers, or clients as a location at which an investment adviser conducts an investment advisory business.

(2) With regard to a broker-dealer, any location where one or more agents, as defined in paragraph II, regularly conducts the business of effecting any transactions in, or inducing or attempting to induce the purchase or sale of, any security, or is held out as such, excluding:

(A) Any location that is established solely for customer service and/or back-office-type functions where no sales activities are conducted and that is not held out to the public as a branch office;

(B) Any location that is the agent's primary residence; provided that:

(i) Only one agent, or multiple agents who reside at that location and are members of the same immediate family, conduct business at the location;

(ii) The location is not held out to the public as an office and the agent does not meet with customers at the location;

(iii) Neither customer funds nor securities are handled at that location;

(iv) The agent is assigned to a designated branch office, and such designated branch office is reflected on all business cards, stationery, advertisements, and other communications to the public by such agent;

(v) The agent's correspondence and communications with the public are subject to the broker-dealer's supervision;

(vi) Electronic communications, such as e-mail are made through the electronic system of the broker-dealer;

(vii) All orders for securities are entered through the designated branch office or an electronic system established by the broker-dealer that is reviewable at the branch office;

(viii) Written supervisory procedures pertaining to supervision of activities conducted at the residence are maintained by the broker-dealer; and

(ix) A list of the residence locations are maintained by the broker-dealer;

(C) Any location, other than a primary residence, that is used for securities business for less than 30 business days in any one calendar year, provided the broker-dealer complies with the provisions of [IV-a] *subparagraph IV(a)(2)(B)(ii)* through (viii);

(D) Any office of convenience, where associated persons occasionally and exclusively by appointment meet with customers, which is not held out to the public as an office;

(E) Any location that is used primarily to engage in non-securities activities and from which the agent effects no more than 25 securities transactions in any one calendar year; provided that any advertisement or sales literature identifying such location also sets forth the address and telephone number of the location from which the agent conducting business at the non-branch locations is directly supervised;

(F) The floor of a registered national securities exchange where a broker-dealer conducts a direct access business with public customers;

(G) A temporary location established in response to the implementation of a business continuity plan; or

(H) Any other location not within the intent of this paragraph as the secretary of state may determine.

(b) Notwithstanding the exclusions provided in subparagraph [IV-a] *IV(a)(2)*, any location that is responsible for supervising the activities of agents of the broker dealer at one or more non-branch locations of the broker-dealer shall be a branch office.

(c) "Business day" as used in this paragraph shall not include any partial day provided that the agent or investment adviser representative spends at least 4 hours of such day at his or her designated branch office during the hours that such office is normally open for business.

IV-a. "Bureau" means the bureau of securities regulation within the department of state.

IV-b. "Common enterprise" means an enterprise in which the fortunes of the investor are interwoven with those of either the person offering the investment, a third party, or other investors.

[~~IV-b.~~] *IV-c. "Complaint" means a written statement submitted within a reasonable time following the incident complained of by a person, association, partnership, corporation, state agency (including the staff of the department) or by any other legal entity that sets forth specific allegations and requests administrative action by the department.*

3 New Paragraph; Definitions. Amend RSA 421-B:2 by inserting after paragraph IX-b the following new paragraph:

IX-c. "Investment contract" means an investment in a common enterprise with the expectation of profits to be derived primarily from the efforts of a person other than the investor.

4 New Paragraph; Definitions. Amend RSA 421-B:2 by inserting after paragraph XXII the following new paragraph:

XXIII. "Willful" or "willfully," especially in connection with RSA 421-B:24, but not limited thereto, means an intentional act or omission to perform an act in that the person was aware of what he or she was doing or failing to do. However, evil motive, scienter, intent to violate this title, or knowledge that this title was being violated is not required.

5 Sales and Purchases. The introductory paragraph of RSA 421-B:3, II is repealed and reenacted to read as follows:

II. For purposes of paragraph I(c), to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, shall include but not be limited to:

6 Uniform Limited Offering Registration. Amend RSA 421-B:15-a to read as follows:

421-B:15-a Uniform Limited Offering Registration. The ~~[attorney-general]~~ bureau shall adopt rules, pursuant to RSA 541-A, relative to adoption in this state of Form ULOR-C, the general registration form for corporations registering under state securities law securities that are exempt from registration with the Securities and Exchange Commission under Rule 504 of Regulation D.

7 Cease and Desist Orders; Injunctions; Receivers. Amend RSA 421-B:23, I(b)-II to read as follows:

(b) The ~~[attorney general or]~~ secretary of state or his or her designee may, with or without prior administrative action by the secretary of state, bring an action in the superior court to enjoin the acts or practices and to enforce compliance with this chapter or any rule or order under this chapter. Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted. In addition, the court may issue an order for other appropriate or ancillary relief, to include an asset freeze, accounting, writ of attachment, writ of general or specific execution, and an appointment of a receiver or conservator, that may be the administrator, for the defendant or the defendant's assets. The court shall not require the ~~[attorney general or]~~ secretary of state to post a bond; and

(c) The ~~[attorney general or]~~ secretary of state or his or her designee may bring an action for injunctive relief and civil penalties for violations of any provision of this chapter. In any action brought by the ~~[attorney general or]~~ secretary of state or his or her designee, the civil penalties shall not exceed \$5,000 for each violation in the case of knowing violations, or \$2,500 for each violation in the case of negligent violations, and each of the acts specified shall constitute a separate violation. The action may be brought in the superior court of the county in which the defendant resides or has his or her principal place of business, or, with the consent of the parties or if the defendant is a nonresident and has no place of business within the state, in the superior court of Merrimack county.

II. In a proceeding in superior court under this section where the state prevails, the secretary of state ~~[and the attorney general]~~ shall be entitled to recover all costs and expenses of investigation, and the court shall include the costs in its final judgment.

8 Criminal Penalty. Amend RSA 421-B:24 to read as follows:

421-B:24 Criminal Penalty.

I. Any person who willfully, *as defined in RSA 421-B:2, XXIII*, violates any provisions of RSA 421-B:3, *421-B:3-a*, 421-B:4, 421-B:5 or fails to comply with an order from the secretary of state to cease and desist or for an injunction issued pursuant to RSA 421-B:23, or who fails to comply with an order to pay a fine, penalty, rescission, restitution, or disgorgement greater than \$10,000 pursuant to RSA 421-B:10, 421-B:23, or 421-B:26, or who violates RSA 421-B:19 knowing that the statement was false or misleading in any material respect, shall be guilty of a class B felony. Each of the acts specified shall constitute a separate offense and a prosecution or conviction for any one of such offenses shall not bar prosecution or conviction for any other offense.

II. Any person who willfully violates RSA 421-B:6, 421-B:11 or 421-B:20 shall be guilty of a ~~[class A misdemeanor if a natural person, and guilty of a]~~ *class B* felony ~~[if any other person]~~. Each of the acts specified shall constitute a separate offense and a prosecution or conviction for any one of such offenses shall not bar

prosecution or conviction for any other offense. [~~For any subsequent offense, any person shall be guilty of a class B felony.~~]

III. [Repealed.]

IV. Nothing in this chapter limits the power of the state to punish any person for any conduct which constitutes a crime by statute.

V. The crimes established in paragraphs I and II of this section are public welfare offenses.

9 Hearing Procedures. Amend RSA 421-B:26-a, XXI-XXVIII to read as follows:

XXI. Within a reasonable time after the hearing, the presiding officer shall issue a written decision stating the action to be taken by the department and may set forth findings of fact, conclusions of law, and disposition. All decisions shall be reached upon the basis of a preponderance of the evidence. [~~The decision of the presiding officer shall be construed as the decision of the secretary of state.~~]

XXII. Any party to whom notice has been forwarded pursuant to and in accordance with these rules who fails to appear shall have a default judgment rendered against him.

XXIII.(a) Within 30 days after a final decision or disposition of a motion for reconsideration by the presiding officer:

(1) Any party, including the bureau staff, may file an appeal of the presiding officer's decision to the secretary of state; or

(2) Upon his or her own motion, the secretary of state may elect to review a presiding officer's decision.

(b) In either case, the procedure for such proceeding shall be the same as in paragraph XXVI.

(c) The secretary of state may elect to conduct the proceeding de novo, on the record, with or without allowing the parties to supplement the record. In the latter case, the procedure shall be the same as that provided for in paragraph XVII.

(d) At the conclusion of the proceedings, by written decision, the secretary of state may accept or reject the presiding officer's decision, in whole or in part, substitute his or her own findings of fact and conclusions of law, or return the case to the original presiding officer, or to a substitute presiding officer, for action consistent with the secretary's instruction.

XXIV. The presiding officer may take judicial notice.

~~[XXIV.]~~ **XXV.** Where the interests of justice will be better served without prejudice to the substantial rights of any party, a presiding officer may sever one case from another or may consolidate 2 or more cases, preserving to all parties the right of appeal from the single or several decisions rendered.

~~[XXV.]~~ **XXVI.** Once a hearing notice has been issued commencing an adjudicatory proceeding, no party shall communicate with the presiding officer or the secretary of state concerning the merits of the case except upon notice to all parties nor shall any party cause another person to make such communications.

~~[XXVI.]~~ **XXVII.** Within 30 days after ~~[a]~~ *the presiding officer's* final decision, any party *including the bureau's staff*, may *but is not required to* file a motion for reconsideration which shall serve as a petition for rehearing under RSA 541. No distinctions shall be made between the terms "reconsideration" and "rehearing." A motion for reconsideration shall:

~~[(1)]~~ **(a)** Identify each error of law, error of reasoning, or erroneous conclusion contained in the final order which the moving party wishes the ~~[secretary of state]~~ *presiding officer* to reconsider.

~~[(2)]~~ **(b)** Concisely state the correct factual finding, correct reasoning, and correct conclusion being advocated.

~~[(3)]~~ **(c)** Include any memorandum of law the petitioner wishes to submit.

~~[XXVII.]~~ **XXVIII.** Within 30 days after a final decision, the presiding officer may reconsider, revise or reverse any final action on the presiding officer's own motion. If reconsideration is based upon the existing record, prior notice shall not be given to the parties. If the presiding officer believes further information or argument should be considered, the parties shall be provided with an appropriate notice and opportunity to be heard before any revision is made in the previous action.

~~[XXVIII.]~~ ~~The filing of a motion for reconsideration shall not operate as a stay of any order or decision, but a motion for stay may be combined with a motion for reconsideration.~~

XXIX. *During the process outlined in this section, any preliminary order, such as a summary cease and desist order, shall remain in full force and effect. Further, during the process of reconsideration or appeal, any order or decision shall not be stayed. However, the presiding officer or the secretary before whom the case is may consider a motion for stay.*

10 Rulemaking Authority; Authority to Issue Orders and Statements; Forms.
Amend RSA 421-B:28 to read as follows:

421-B:28 Rulemaking Authority; Forms; Orders.

I. The secretary of state may adopt rules pursuant to RSA 541-A relative to:

(a) Registration statements;

(b) Applications; *and*

(c) Reports[;].

~~[(d) Definitions of terms consistent with this chapter, whether or not they are used in the chapter;~~

~~(e) Classification of securities, persons and matters within the jurisdiction of the secretary of state and different requirements for different classes; and~~

~~(f) Any other matter reasonably necessary to carry out the provisions of this title.]~~

II. (a) The secretary of state may adopt rules, orders, or interpretive releases relative to:

(1) Definitions or interpretations of terms consistent with this chapter, whether or not they are used in the chapter; and

(2) Classifications of securities, persons, and matters within the jurisdiction of this chapter and different requirements for different categories of securities or persons.

(b) When exercising the authority granted in subparagraph (a) the secretary of state shall not be bound by RSA 541-A.

III. The secretary of state may prepare, alter or withdraw such forms as are necessary to comply with the provisions of this title.

~~[III.]~~ IV. The ~~[attorney general]~~ *secretary of state* may issue, amend or rescind such orders as are reasonably necessary to carry out the provisions of this chapter.

~~[IV.]~~ V. All actions undertaken by the secretary of state pursuant to this section shall be taken only when the secretary of state finds such action necessary or appropriate to the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of this title. In adopting rules, preparing forms, setting standards, and reviewing offerings, the

secretary of state may cooperate with the securities administrators of other states, self regulatory organizations, and the Securities and Exchange Commission in order to implement the policy of this chapter in an efficient and effective manner and to achieve maximum uniformity in the form and content of registration statements, applications, reports, and requirements for issuers, broker-dealers, and investment advisors, where practicable.

[V.] VI. The secretary of state may use a standard form widely used in the industry, including forms promulgated by the Securities and Exchange Commission, provided such forms are incorporated by reference in rules adopted by the secretary of state pursuant to RSA 541-A.

11 Repeal. RSA 421-B:17, II(d), relative to an exemption for non-issuer sale of notes or bonds sold to a single purchaser at a single sale.

12 Effective Date. This act shall take effect January 1, 2012.

In addition, the Bureau would request an amendment to RSA 421-B:2, XX as follows:

XX. (a) "Security" means *the investment of money or money's worth including goods furnished and/or services performed in the risk capital of a venture with the expectation of some benefit to the investor where the investor has no direct control over the investment or policy decisions of the venture. "Security" shall include* any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit sharing agreement; membership interest in a limited liability company; partnership interest in a registered limited liability partnership; partnership interest in a limited partnership; collateral trust certificate; preorganization certificate or subscription; transferable shares; investment contract; investment metal contract or investment gem contract; voting trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas or mining right, title or lease or in payments out of production under such a right, title or lease; or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation in, temporary or interim certificate for, receipt for guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. "Security" does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay money either in a lump sum or periodically for life or for some other specified period.

(b) Notwithstanding subparagraph (a), a membership interest in a limited liability company or a partnership interest in a registered limited liability partnership is not a security if:

(1) The secretary of state, by rule or order, determines that it is not a security;

(2) The limited liability company is a professional limited liability company or foreign professional limited liability company under RSA 304-D; or

(3) The registered limited liability partnership or foreign registered limited liability partnership:

(A) Is licensed, registered, certified, or otherwise authorized under the provisions of RSA 309-B, 310-A, 311, 315, 316, 317-A, 318, 326-B, 327, 329, 330-A or 332-B to render

professional services, as defined in RSA 304-D:1, VI, including necessary related services, or

(B) Is related to a registered limited liability partnership or foreign registered limited liability partnership licensed, registered, certified, or otherwise authorized under the provisions of RSA 309-B, 310-A, 311, 315, 316, 317-A, 318, 326-B, 327, 329, 330-A or 332-B to render professional services, as defined in RSA 304-D:1, VI.

(c) For purposes of subparagraph (b)(3) of this paragraph, a registered limited liability partnership or foreign registered limited liability partnership is related to a registered limited liability partnership or foreign registered limited liability partnership engaged in the rendering of professional services if:

(1) Such registered limited liability partnership or foreign registered limited liability partnership provides services related or complementary to the professional services rendered by, or provides services or facilities to, the registered limited liability partnership or foreign registered limited liability partnership engaged in the rendering of professional services; and

(2) Either:

(A) At least a majority of the partners in one partnership are partners in the other partnership, or

(B) At least a majority of partners in each partnership also hold interests or are members in another person, and each partnership renders services pursuant to an agreement with such other person, or

(C) The partnerships are affiliates within the meaning of RSA 421-B:2, I.

(D) In connection with the issuance of a cease and desist order issued by the secretary of state, and any hearings conducted, under RSA 421-B:23, I(a), the secretary may presume that a membership interest in a limited liability company or a partnership interest in a registered limited liability partnership is a security, and the person relying on subparagraph (b) of this paragraph has the burden of proving that the interest is not a security under the provisions of subparagraph (b).



HOUSE COMMITTEE RESEARCH OFFICE
New Hampshire House of Representatives
4th Floor, Legislative Office Building
Concord, NH 03301
Tel: (603) 271-3600
Fax: (603) 271-6689

James S. Cianci, Esq., Committee Researcher
(603) 271-3683
james.cianci@leg.state.nh.us

To: Rep. Elaine Swinford, Chair
House Committee on Criminal Justice & Public Safety

From: Jim Cianci, Committee Researcher
House Committee Research

Date: March 18, 2011

Re: HB 292 relative to securities regulation

HB 292 was originally referred to Commerce and Consumer Affairs which recommended Ought to Pass with Amendment (16-0):

Rep. Donna L. Schlachman for Commerce and Consumer Affairs: This bill makes technical changes to our securities law. It changes and clarifies some definitions, improves the procedures for processing and hearing complaints, and increases the penalty for those guilty of crimes under this law.

The committee report was subsequently adopted by the full House by a voice vote.

Criminal Penalty:

- Section 7 of HB 292 increases the criminal penalty provision contained in RSA 421-B:24, II.
- Current law provides that willful violation of RSA 421-B:6 (licensing requirements), RSA 421-B:11 (registration requirements) or RSA 421-B:20 (unlawful representation concerning registration or exemption) is a class A misdemeanor for a first offense and a class B felony for any subsequent offense.
- HB 292 amends this provision to provide for a class B felony for any violation of these sections.

Voting Sheets

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

EXECUTIVE SESSION on HB 292-FN

BILL TITLE: relative to securities regulation.

DATE: 2-15-11

LOB ROOM: 302

Amendments:

Sponsor: Rep. Gidge OLS Document #: 2011 0196h

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. Gidge

Seconded by Rep. Coffey

Vote: 16-0 (Please attach record of roll call vote.)

Motions: OTP OTP/A ITL, Interim Study (Please circle one.)

Moved by Rep. Gidge

Seconded by Rep. Coffey

Vote: 16-0 (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE Consent or Regular (Circle One)

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Jim Headd, Clerk

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

EXECUTIVE SESSION on HB 292-FN

BILL TITLE: relative to securities regulation.

DATE: 2-15-11

LOB ROOM: 302

Amendments: 0 195 h

Sponsor: Rep. *Bridg* OLS Document #:
Sponsor: Rep. *Coffe* OLS Document #:
Sponsor: Rep. OLS Document #:

Motions: OTP ~~OTPA~~, ITL, Interim Study (Please circle one.)

Moved by Rep. *Bridg*
Seconded by Rep. *Coffe*
Vote: 16-0 (Please attach record of roll call vote.)

Motions: OTP ~~OTPA~~, ITL, Interim Study (Please circle one.)

Moved by Rep. *Bridg*
Seconded by Rep. *Coffe*
Vote: 16-0 (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: Consent or Regular (Circle One) *16-0*
(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,
Rep. Jim Headd, Clerk

COMMERCE AND CONSUMER AFFAIRS

Bill #: HB 2227N Title: Relative To Examination Reports

PH Date: 1/11

Exec Session Date: 2, 15, 11

Motion: OTP

Amendment #: 0196h

MEMBER	YEAS	NAYS
Hunt, John B, Chairman	/	
Coffey, Jennifer R, V Chairman	/	
Belanger, Ronald J	/	
Flanders, Donald H	/	
Quandt, Matt J	/	
Headd, James F	/	
Nevins, Chris F	/	
Palfrey, David J	/	
Sullivan, James M	/	
Bergevin, Jerry E	/	
Manuse, Andrew J	/	
Mauro, Donna C	/	
McGuinness, Sean M	/	
Rice, Frederick C	/	
Taylor, Kathleen N	/	
Meador, David R	/	
Gidge, Kenneth N	/	
Schlachman, Donna L	/	

16-0

COMMERCE AND CONSUMER AFFAIRS

Bill #: HB292-FN Title: Rebate to secondary Reg

PH Date: 1/1/11

Exec Session Date: 2/15/11

Motion: OTP/A

Amendment #: _____

MEMBER	YEAS	NAYS
Hunt, John B, Chairman	✓	
Coffey, Jennifer R, V Chairman	✓	
Belanger, Ronald J	—	
Flanders, Donald H	✓	
Quandt, Matt J	✓	
Headd, James F	✓	
Nevins, Chris F	✓	
Palfrey, David J	✓	
Sullivan, James M	✓	
Bergevin, Jerry E	—	
Manuse, Andrew J	✓	
Mauro, Donna C	✓	
McGuinness, Sean M	✓	
Rice, Frederick C	✓	
Taylor, Kathleen N	✓	
Meador, David R	✓	
Gidge, Kenneth N	✓	
Schlachman, Donna L	✓	
	16-0	
TOTAL VOTE:		

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

EXECUTIVE SESSION on HB 292-FN

BILL TITLE: relative to securities regulation.

DATE: March 22, 2011

LOB ROOM: 204

Amendments:

Sponsor: Rep. David A. Welch OLS Document #: 2011 1126h

Sponsor: Rep. Laura C. Pantelakos OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. David A. Welch

Seconded by Rep. Laura C. Pantelakos

Vote: 10-6 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. Mark Warden

Seconded by Rep. Kyle Tasker

Vote: 3-11 (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: NO

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Dennis Fields, Acting Clerk



HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

EXECUTIVE SESSION on HB 292-FN

BILL TITLE: relative to securities regulation.

DATE: 3/22/2011

LOB ROOM: 204

Amendments:

Sponsor: Rep. *WELCH MOTION OTP RECOMMEND* OLS Document #: *2011-1125H*
SEN TELLOKAS second

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP OTP/A, ITL, Interim Study (Please circle one.) *AMEND 2011-1126H*

Moved by Rep. *WELCH*

Seconded by Rep. *SEN TELLOKAS*

Vote: (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE:

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Gene Charron, Clerk

Exec Form

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

~~SUBCOMMITTEE~~ WORK SESSION ON HB 292-FN

BILL TITLE: relative to securities regulation.

DATE: 3/22/2011

Subcommittee Members: Reps.

Comments and Recommendations:

Amendments:

Sponsor: Rep. GIDGE HILLS 24 OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep. WARDEN

Seconded by Rep. FUSHER

Vote: Yes 13
3

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep.
Subcommittee Chairman/Clerk

By: Dawn H. Gierke
ACTING CLERK

CRIMINAL JUSTICE AND PUBLIC SAFETY

Bill #: 292 FN Title: RELATIVE TO SECURITIES REGULATION

PH Date: 3/22/2011

Exec Session Date: 3/22/2011

Motion: Rep GINSBURG ATP PG AMENDED Amendment #: 2011-1126H

MEMBER second = PANTELAKOS

YEAS

NAYS

Swinford, Elaine B, Chairman	/	
Gagne, Larry G, V Chairman	/	
Welch, David A	/	
Fields, Dennis H	/	
Fesh, Robert M	/	
Charron, Gene P		
Villeneuve, Moe		/
Antosz, Jason P		/
Greazzo, Phil J	/	
Kreis, Kenneth		/
Parsons, Robbie L		/
Tasker, Kyle J		/
Warden, Mark		/
Pantelakos, Laura C	/	
Berube, Roger R	/	
Shurtleff, Stephen J	/	
Ginsburg, Philip E	/	

10
yes

6
NAYS

CRIMINAL JUSTICE AND PUBLIC SAFETY

Bill #: HB 292 FN Title: AMENDMENT TO SACRAMENTO REGULATIONS

PH Date: 3 / 22 / 2011

Exec Session Date: 3 / 22 / 2011

Motion: Rep WARDEN IRL ^{second} Rep JOSEPH Amendment #: _____

MEMBER	YEAS	NAYS
Swinford, Elaine B, Chairman		/
Gagne, Larry G, V Chairman		/
Welch, David A		/
Fields, Dennis H		/
Fesh, Robert M		/
Charron, Gene P		
Villeneuve, Moe		/
Antosz, Jason P		/
Greazzo, Phil J		/
Kreis, Kenneth	/	
Parsons, Robbie L		/
Tasker, Kyle J	/	
Warden, Mark	/	
Pantelakos, Laura C		/
Berube, Roger R		/
Shurtleff, Stephen J		/
Ginsburg, Philip E		/
	3	13
TOTAL VOTE:	3	13

CRIMINAL JUSTICE AND PUBLIC SAFETY

Bill #: HB292-FN Title: Relative to securities regulation.

PH Date: 3 / 22 / 2011

Exec Session Date: 3 / 22 / 2011

Motion: replace OTP Amendment #: _____

MEMBER second person

YEAS

NAYS

MEMBER	YEAS	NAYS
Swinford, Elaine B, Chairman	/	
Gagne, Larry G, V Chairman	/	
Welch, David A		/
Fields, Dennis H	/	
Fesh, Robert M	/	
Charron, Gene P		
Villeneuve, Moe		/
Antosz, Jason P		/
Greazzo, Phil J		/
Kreis, Kenneth		/
Parsons, Robbie L	/	
Tasker, Kyle J		/
Warden, Mark		/
Pantelakos, Laura C	/	
Berube, Roger R		/
Shurtleff, Stephen J	/	
Ginsburg, Philip E		/

7 9

7 yeas

9 nays

TOTAL VOTE:

Printed: 1/4/2011

CRIMINAL JUSTICE AND PUBLIC SAFETY

Bill #: 292 FM Title: RELATIVE TO SECURITIES REGULATIONS

PH Date: 3 / 22 / 2011

Exec Session Date: 3 / 22 / 2011

Motion: Rep Welch OTP on bench
SAMD = VOT RELEAS

Amendment #: 2011-1125H

MEMBER	YEAS	NAYS
Swinford, Elaine B, Chairman	/	
Gagne, Larry G, V Chairman	/	
Welch, David A	/	
Fields, Dennis H	/	
Fesh, Robert M	/	
Charron, Gene P		
Villeneuve, Moe	/	
Antosz, Jason P	/	
Greazzo, Phil J	/	
Kreis, Kenneth	/	
Parsons, Robbie L	/	
Tasker, Kyle J	/	
Warden, Mark		/
Pantelakos, Laura C	/	
Berube, Roger R	/	
Shurtleff, Stephen J	/	
Ginsburg, Philip E	/	
TOTAL VOTE:	15 yes	1 nay

Committee Report

CONSENT CALENDAR

February 23, 2011

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Committee on COMMERCE AND CONSUMER AFFAIRS to which was referred HB292-FN,

AN ACT relative to securities regulation. Having considered the same, report the same with the following amendment, and the recommendation that the bill OUGHT TO PASS WITH AMENDMENT.

Rep. Donna L Schlachman

FOR THE COMMITTEE

COMMITTEE REPORT

Committee:	COMMERCE AND CONSUMER AFFAIRS
Bill Number:	HB292-FN
Title:	relative to securities regulation.
Date:	February 17, 2011
Consent Calendar:	YES
Recommendation:	OUGHT TO PASS WITH AMENDMENT

STATEMENT OF INTENT

This bill makes technical changes to our securities law. It changes and clarifies some definitions, improves the procedures for processing and hearing complaints, and increases the penalty for those guilty of crimes under this law.

Vote 16-0.

Rep. Donna L Schlachman
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

CONSENT CALENDAR

COMMERCE AND CONSUMER AFFAIRS

HB292-FN, relative to securities regulation. **OUGHT TO PASS WITH AMENDMENT.**

Rep. Donna L Schlachman for **COMMERCE AND CONSUMER AFFAIRS**. This bill makes technical changes to our securities law. It changes and clarifies some definitions, improves the procedures for processing and hearing complaints, and increases the penalty for those guilty of crimes under this law. **Vote 16-0.**

Original: House Clerk
Cc: Committee Bill File

COMMITTEE REPORT

COMMITTEE: Commerce & CP

BILL NUMBER: HB 292-FN

TITLE: _____

DATE: _____ CONSENT CALENDAR: YES NO

- OUGHT TO PASS
- OUGHT TO PASS W/ AMENDMENT
- INEXPEDIENT TO LEGISLATE
- INTERIM STUDY (Available only 2nd year of biennium)

Amendment No.

STATEMENT OF INTENT:

This bill makes technical changes to our securities law. It changes and clarifies some definitions, improves the procedures for processing and hearing complaints, and increases the penalty for those guilty of crimes under this law.

Donna Schlachman

COMMITTEE VOTE: 16-0

- Copy to Committee Bill File
- Use Another Report for Minority Report

RESPECTFULLY SUBMITTED,
Rep. Donna Schlachman OK
For the Committee

REGULAR CALENDAR

March 29, 2011

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Majority of the Committee on CRIMINAL JUSTICE AND PUBLIC SAFETY to which was referred HB292-FN, AN ACT relative to securities regulation. Having considered the same, report the same with the following amendment, and the recommendation that the bill OUGHT TO PASS WITH AMENDMENT.

Rep. Philip E Ginsburg

FOR THE MAJORITY OF THE COMMITTEE

**MAJORITY
COMMITTEE REPORT**

Committee: **CRIMINAL JUSTICE AND PUBLIC SAFETY**
Bill Number: **HB292-FN**
Title: **relative to securities regulation.**
Date: **March 22, 2011**
Consent Calendar: **NO**
Recommendation: **OUGHT TO PASS WITH AMENDMENT**

STATEMENT OF INTENT

As the second committee, Criminal Justice and Public Safety examined the penalty portion of this bill. The committee supported the increase of penalty for unlawful representation concerning registration from a misdemeanor to a class B felony, but amended the bill to leave violations of licensing requirements and registration requirements as misdemeanors except for subsequent violations which will be a felony level offense.

Vote 10-6

Rep. Philip E Ginsburg
FOR THE MAJORITY

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

CRIMINAL JUSTICE AND PUBLIC SAFETY

HB292-FN, relative to securities regulation. **OUGHT TO PASS WITH AMENDMENT.**
Rep. Philip E Ginsburg for the **Majority** of **CRIMINAL JUSTICE AND PUBLIC SAFETY**. As the second committee, Criminal Justice and Public Safety examined the penalty portion of this bill. The committee supported the increase of penalty for unlawful representation concerning registration from a misdemeanor to a class B felony, but amended the bill to leave violations of licensing requirements and registration requirements as misdemeanors except for subsequent violations which will be a felony level offense. **Vote 10-6.**

Original: House Clerk
Cc: Committee Bill File

HB 292-FN relative to securities regulation.

MAJORITY REPORT

As the second committee, Criminal Justice and Public Safety examined the penalty portion of this bill. The committee supported the increase of penalty for unlawful representation concerning registration from a misdemeanor to a class B felony, but amended the bill to leave violations of licensing requirements and registration requirements as misdemeanors except for subsequent violations which will be a felony level offense.

Rep. Philip E. Ginsburg
For the Committee
10-6 OTP/A <2011-1126h> RC

Rep. Elaine Swenford

COMMITTEE REPORT

COMMITTEE: CRIMINAL JUSTICE AND PUBLIC SAFETY

BILL NUMBER: HB 292 FM

TITLE: RELATIVE TO SECURITIES REGULATION

DATE: 3/22/2011 CONSENT CALENDAR: YES NO

- OUGHT TO PASS
- OUGHT TO PASS W/ AMENDMENT
- INEXPEDIENT TO LEGISLATE
- INTERIM STUDY (Available only 2nd year of biennium)

Amendment No.
2011-1126 H

STATEMENT OF INTENT:

As the second committee, Criminal Justice and Public Safety examined the penalty portion of this bill. The Committee supported the increase of penalty for unlawful representation concerning registration ~~or exemption~~ from a misdemeanor to a class B felony, but amended the bill to leave violations of licensing requirements and registration requirements as misdemeanors, except for subsequent violations which will be a felony level offense.

COMMITTEE VOTE: 10 - 6

Rep. Elmer Sweigard

RESPECTFULLY SUBMITTED,

- Copy to Committee Bill File
- Use Another Report for Minority Report

Rep. *Philip E. Grubbs*
For the Committee
Philip E. Grubbs

REGULAR CALENDAR

March 29, 2011

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

**The Minority of the Committee on CRIMINAL JUSTICE
AND PUBLIC SAFETY to which was referred HB292-FN,**

**AN ACT relative to securities regulation. Having
considered the same, and being unable to agree with
the Majority, report with the following Resolution:**

RESOLVED, That it is INEXPEDIENT TO LEGISLATE.

Rep. Mark Warden

FOR THE MINORITY OF THE COMMITTEE

**MINORITY
COMMITTEE REPORT**

Committee: **CRIMINAL JUSTICE AND PUBLIC SAFETY**
Bill Number: **HB292-FN**
Title: **relative to securities regulation.**
Date: **March 22, 2011**
Consent Calendar: **NO**
Recommendation: **INEXPEDIENT TO LEGISLATE**

STATEMENT OF INTENT

This bill would change statute to increase penalties for misdemeanor to felony level for certain actions, including violations of RSA 421-B: 6, B: 11 and B: 20, relative to licensing and registration requirements. The minority believes this bill is flawed. Some of the language is ambiguous and includes undefined terms such as "public welfare offenses". Securities Bureau personnel testified that only one or two people were prosecuted last year for misdemeanor charges.

Rep. Mark Warden
FOR THE MINORITY

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

CRIMINAL JUSTICE AND PUBLIC SAFETY

HB292-FN, relative to securities regulation. **INEXPEDIENT TO LEGISLATE.**

Rep. Mark Warden for the **Minority** of **CRIMINAL JUSTICE AND PUBLIC SAFETY**. This bill would change statute to increase penalties for misdemeanor to felony level for certain actions, including violations of RSA 421-B: 6, B: 11 and B: 20, relative to licensing and registration requirements. The minority believes this bill is flawed. Some of the language is ambiguous and includes undefined terms such as "public welfare offenses". Securities Bureau personnel testified that only one or two people were prosecuted last year for misdemeanor charges.

Original: House Clerk
Cc: Committee Bill File

HB 292-FN relative to securities regulation.

MINORITY REPORT

This bill would change statute to increase penalties for misdemeanor to felony level for certain actions, including violations of RSA 421-B: 6, B: 11 and B: 20, relative to licensing and registration requirements. The minority believes this bill is flawed. Some of the language is ambiguous and includes undefined terms such as "public welfare offenses". Securities Bureau personnel testified that only one or two people were prosecuted last year for misdemeanor charges.

Rep. Mark Warden
For the Committee
RC

Rep Elaine Swenford

MINORITY REPORT

COMMITTEE: CRIMINAL JUSTICE AND PUBLIC SAFETY

BILL NUMBER: HB 292 FM

TITLE: RELATIVE TO SECURITIES REGULATIONS.

DATE: 3/22/2011 CONSENT CALENDAR: YES NO

- OUGHT TO PASS
- OUGHT TO PASS W/ AMENDMENT
- INEXPEDIENT TO LEGISLATE
- INTERIM STUDY (Available only 2nd year of biennium)

Amendment No.
<u>2011 - 1126 H</u>

STATEMENT OF INTENT:

This bill would change statute to increase penalties from misdemeanor to felony level for certain actions, including violations of RSA 421-B:6, B:11, and B:20, relative to licensing and registration requirements. The minority believes this bill is flawed. Some of the language is ambiguous and includes undefined terms such as "public welfare offenses." Securities Bureau personnel testified that only one or two people were ~~charged~~ prosecuted last year for misdemeanor charges.

Rep Elaine Swafford

COMMITTEE VOTE: YES 10 NAY 6

RESPECTFULLY SUBMITTED,

• Copy to Committee Bill File

Rep. Mark Warden
For the Minority