



Sen. Ram Villivalam

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10100SB1628sam001

LRB101 05279 JLS 56357 a

1 AMENDMENT TO SENATE BILL 1628

2 AMENDMENT NO. _____. Amend Senate Bill 1628 on page 1, by
3 replacing line 5 with the following:

4 "by changing Sections 2.11, 2.12b, 8, and 12 and by adding
5 Section 3.5 as follows:

6 (815 ILCS 5/2.11) (from Ch. 121 1/2, par. 137.2-11)

7 Sec. 2.11. Investment adviser. "Investment adviser" means
8 any person who, for compensation, engages in this State in the
9 business of advising others, either directly or through
10 publications or writings, as to the value of securities or as
11 to the advisability of investing in, purchasing, or selling
12 securities or who, in this State for direct or indirect
13 compensation and as part of a regular advisory business, issues
14 or promulgates analyses or reports concerning securities or any
15 financial planner or other person who, as an integral component
16 of other financially related services, provides ~~the foregoing~~
17 investment advisory services to others for compensation and as

1 part of a business, or who holds himself or herself out as
2 providing ~~the foregoing~~ investment advisory services to others
3 for compensation; but "investment adviser" does not include:

4 (1) a bank or trust company, or the regular employees of a
5 bank or trust company;

6 (2) any lawyer, accountant, engineer, geologist or teacher
7 (i) whose performance of such services is solely incidental to
8 the practice of his or her profession or (ii) who:

9 (A) does not exercise investment discretion with
10 respect to the assets of clients or maintain custody of the
11 assets of clients for the purpose of investing those
12 assets, except when the person is acting as a bona fide
13 fiduciary in a capacity such as an executor, trustee,
14 personal representative, estate or trust agent, guardian,
15 conservator, or person serving in a similar fiduciary
16 capacity;

17 (B) does not accept or receive, directly or indirectly,
18 any commission, fee, or other remuneration contingent upon
19 the purchase or sale of any specific security by a client
20 of such person; and

21 (C) does not advise on the purchase or sale of specific
22 securities, except that this clause (C) shall not apply
23 when the advice about specific securities is based on
24 financial statement analyses or tax considerations that
25 are reasonably related to and in connection with the
26 person's profession;

1 (3) any registered dealer or partner, officer, director or
2 regular employee of a registered dealer, or registered
3 salesperson, whose performance of these services, in each case,
4 is solely incidental to the conduct of the business of the
5 registered dealer or registered salesperson, as the case may
6 be, and who receives no special compensation, directly or
7 indirectly, for such services;

8 (4) any publisher or regular employee of such publisher of
9 a bona fide newspaper, news magazine or business or financial
10 publication of regular and established paid circulation;

11 (5) any person whose advice, analyses or reports relate
12 only to securities which are direct obligations of, or
13 obligations guaranteed as to principal or interest by, the
14 United States, any state or any political subdivision of any
15 state, or any public agency or public instrumentality of any
16 one or more of the foregoing;

17 (5.5) any person who is a federal covered investment
18 adviser; or

19 (6) any other persons who are not within the intent of this
20 Section as the Secretary of State may designate by rules and
21 regulations or order.

22 (Source: P.A. 90-70, eff. 7-8-97.)

23 (815 ILCS 5/2.12b) (from Ch. 121 1/2, par. 137.2-12b)

24 Sec. 2.12b. Investment adviser representative. "Investment
25 adviser representative" means, with respect to an investment

1 adviser who is required to register under this Act, any
2 partner, officer, director of (or a person occupying a similar
3 status or performing similar functions), or other natural
4 person employed by or associated with an investment adviser,
5 except clerical or ministerial personnel, who in this State:

6 (1) makes any recommendations or otherwise renders
7 advice regarding securities or investment products;

8 (2) manages accounts or portfolios of clients;

9 (3) determines what recommendation or advice regarding
10 securities or investments should be given;

11 (4) supervises any employee who performs any of the
12 foregoing; or

13 (5) solicits, refers, offers, or negotiates for the
14 sale of, or sells, investment advisory services.

15 With respect to a federal covered investment adviser,
16 "investment adviser representative" means any person who is an
17 investment adviser representative with a place of business in
18 this State as such terms are defined by the Securities and
19 Exchange Commission under Section 203A of the Federal 1940
20 Investment Advisers Act.

21 (Source: P.A. 90-70, eff. 7-8-97; 90-667, eff. 7-30-98; 91-809,
22 eff. 1-1-01.)

23 (815 ILCS 5/3.5 new)

24 Sec. 3.5. Authority of Secretary of State. Notwithstanding
25 any other law, the Secretary of State has the authority to

1 enforce this Act as it pertains to the offer, sale, or
2 investment advice concerning a covered security as defined by
3 Section 2.29."; and

4 on page 32, by inserting immediately below line 4 the
5 following:

6 "(815 ILCS 5/12) (from Ch. 121 1/2, par. 137.12)
7 Sec. 12. Violation. It shall be a violation of the
8 provisions of this Act for any person:

9 A. To offer or sell any security except in accordance
10 with the provisions of this Act.

11 B. To deliver to a purchaser any security required to
12 be registered under Section 5, Section 6 or Section 7
13 hereof unless accompanied or preceded by a prospectus that
14 meets the requirements of the pertinent subsection of
15 Section 5 or of Section 6 or of Section 7.

16 C. To act as a dealer, Internet portal, salesperson,
17 investment adviser, or investment adviser representative,
18 unless registered as such, where such registration is
19 required, under the provisions of this Act.

20 D. To fail to file with the Secretary of State any
21 application, report or document required to be filed under
22 the provisions of this Act or any rule or regulation made
23 by the Secretary of State pursuant to this Act or to fail
24 to comply with the terms of any order of the Secretary of

1 State issued pursuant to Section 11 hereof.

2 E. To make, or cause to be made, (1) in any sworn
3 testimony before the Secretary of State or the Illinois
4 Securities Department within the Office of the Secretary,
5 or application, report or document filed under this Act or
6 any rule or regulation made by the Secretary of State
7 pursuant to this Act, any statement which was false or
8 misleading with respect to any material fact or (2) any
9 statement to the effect that a security (other than a
10 security issued by the State of Illinois) has been in any
11 way endorsed or approved by the Secretary of State or the
12 State of Illinois.

13 F. To engage in any transaction, practice or course of
14 business in connection with the sale or purchase of
15 securities which works or tends to work a fraud or deceit
16 upon the purchaser or seller thereof.

17 G. To obtain money or property through the sale of
18 securities by means of any untrue statement of a material
19 fact or any omission to state a material fact necessary in
20 order to make the statements made, in the light of the
21 circumstances under which they were made, not misleading.

22 H. To sign or circulate any statement, prospectus, or
23 other paper or document required by any provision of this
24 Act or pertaining to any security knowing or having
25 reasonable grounds to know any material representation
26 therein contained to be false or untrue.

1 I. To employ any device, scheme or artifice to defraud
2 in connection with the sale or purchase of any security,
3 directly or indirectly.

4 J. When acting as an investment adviser, investment
5 adviser representative, or federal covered investment
6 adviser, by any means or instrumentality, directly or
7 indirectly:

8 (1) To employ any device, scheme or artifice to defraud
9 any client or prospective client;

10 (2) To engage in any transaction, practice, or
11 course of business which operates as a fraud or deceit
12 upon any client or prospective client; or

13 (3) To engage in any act, practice, or course of
14 business which is fraudulent, deceptive or
15 manipulative. The Secretary of State shall for the
16 purposes of this paragraph (3), by rules and
17 regulations, define and prescribe means reasonably
18 designed to prevent such acts, practices, and courses
19 of business as are fraudulent, deceptive, or
20 manipulative.

21 K. When offering or selling any mineral investment
22 contract or mineral deferred delivery contract:

23 (1) To employ any device, scheme, or artifice to
24 defraud any customer, prospective customer, or
25 offeree;

26 (2) To engage in any transaction, practice, or course

1 of business that operates as a fraud or deceit upon any
2 customer, prospective customer, or offeree; or

3 (3) To engage in any act, practice, or course of
4 business that is fraudulent, deceptive, or
5 manipulative. The Secretary of State shall for the
6 purposes of this paragraph (3), by rules and
7 regulations, define and prescribe means reasonably
8 designed to prevent acts, practices, and courses of
9 business as are fraudulent, deceptive, or
10 manipulative.

11 L. To knowingly influence, coerce, manipulate, or
12 mislead any person engaged in the preparation or audit of
13 financial statements or appraisals to be used in the offer
14 or sale of securities for the purpose of rendering such
15 financial statements or appraisals materially misleading.

16 (Source: P.A. 99-182, eff. 1-1-16.)

17 (815 ILCS 5/2.10a rep.)

18 Section 10. The Illinois Securities Law of 1953 is amended
19 by repealing Section 2.10a.

20 Section 99. Effective date. This Act takes effect July 1,
21 2019."