

blood, breath or urine test to determine the alcoholic content of his blood pursuant to section 169.123, subdivision 2. Another test may be required of the driver following the screening test pursuant to the provisions of this chapter, which shall be admissible evidence in accordance therewith.

Nothing in this subdivision authorizing such preliminary screening test or analysis shall be construed as changing, limiting, or otherwise modifying the procedures, safeguards, and other provisions of sections 169.121 to 169.123 or ordinances in conformity therewith.

The provisions of this subdivision apply, but are not limited in application, to any person who drives, operates, or who is in actual physical control of any vehicle in the manner prohibited by this subdivision upon the ice of any lake, stream, or river, including but not limited to the ice of any boundary water.

Approved June 5, 1975.

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#### CHAPTER 371—H.F.No.618

*An act relating to securities; providing for the inclusion of investment metal contracts and investment gem contracts in the definition of a security; amending Minnesota Statutes 1974, Section 80A.14.*

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1974, Section 80A.14, is amended to read:

**80A.14 SECURITIES; INVESTMENT CONTRACTS; METALS OR GEMS; DEFINITIONS.** When used in sections 80A.01 to 80A.31, unless the context otherwise requires:

(a) "Affiliate" of another person means any person directly or indirectly controlling, controlled by, or under common control with such other person.

(b) "Agent" means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities. "Agent" does not include an individual who represents an issuer in:

(1) effecting transactions in a security exempted by section 80A.15, subdivision 1, clauses (a), (b), (c), (d), (e), (g), (h) or (j);

(2) effecting transactions exempted by section 80A.15, subdivision 2;

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(3) effecting transactions with existing employees, partners or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state;

(4) effecting other transactions, if such individual is an officer or director of the issuer, no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state, and, upon application, such individual is specifically authorized by name in an order issued by the commissioner; or

(5) effecting transactions in securities registered by notification under section 80A.09 if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state.

A partner, officer or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions, is an agent only if he otherwise comes within this definition.

(c) "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:

(1) an agent;

(2) an issuer;

(3) a bank, savings institution or trust company, or

(4) a person who has no place of business in this state if he effects transactions in this state exclusively with or through (i) the issuers of the securities involved in the transactions, (ii) other broker-dealers, or (iii) 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; or

(5) other persons not within the intent of this subsection whom the commissioner by rule or order designates.

(d) "Commissioner" means the commissioner of securities of the department of commerce.

(e) "Fraud," "deceit" and "defraud" are not limited to common law deceit.

(f) "Guaranteed" means guaranteed as to payment of principal and interest or principal and dividends.

(g) "Industrial revenue bond" means any obligation issued by a governmental unit (including the United States, any state, any political

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subdivision of a state, or any agency or corporate or other instrumentality of one or more of the foregoing), other than a general obligation of a governmental unit having power to tax property or of an agency of the state of Minnesota, (1) which is issued as part of an issue, all or a major portion of the proceeds of which are to be used directly or indirectly in any trade or business carried on by any person who is not an exempt person, and (2) the payment of the principal or interest on which (under the terms of such obligation or any underlying arrangement) is, in whole or in major part, (i) secured by any interest in property used or to be used in a trade or business or in payment in respect of such property, or (ii) to be derived from payments in respect of property or borrowed money, used or to be used in a trade or business. For purposes of the preceding sentence, an exempt person is a governmental unit or an organization described in Minnesota Statutes 1971, Section 290.05, Subdivision 1, Clauses (h) and (i).

(h) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the 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" does not include:

- (1) a bank, savings institution or trust company;
- (2) a lawyer, accountant, engineer or teacher whose performance of these services is solely incidental to the practice of his profession;
- (3) a broker-dealer whose performance of these services is solely incidental to the conduct of his business as a broker-dealer and who receives no special compensation for them;
- (4) a publisher of any bona fide newspaper, news magazine or business or financial publication of general, regular and paid circulation;
- (5) a person whose advice, analyses or reports relate only to securities exempted by section 80A.15, subdivision 1, clause (a);
- (6) a person who has no place of business in this state if his only clients in this state are other investment advisers, broker-dealers or persons to whom sales are exempted under section 80A.15, subdivision 2, clause (g);
- (7) such other persons not within the intent of this paragraph as the commissioner may by rule or order designate.

(i) "Investment metal" means any object which contains gold, silver or platinum, or any other metal which the commissioner may specify by rule upon a showing that such other metal is being purchased

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and sold by the public as an investment.

(j) "Investment gem" means any gem which the commissioner may specify by rule upon a showing that such gem is being purchased and sold by the public as an investment.

(k) "Investment metal contract" or "investment gem contract" means:

(i) a sale of an investment metal or investment gem in which the seller or an affiliate of the seller retains possession of the investment metal or investment gem; or

(ii) a contract of purchase or sale which provides for the future delivery of an investment metal or investment gem, or any option to purchase or option to sell such a contract; or

(iii) a sale of an investment metal or investment gem pursuant to a contract known to the trade as a margin account, margin contract, leverage account, or leverage contract.

"Investment metal contract" or "investment gem contract" shall not include:

(i) the sale of an investment metal or investment gem where the seller has reasonable grounds to believe that the investment metal or investment gem is being acquired for manufacturing, commercial or industrial purposes; or

(ii) the sale, or contract for the future purchase or sale, of jewelry, art objects or other manufactured or crafted goods other than bullion or bulk sales of coins; or

(iii) the sale of an investment metal or investment gem where full payment is made to the seller and delivery is made to the purchaser within twenty days of the date of purchase provided that a purchaser may designate a bank, savings institution, trust company, or licensed broker-dealer, within this state, to accept delivery on his behalf if such bank, savings institution, trust company or licensed broker-dealer maintains such investment metal or investment gem in safe-keeping and as the specifically identifiable property of the purchaser; or

(iv) any futures contracts traded on a commodities exchange registered under the Federal Commodity Futures Trading Commission Act of 1974.

~~(1)~~ "Issuer" means any person who issues or proposes to issue any security and any promoter who acts for an issuer to be formed, except:

(1) with respect to certificates of deposit or trust certificates, is-  
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suer means the person performing the act and assuming the duties of depositor, manager or trustee pursuant to the provisions of the trust or other instrument under which the security is issued;

(2) with respect to certificates of interest or participation in oil, gas or mining rights, titles or leases, issuer means the owner of any such right, title or lease, who creates fractional interest therein for the purposes of sale.

~~(j)~~-(m) "Nonissuer" means not directly or indirectly for the benefit of the issuer or an affiliate of the issuer.

~~(k)~~-(n) "Person" means an individual, corporation, a partnership, an association, a joint stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, a political subdivision of a government or any other entity.

~~(l)~~-(o) "Purchasing for investment" means a purchase made for investment and not for the purpose of resale. In determining whether securities have been purchased for investment, the length of the period for which the securities are held will be one of the factors considered. Securities held for two years after their purchase shall be conclusively deemed to have been purchased for investment.

~~(m)~~-(p) (1) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of, a security or interest in a security for value.

(2) "Offer" or "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value.

(3) Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value.

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

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

(6) The terms defined in this subsection do not include (i) any bona fide pledge or loans; (ii) any stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not.

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~~(n)~~-(q) "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit sharing agreement; 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.

~~(o)~~-(r) "State" means any state, territory or possession of the United States, the District of Columbia and Puerto Rico.

Approved June 4, 1975.

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**CHAPTER 372—H.F.No.619**

[Coded]

*An act relating to commerce; providing disclosure obligations in personal solicitation of sales; providing penalties.*

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:**

**Section 1. [325.942] COMMERCE; PERSONAL SOLICITATION SALES; DISCLOSURES; DEFINITIONS.** Subdivision 1. As used in sections 1 to 4, the terms defined in this section have the meanings given them.

Subd. 2. "Personal solicitation" means any attempt by a seller who regularly engages in transactions of the same kind, to sell goods or services which are primarily for personal, family, or household purposes, and not for agricultural purposes, when either the seller or a person acting for him, contacts the buyer by telephone or in person other than at the place of business of the seller, except:

(a) An attempted sale in which the buyer personally knows the identity of the seller, the name of the business firm or organization he represents, and the identity or kinds of goods or services offered for sale; or

(b) An attempted sale in which the buyer has initiated the contact with the seller; or

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