

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 18-1201.01 Thomas Morris x4218

HOUSE BILL 18-1388

HOUSE SPONSORSHIP

Garnett,

SENATE SPONSORSHIP

Tate,

House Committees

Finance

Senate Committees

A BILL FOR AN ACT

101 CONCERNING AN EXEMPTION FROM THE REQUIREMENT TO REGISTER
102 A SECURITY IF THE SECURITY IS SUBJECT TO A NOTICE FILING AS
103 PERMITTED UNDER FEDERAL LAW.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

Existing law generally requires that, for a person to issue a security, either the security or the person must be exempt or the person must register the security with the securities commissioner. The federal "National Securities Markets Improvement Act of 1996" (NSMIA) preempts certain provisions of the "Colorado Securities Act" that require

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

the filing of a registration statement and the collection of fees for mutual fund offerings. NSMIA permits state securities regulators to require only notice filing and the payment of a required fee for mutual fund offerings.

Sections 1, 2, and 5 of the bill eliminate the registration requirement, and **section 3** substitutes a notice filing requirement. The notice is valid for 12 months, must be accompanied by a fee established by the securities commissioner, and can be renewed.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **amend** 11-51-301 as
3 follows:

4 **11-51-301. Requirement for registration of securities.** It is
5 unlawful for any person to offer to sell or sell any security in this state
6 unless it is registered under this article ~~or unless 51~~; the security or
7 transaction is exempted under section 11-51-307, 11-51-308,
8 11-51-308.5, or 11-51-309; OR THE SECURITY IS A FEDERAL COVERED
9 SECURITY FOR WHICH A NOTICE FILING HAS BEEN MADE PURSUANT TO
10 SECTION 11-51-304.5.

11 **SECTION 2.** In Colorado Revised Statutes, 11-51-302, **amend**
12 (7)(a); and **repeal** (7)(b) as follows:

13 **11-51-302. General registration provisions.** (7) (a) ~~Except as~~
14 ~~provided in paragraph (b) of this subsection (7),~~ A registration statement
15 filed and effective under section 11-51-303 is effective for one year after
16 its effective date and thereafter is effective during the period or periods,
17 but only those periods, when the prospectus contained in the registration
18 statement filed under the federal "Securities Act of 1933", AS AMENDED,
19 meets the requirements of ~~subsection (a) of section 10~~ SECTION 10 (a) of
20 ~~such~~ THE federal "Securities Act of 1933", AS AMENDED, 15 U.S.C. SEC.
21 77j (a).

22 (b) ~~(f) A registration statement filed and effective under section~~

1 ~~11-51-303 or 11-51-304~~ on behalf of an investment company registered
2 under the federal "Investment Company Act of 1940" is effective for one
3 year after its effective date and may be renewed by filing a renewal notice
4 with the securities commissioner.

5 (H) ~~Any person filing a renewal notice pursuant to this paragraph~~
6 ~~(b) shall pay a renewal fee pursuant to section 11-51-707.~~

7 **SECTION 3.** In Colorado Revised Statutes, **add** 11-51-304.5 as
8 follows:

9 **11-51-304.5. Notice filing - investment companies.** (1) WITH
10 RESPECT TO A SECURITY THAT IS A FEDERAL COVERED SECURITY AS
11 DEFINED IN SECTION 18 (b)(2) OF THE FEDERAL "SECURITIES ACT OF
12 1933", AS AMENDED, 15 U.S.C. SEC. 77r (b)(2), THAT IS NOT OTHERWISE
13 EXEMPT UNDER SECTION 11-51-307, 11-51-308, 11-51-308.5, OR
14 11-51-309, BEFORE THE INITIAL OFFER OF THE SECURITY, THE ISSUER MUST
15 FILE WITH THE SECURITIES COMMISSIONER A FORM NF ESTABLISHED BY
16 THE NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, OR
17 AN ANALOGOUS FORM PRESCRIBED BY THE SECURITIES COMMISSIONER,
18 ALONG WITH A NOTICE FILING FEE, WHICH FEE SHALL BE DETERMINED AND
19 COLLECTED PURSUANT TO SECTION 11-51-707.

20 (2) A NOTICE FILING UNDER THIS SECTION IS EFFECTIVE ONLY FOR
21 SECURITIES SOLD WITHIN TWELVE MONTHS AFTER THE DATE ON WHICH THE
22 FORM NF WAS FILED WITH THE SECURITIES COMMISSIONER. ON OR BEFORE
23 THE EXPIRATION DATE, THE ISSUER MAY RENEW A NOTICE FILING BY FILING
24 ANOTHER FORM NF AND PAYING A RENEWAL FEE, WHICH FEE SHALL BE
25 DETERMINED AND COLLECTED PURSUANT TO SECTION 11-51-707. THE
26 RENEWED NOTICE FILING BECOMES EFFECTIVE UPON THE EXPIRATION OF
27 THE FILING BEING RENEWED.

1 (3) IF THE SECURITIES COMMISSIONER FINDS THERE IS A FAILURE
2 TO COMPLY WITH A NOTICE FILING OR FEE REQUIREMENT OF THIS SECTION,
3 THE SECURITIES COMMISSIONER MAY ISSUE A STOP ORDER SUSPENDING
4 THE OFFER OR SALE OF THOSE SECURITIES FOR WHICH NOTICE FILING HAS
5 NOT BEEN MADE OR THE NOTICE FILING FEE HAS NOT BEEN PAID. IF THE
6 SECURITIES COMMISSIONER FINDS THAT A DEFICIENCY IS CORRECTED, THE
7 STOP ORDER IS VOID AND NO PENALTY WILL BE IMPOSED.

8 **SECTION 4.** In Colorado Revised Statutes, **amend** 11-51-305 as
9 follows:

10 **11-51-305. Filing of sales literature.** (1) The securities
11 commissioner may, by rule or order, require the filing of any prospectus,
12 pamphlet, circular, form letter, advertisement, or other sales literature
13 addressed or intended for distribution to prospective investors, unless:

14 (a) The security or the transaction is exempted by section
15 11-51-307, 11-51-308, or 11-51-309; OR

16 (b) THE SECURITY IS SUBJECT TO THE FILING REQUIREMENTS OF
17 SECTION 11-51-304.5.

18 **SECTION 5.** In Colorado Revised Statutes, 11-51-307, **repeal**
19 (1)(k) and (2) as follows:

20 **11-51-307. Exempt securities.** (1) The following securities are
21 exempted from sections 11-51-301 and 11-51-305:

22 (k) ~~Any security issued by an issuer registered as an open-end~~
23 ~~management investment company or unit investment trust under the~~
24 ~~federal "Investment Company Act of 1940" if:~~

25 ~~(I) (A) The issuer is advised by an investment adviser that is a~~
26 ~~depository institution exempt from registration under the federal~~
27 ~~"Investment Advisers Act of 1940" or that is currently registered, and has~~

1 ~~been registered or is affiliated with an adviser that has been registered, as~~
2 ~~an investment adviser under the federal "Investment Advisers Act of~~
3 ~~1940" for at least three years next preceding an offer or sale of a security~~
4 ~~claimed to be exempt under this paragraph (k) and the adviser has acted,~~
5 ~~or is affiliated with an investment advisor that has acted, as investment~~
6 ~~adviser to one or more registered investment companies or unit~~
7 ~~investment trusts for at least three years next preceding an offer or sale of~~
8 ~~a security claimed to be exempt under this paragraph (k); or~~

9 ~~(B) The issuer has a sponsor that has at all times throughout the~~
10 ~~three years before an offer or sale of a security claimed to be exempt~~
11 ~~under this paragraph (k) sponsored one or more registered investment~~
12 ~~companies or unit investment trusts the aggregate total assets of which~~
13 ~~have exceeded one hundred million dollars; and~~

14 ~~(H) There is filed with and paid to the securities commissioner~~
15 ~~prior to any sale of any securities claimed to be exempt under this~~
16 ~~paragraph (k):~~

17 ~~(A) A notice of intention to sell which has been executed by the~~
18 ~~issuer and which sets forth the name and address of the issuer and the title~~
19 ~~of the securities to be offered in this state; and~~

20 ~~(B) An exemption fee, which shall be determined and collected~~
21 ~~pursuant to section 11-51-707, for open-end management companies and~~
22 ~~for unit investment trusts.~~

23 ~~(2) Any notice filed and exemption fee paid under paragraph (k)~~
24 ~~of subsection (1) of this section shall be effective only for securities sold~~
25 ~~within twelve months after the date on which such notice was filed with~~
26 ~~the securities commissioner. For the purposes of paragraph (k) of~~
27 ~~subsection (1) of this section, an investment adviser is affiliated with~~

1 another investment adviser if it controls, is controlled by, or is under
2 common control with the other investment adviser. For the purposes of
3 paragraph (k) of subsection (1) of this section, a "sponsor" of a unit
4 investment trust means the person primarily responsible for the
5 organization of the unit investment trust or who has continuing
6 responsibilities for the administration of the affairs of the unit investment
7 trust other than a trustee or custodian. "Sponsor" includes the depositor
8 of the unit investment trust.

9 **SECTION 6.** In Colorado Revised Statutes, 11-51-707, **amend**
10 (3)(a) as follows:

11 **11-51-707. Collection of fees - division of securities cash fund**
12 **created.** (3) (a) The division shall set the amount of each fee ~~which~~ THAT
13 it is authorized by law to collect under this article **51**. The budget request
14 and the fees for the division ~~shall~~ MUST reflect direct and indirect costs.
15 The division, in the discretion of the securities commissioner, may set:

16 (I) Registration fees payable under section 11-51-302, according
17 to a scale of rates applied to the dollar amount of securities to be
18 registered, with a maximum fee specified;

19 (II) ~~The division, in the discretion of the securities commissioner,~~
20 ~~may set an investment company registration renewal fee payable under~~
21 ~~section 11-51-302 (7) and an exemption fee payable under section~~
22 ~~11-51-307 (1)(k) A NOTICE FILING FEE AND NOTICE FILING RENEWAL FEE~~
23 ~~PAYABLE UNDER SECTION 11-51-304.5 for each series, portfolio, separate~~
24 ~~account, or fund of an open-end management company or unit investment~~
25 ~~trust;~~

26 (III) ~~The division, in the discretion of the securities commissioner,~~
27 ~~may set~~ Registration fees payable under section 11-51-905 (4), according

1 to a scale of rates applied to the asset size of the trust fund as of the date
2 of registration; AND

3 (IV) ~~The division, in the discretion of the securities commissioner,~~
4 ~~may set~~ Annual fees payable under section 11-51-906 (4)(e), according
5 to a scale of rates applied to the asset size of the trust fund as of the date
6 of the filing of the annual audit.

7 **SECTION 7. Act subject to petition - effective date -**
8 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
9 the expiration of the ninety-day period after final adjournment of the
10 general assembly (August 8, 2018, if adjournment sine die is on May 9,
11 2018); except that, if a referendum petition is filed pursuant to section 1
12 (3) of article V of the state constitution against this act or an item, section,
13 or part of this act within such period, then the act, item, section, or part
14 will not take effect unless approved by the people at the general election
15 to be held in November 2018 and, in such case, will take effect on the
16 date of the official declaration of the vote thereon by the governor.

17 (2) This act applies to conduct occurring on or after the applicable
18 effective date of this act.