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(c) This act shall not apply to any person who on the effective date of this act has a valid license to carry a firearm issued pursuant to section one hundred and thirty-one or one hundred and thirty-one F of said chapter one hundred and forty.

(d) This act shall not be construed to prohibit the enforcement of any other statute and any person who violated the provisions of this act may also be convicted of any other violation of law notwithstanding the provisions of this act.

SECTION 2. This act shall take effect upon its passage.

Approved January 14, 1994.

Chapter 492. AN ACT RELATIVE TO INVESTMENT ADVISERS AND FINANCIAL PLANNERS.

Be it enacted, etc., as follows:

SECTION 1. Section 201 of chapter 110A of the General Laws, as appearing in the 1992 Official Edition, is hereby amended by striking out paragraph (c) and inserting in place thereof the following three paragraphs:-

(c) It shall be unlawful for any person to transact business in this state as an investment adviser or as an investment adviser representative unless he is so registered under this chapter.

(d) It shall be unlawful for any investment adviser required to be registered as such to employ an investment adviser representative unless the investment adviser representative is registered under this chapter. The registration of an investment adviser representative shall not be effective during any period when he is not employed by an investment adviser registered under this chapter. When an investment adviser representative begins or terminates employment with an investment adviser, the investment adviser shall promptly notify the secretary.

(e) Every registration shall expire on the last day of the calendar year.

SECTION 2. Section 202 of said chapter 110A, as so appearing, is hereby amended by striking out paragraphs (a) to (d), inclusive, and inserting in place thereof the following five paragraphs:-

(a) A broker-dealer, agent, investment adviser or investment adviser representative may obtain an initial or renewal registration by filing with the secretary an application together with consent to service of process pursuant to paragraph (g) of section four hundred and fourteen. The application shall contain whatever information the secretary by rule requires concerning such matters as the applicant's form and place of organization; the applicant's proposed method of doing business; the qualifications and business history of the applicant; and in the case of a broker-dealer or investment adviser, the qualifications and business history of any partner, officer, or director, any person occupying a similar status or

performing similar functions, or any person directly or indirectly controlling the broker-dealer or the investment adviser; any junction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony; the applicant's financial condition and history; and any information to be furnished or disseminated to any client or prospective client, if the applicant is an investment adviser. The secretary may rule or order require an applicant for initial registration to publish an announcement of the application in one or more specified newspapers published in this state. If no denial order is in effect and no proceeding is pending under section two hundred and four, registration shall become effective at noon of the thirtieth day after an application is filed. The secretary may by rule or order specify an earlier effective date, and he may by order defer the effective date until noon of the thirtieth day after the filing of any amendment. Registration of a broker-dealer or an investment adviser shall automatically constitute registration of any agent or investment adviser representative, whichever is applicable, who is a partner, officer, or director, or a person occupying a similar status performing similar functions. No person shall be designated as an officer, partner or director or a person occupying a similar position or performing similar functions, for the purpose of the automatic registration if such designation is solely for the purpose of avoiding registration as an agent or investment adviser representative.

(b) Every applicant for initial or renewal registration shall pay a registration fee of three hundred dollars in the case of a broker-dealer or investment adviser; of forty dollars in the case of an agent, including an agent automatically registered pursuant to paragraph (a); fifty dollars in the case of an investment adviser representative, including investment adviser representative registered pursuant to said paragraph (a). When an agent or investment adviser representative transfers an affiliation, he shall pay a fee of forty dollars.

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

(d) The secretary may by rule require a minimum capital for registered broker-dealer and establish minimum financial requirements for investment adviser.

(e) The secretary may by rule provide that an applicant may submit one application for registration as both a broker-dealer agent and investment adviser representative. Each applicant shall pay a registration fee of fifty dollars.

SECTION 3. Section 203 of said chapter 110A, as so appearing, is hereby amended by striking out paragraphs (a) and (b) and inserting in place thereof the following two paragraphs:-

(a) Every registered broker-dealer and investment adviser shall make and keep such accounts, correspondence, memoranda, papers, books and other records as the secretary by rule prescribes. All records so required shall be preserved for three years unless the secretary by rule prescribes otherwise for particular types of records.

(b) Every registered broker-dealer and investment adviser shall file such financial reports as the secretary by rule prescribes.

SECTION 4. Said section 203 of said chapter 110A, as so appearing, is hereby further amended by adding the following paragraph:-

(e) With respect to investment advisers, the secretary may require that certain information be furnished or disseminated as necessary or appropriate in the public interest or for the protection of investors and advisory clients. The secretary may rule or order require that such material be filed.

SECTION 5. Said chapter 110A is hereby further amended by inserting after section 203 the following section:-

Section 203A. (a) Each investment adviser registered under this chapter shall disseminate to each client or prospective client a document disclosing material facts. Said document shall include information concerning:

- (1) compensation arrangements between the client and the investment adviser,
- (2) the nature of services offered,
- (3) business practices,
- (4) methods for obtaining information on disciplinary history and registration of the investment adviser and persons associated with the investment adviser,

(b) Each person registered under this section shall disclose to each client before a purchase or sale is affected on behalf of the client:

(1) the total amount of sales commissions or other fees that may reasonably be expected to be charged or deducted in connection with the purchase of sale;

(2) That the adviser will receive such amount or a portion of such amount, or, in the case of a transaction to be effected through a broker or a dealer that is a person associated or under common control with the adviser, that the broker or dealer is affiliated with the adviser and will receive such amount or portion of such amount.

(3) the existence of any compensation arrangement with an issuer or other third party with respect to the recommended transaction.

Such initial disclosure shall be in writing if the purchase or sale was recommended in writing. The secretary may, by rule, permit a client to waive in writing, the right to a disclosure.

SECTION 6. Subsection (a) of section 204 of said chapter 110A, as appearing in the 1992 Official Edition, is hereby amended by striking out the introductory paragraph and inserting in place thereof the following paragraph:-

The secretary may by order impose an administrative fine or censure or deny, suspend, or revoke any registration or take any other appropriate action if he finds (1) that the order is in the public interest and (2) that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser:-

SECTION 7. Said subsection (a) of said section 204 of said chapter 110A, as so appearing, is hereby further amended by striking out clause (E) and inserting in place thereof the following clause:-

(E) is the subject of an order of the secretary denying, suspending or revoking registration as a broker-dealer, agent, investment adviser, or investment adviser representative.

SECTION 8. Said subsection (a) of said section 204 of said chapter 110A, as so appearing, is hereby further amended by striking out clause (J) and inserting in place thereof the following clause:-

(J) has failed reasonably to supervise agents, investment adviser representatives or other employees to assure compliance with this chapter, or:-

SECTION 9. Subsection (b) of said section 204 of said chapter 110A, as so appearing, is hereby amended by striking out paragraphs (2), (3), and (4) and inserting in place thereof the following five paragraphs:-

(2) The secretary may not enter an order against any investment adviser on the basis of the lack of qualification of any person other than (a) the investment adviser himself if he is an individual or (b) an investment adviser representative.

(3) The secretary may not enter an order solely on the basis of lack of experience if the applicant or registrant is qualified by training or knowledge or both.

(4) The secretary shall consider that an agent who will work under the supervision of a registered broker-dealer need not have the same qualifications as a broker-dealer and that an investment adviser representative who will work under the supervision of a registered investment adviser need not have the same qualifications as an investment adviser.

(5) The secretary may consider that a broker-dealer or an agent is not necessarily qualified to act in the capacity as an investment adviser solely on the basis of experience as an agent. When he finds that an applicant for initial or renewal registration as a broker-dealer or agent is not qualified to act in the capacity of an investment adviser, he may by order condition the applicant's registration as a broker-dealer upon his not transacting the business of an investment adviser in this state.

(6) The secretary may by rule provide for an examination, which may be written or oral or both, to be taken by any class of or all applicants.

SECTION 10. Said section 204 of said chapter 110A, as so appearing, is hereby further amended by striking out subsections (c) to (f), inclusive, and inserting in place thereof the following four subsections:-

(c) The secretary may by order summarily postpone or suspend registration, pending final determination of any proceeding under this section. Upon the entry of the order, the secretary shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is an agent or investment adviser representative, that it has been entered and of the reasons therefor and that within fifteen days after the receipt of a written request the matter will be set down for hearing. If a hearing is requested or ordered, the secretary, after notice of and opportunity for hearing, may modify or vacate the order or extend it until final determination.

(d) If the secretary finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, agent, investment adviser or investment adviser representative, or is subject to an adjudication of mental incompetence

or to the control of a committee, conservator, or guardian, or cannot be located after reasonable search, the secretary may by order cancel the registration or application.

(e) Withdrawal from registration as a broker-dealer, agent, investment adviser, or investment adviser representative shall become effective thirty days after receipt of an application to withdraw or within such shorter period of time as the secretary may determine, unless a revocation or suspension proceeding to revoke pending when the application is filed or a proceeding to revoke or suspend or impose conditions upon withdrawal is instituted within thirty days after the application is filed. If a proceeding is pending or instituted, withdrawal becomes effective at such time and upon such conditions as the secretary by order determines. If no proceeding is pending or instituted and withdrawal automatically becomes effective, the secretary may nevertheless institute a revocation or suspension order proceeding under clause (B) of subsection (a) within one year after withdrawal became effective and enter a revocation or suspension order as of the last date on which registration was effective.

(f) No order may be entered under any part of this section except the first sentence of subsection (c) without (1) appropriate prior notice to the applicant or registrant as well as the employer prospective employer if the applicant or registrant is an agent or investment adviser representative, (2) opportunity for hearing, and (3) written findings of fact and conclusions of law.

SECTION 11. Section 401 of said chapter 110A, as so appearing, is hereby amended by adding the following paragraphs:-

(m) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. "Investment adviser" shall also include financial planners and other persons who, as an integral component of other financially related services, provide the foregoing investment advisory services to others for compensation as a part of a business or who hold themselves out as providing the foregoing investment advisory services to others for compensation. "Investment adviser" shall not include a bank, savings institution, or trust company; a lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of his profession, or who does not exercise investment discretion with respect to the assets of clients or maintain custody of the assets of clients for the purpose of investing such assets, except when the person is acting as a bona fide fiduciary in a capacity, such as an executor, trustee, personal representative, estate or trust agent, guardian, conservator, or person serving in a similar fiduciary capacity; and who does not accept or receive, directly or indirectly, any commission, fee or other remuneration contingent upon the purchase or sale of any specific security by a client of such persons; a publisher of any newspaper, news column, newsletter, news magazine, or business or financial publication or service whether communicated in hard copy form, or by electronic

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means, or otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation of each client; a person whose only clients in this state are other investment advisers, broker-dealers, banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, employee benefit plans with assets of not less than five million dollars, governmental agencies or instrumentalities, or other financial institutions or institutional buyers, whether acting for themselves or as trustees with investment control; a registered broker-dealer or broker-dealer agent; a person who is engaged in interstate commerce, and is registered with the Securities and Exchange Commission as an investment adviser under the provisions of the Investment Advisers Act of 1940, 15 USC 80(b) and is a qualified institutional buyer or affiliate under S.E.C. Rule 144A; and such other persons not within the intent of this paragraph as the secretary may by rule or order designate.

(n) "Investment adviser representative" means any partner, officer, director, or a person occupying a similar status or performing similar functions, or other individual employed by or associated with an investment adviser required to be registered under this act, except clerical or ministerial personnel, who makes recommendations or otherwise renders advice regarding securities; manages accounts or portfolios of clients; determines which recommendation or advice regarding securities should be given; solicits, offers or negotiates for the sale or sells investment advisory services; or supervises employees who perform any of the foregoing.

Approved January 14, 1994.

Chapter 493. AN ACT RELATIVE TO BOND AUTHORIZATIONS TO MEET CERTAIN CAPITAL EMERGENCIES OF THE COMMONWEALTH.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to provide for emergency capital repairs and to facilitate the acquisition of agricultural restrictions, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted, etc., as follows:

SECTION 1. To provide for a capital outlay program for certain repairs, improvements, construction, reconstruction, and closings of state facilities and for the acquisition of development rights to certain properties, the sums set forth in section two, for the several purposes and subject to the conditions in this act, are hereby made available from the General Capital Projects Fund, subject to the provisions of law regulating the disbursement of public funds.