

**ARTICLE 59**  
**COLORADO MUNICIPAL BOND SUPERVISION ACT**

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**11-59-101. Short title.**

This article shall be known and may be cited as the "Colorado Municipal Bond Supervision Act".

**11-59-102. Legislative declaration.**

(1) The general assembly finds that:

(a) The financial reputation and integrity of all local governments and political subdivisions are a matter of statewide concern;

(b) There is a growing concern statewide with special districts and municipal and county improvement districts that are either insolvent or threatened with insolvency and the attendant impairment of viability and of the ability to provide public services; and

(c) The credit reputation of political subdivisions of the state of Colorado is of vital interest to citizens of the state.

(2) The general assembly determines that it is necessary to empower the securities commissioner to regulate and monitor the issuance of municipal bonds of political subdivisions and to develop information and recommendations for appropriate action for the general assembly in connection therewith.

(3) The general assembly declares that the annual disclosure of financial and credit information for public securities will benefit both issuers and investors by expanding and stabilizing the market for public securities and thereby improving the marketability of such securities.

(4) Therefore, the general assembly declares that it is in the best interests of this state and its citizens that safeguards and full disclosure be made in connection with the issuance of bonds of special districts and municipal and county improvement districts and that this article is necessary to protect the continued provision of public services and the credit of political subdivisions. This article is remedial in nature and is to be broadly construed to effectuate its purposes.

**11-59-103. Definitions.**

As used in this article, unless the context otherwise requires:

(1) "Appraisal" shall have the same meaning as provided in section 12-61-702 (1), C.R.S.

(2) "Bond" means any bond, debenture, or other obligation authorized to be issued by any special district, municipal general improvement district, municipal special improvement district, county local improvement district, or county public improvement district.

(3) "County local improvement district" shall have the same meaning as district provided in section 30-20-602 (2), C.R.S.

(4) "County public improvement district" shall have the same meaning as improvement district provided in section 30-20-503 (3), C.R.S.

(5) "Depository institution" means:

(a) A person that is organized or chartered, or is doing business or holds an authorization certificate, under the laws of a state or of the United States which authorize the person to receive deposits, including deposits in savings, shares, certificates, or other deposit accounts, and that is supervised and examined for the protection of depositors by an official or agency of a state or the United States; and

(b) A trust company or other institution that is authorized by federal or state law to exercise fiduciary powers of the type a national bank, is permitted to exercise under the authority of the comptroller of the currency, and is supervised and examined by an official or agency of a state or the United States. The term does not include an insurance company or other organization primarily engaged in the insurance business.

(6) "District" means a special district, a municipal improvement district, a municipal special improvement district, a county local improvement district, or a county public improvement district.

(7) "Division" means the division of securities created by section 11-51-701.

(8) "Financial institution or institutional investor" means any of the following, whether acting for itself or others in a fiduciary capacity:

(a) A depository institution;

(b) An insurance company;

(c) A separate account of an insurance company;

(d) An investment company registered under the federal "Investment Company Act of 1940";

(e) A business development company as defined in the federal "Investment Company Act of 1940";

(f) Any private business development company as defined in the federal "Investment Advisers Act of 1940";

(g) An employee pension, profit-sharing, or benefit plan if the plan has total assets in excess of five million dollars or its investment decisions are made by a named fiduciary, as defined in the federal "Employee Retirement Income Security Act of 1974", that is a broker-dealer registered under the federal "Securities Exchange Act of 1934", an investment adviser registered or exempt from registration under the federal "Investment Advisers Act of 1940", a depository institution, or an insurance company;

(h) An entity, but not an individual, a substantial part of whose business activities consist of investing, purchasing, selling, or trading in securities of more than one issuer and not of its own issue and that has total assets in excess of five million dollars as of the end of its last fiscal year;

(i) A small business investment company licensed by the federal small business administration under the federal "Small Business Investment Act of 1958"; and

(j) Any other institutional buyer.

(9) "General obligation bond" means a bond constituting a debt or an indebtedness of a district backed by the full faith and credit and unlimited mill levy of such district.

(10) "Municipal general improvement district" shall have the same meaning as district provided in section 31-25-602 (1), C.R.S.

(11) "Municipal securities rule-making board" means the board established under section 15b of the federal "Securities Exchange Act of 1934".

(12) "Municipal special improvement district" shall have the same meaning as district provided in section 31-25-501 (1.5), C.R.S.

(13) "Person" means an individual, a corporation, a partnership, an association, an estate, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, a governmental subdivision or agency, or any other legal entity.

(14) "Residential real property" shall have the same meaning as provided in section 39-1-102 (14.5), C.R.S.

(15) "Securities commissioner" means the commissioner of securities appointed pursuant to section 11-51-701.

(16) "Securities and exchange commission" means the commission established by the federal "Securities Exchange Act of 1934".

(17) "Special district" shall have the same meaning as provided in section 32-1-103 (20), C.R.S.

(18) "Taxing district" means a special district which is organized or acting under the provisions of title 32, C.R.S.

#### **11-59-104. General powers of the securities commissioner.**

(1) The securities commissioner is hereby empowered to administer and enforce all provisions of this article and to provide the division with such books, records, files, and printing and other supplies and such officers and clerical and other assistance as may be necessary in the commissioner's discretion to perform the duties required of the securities commissioner under this article, subject to appropriations made by the general assembly.

(2) The securities commissioner shall make such rules, forms, and orders as are necessary to assure that bonds issued by a district shall meet certain prescribed investment criteria and shall not unduly burden future property owners in such district. To further effectuate the purposes of this article, the securities commissioner may, from time to time, make, amend, and rescind such rules and forms as are necessary to carry out the provisions of this article, including rules and forms governing applications for registration and reports and defining any terms, whether or not used in this article, insofar as the definitions are not inconsistent with the provisions of this article. For the purposes of rules and forms, the securities commissioner may classify bonds, issuers, and matters within the securities commissioner's jurisdiction and prescribe different requirements for different classes.

(3) No rule, form, or order shall be made, amended, or rescinded unless the securities commissioner finds that the action is necessary or appropriate in the public interest or for the protection of investors or present or future property owners and is consistent with the purposes and provisions of this article. In prescribing rules and forms, the securities commissioner may cooperate with the securities and exchange commission, the municipal securities rule-making board, the department of local affairs, and the state auditor with a view to effectuating this article and to achieving uniformity in the form and content of applications and reports wherever practicable.

(4) (a) Unless otherwise prescribed by law, the securities commissioner may, by rule or order, prescribe the form and content of financial statements of persons other than districts required under this article, the circumstances under which

consolidated financial statements shall be filed, and whether any required financial statements shall be certified by certified public accountants. Unless the commissioner by rule or order provides otherwise, a financial statement required of such persons under this article must be prepared in accordance with generally accepted accounting principles or other accounting principles or in such other form as may be prescribed for the issuer of the financial statement of such person by law.

(b) Unless otherwise prescribed by law, the securities commissioner may, by rule or order, prescribe the form and content of supplemental financial information of districts required under this article. Any supplemental financial information required under this article must be prepared in accordance with generally accepted accounting principles or such other accounting principles or in such other form as are prescribed for the supplemental financial information of such district by law.

(5) The securities commissioner may, by rule or order, establish standards and procedures for full disclosure to property owners in, and potential bond investors of, a district of such district's current financial condition.

(6) (a) The securities commissioner shall, by rule or order, require a special district to file with the securities commissioner a copy of the annual budget which such special district is required to file with the department of local affairs. Such budget shall not authorize the use of bond reserve funds or the proceeds of a sale or proposed sale of public facilities or improvements built or paid for with bond proceeds for bond payments without the prior written authorization of the securities commissioner.

(b) The securities commissioner shall, by rule or order, require districts to file with the securities commissioner a copy of the annual audit required pursuant to section 29-1-603, C.R.S., at the same time as districts are required to file audits of such districts with the state auditor.

(c) Where the application for registration of a special district is effective pursuant to section 11-59-108, the securities commissioner may, by rule or order, require such a special district to file with the audited statement a further disclosure statement setting forth credit and financial information which will assist existing and potential investors in evaluating the district's ability to meet its debt service requirements, the enforcement of bondholders' rights and remedies, and the attainment of growth projections set forth in any documents accompanying the registration application.

(d) Any statements required to be filed pursuant to paragraph (a), (b), or (c) of this subsection (6) shall be made available to any person for inspection and copies thereof supplied as ordered by any person at a fee to be determined by the securities commissioner.

(7) The securities commissioner shall, by rule or order, require that a district obtain prior written approval of the securities commissioner before making any use of the proceeds of a bond offering in a manner that is contrary in any material respect to the use of proceeds that was described in the application for registration and declared effective by the securities commissioner.

(8) The securities commissioner shall, by rule or order, provide means by which bondholders, at their expense, may communicate with the holders of bonds of the same district so long as the confidentiality of the names and addresses of the bondholders is protected.

(9) The securities commissioner may compile information and reports and may make recommendations to the general assembly and the governor for such action, including legislation, as may be deemed desirable to promote the financial integrity of all investments in obligations of instrumentalities of the state. For such purposes, the securities commissioner may require from instrumentalities of the state such reports and information as may be necessary to determine the financial stability of such instrumentalities and the financial character of their obligations.

(10) All the powers of the securities commissioner described in this section relating to a district issuing bonds shall apply to any other taxing district signatory to a contract which pledges the revenues of such contract to the payment of the obligations of the issuing district.

#### **11-59-105. Advisory board.**

(1) There is hereby created the Colorado municipal bond supervision advisory board, to be composed of three members of the general assembly one municipal securities broker-dealer representative, one representative of a county, one representative of a municipality, one representative of a special district, one representative of banks that act as indenture trustees for municipal bond offerings, one bond counsel representative, one real estate developer representative, three members of the general public with experience in municipal financing as investors who are not associated with any of the other members or interests, and four owners of residential real property located in special districts who are not associated with any of the other members or interests. Except for the legislative members, members of the board shall be appointed by the governor, who shall take into account the extent to which the board represents the geographic areas, population concentrations, and ethnic communities of this state. Appointments by the governor shall be for a period of four years. The three members of the general assembly shall be appointed one each by the governor, the speaker of the house of representatives, and the president of the senate. No more than two of said legislative members may be from the same major political party, and each such legislative member shall be appointed for a term of two years or for the same term to which they were elected, whichever is less. Successors shall be appointed in the same manner as the original members. Vacancies of all other members shall be filled by appointment by the governor for unexpired

terms. In the case of a vacancy, the remaining members of the board shall exercise all the powers and authority of the board until such vacancy is filled. The board shall choose its own chairperson by majority vote of the quorum present at a meeting called for the purpose of electing a chairperson. The board shall meet not less than annually. Members of the board shall receive no compensation but shall be reimbursed for all actual and necessary expenses incurred in the performance of their duties. Such expenses shall be paid from the appropriations from the division of securities cash fund created in section 11-51-707. A majority of the board shall constitute a quorum to transact business and for the exercise of any of the powers or authority conferred.

(2) The board shall aid and advise the securities commissioner in connection with the commissioner's duties under this article including, but not limited to, development of policies, rules, orders, standards, guidelines, criteria and procedures regarding the registration of bond issues, ordinances, and resolutions and applications for authorization to file federal bankruptcy petitions and assuring impartiality and freedom from political influence in such activities.

(3) Repealed.

**11-59-106. Requirement for registration of district bonds.**

It is unlawful for any district to issue bonds or for any other person to make a distribution of such bonds unless they are first registered with the securities commissioner under section 11-59-108 or unless the issuance of bonds is exempted under section 11-59-110.

**11-59-107. General registration provisions.**

(1) An application for registration of bonds may be filed by the district proposing to issue the bonds or a broker-dealer licensed or exempt under article 51 of this title acting on behalf of such district.

(2) Every application for registration shall be accompanied by a fee, which shall be determined and collected pursuant to section 11-59-119.

(3) Any document or portion thereof filed with the securities commissioner under this article within five years preceding the filing of an application for registration may be incorporated by reference in an application to the extent that such document or portion thereof is accurate at the time of such incorporation by reference.

(4) The securities commissioner may, by rule or order, permit the omission of any item of information or document from any application.

(5) The securities commissioner may, by rule or order, require as a condition of registration under section 11-59-108 that a district require that persons building or developing improvements in the district furnish security to the district for their undertakings relating to payments supporting the offering. The commissioner may, by rule or order, determine the manner and form of such security, which may include but need not be limited to:

(a) Letters of credit or guarantees from depository institutions or such other persons, companies, or institutions approved by the securities commissioner;

(b) Escrow deposits of cash or securities; or

(c) First lien mortgages on land owned by developers or builders, together with recent appraisals.

(6) An application for registration may be amended after its effective date so as to increase the quantity of bonds being offered. A district filing such an amendment shall pay a fee, which shall be determined and collected pursuant to section 11-59-119, with respect to the additional bonds being registered.

**11-59-108. Registration of bonds.**

(1) An issuance of bonds may be registered by a district under this article.

(2) An application for registration of bonds under this section shall contain full and fair disclosure of all material facts respecting the bonds offered, including the following information, shall state the title of the bonds and the number and amount being registered under this article, and shall be accompanied by the following documents:

(a) The most recent district audit report;

(b) Engineering and architectural reports which describe the cost and location of improvements in the district;

(c) Copies of intergovernmental agreements, construction contracts, and competitive bids which disclose the material elements of any proposed project to be financed by the proceeds of the offering, if available;

(d) Copies of signed agreements, if available, with persons building or developing improvements in the district which are to be owned, managed, leased, or sold by such persons;

(e) Copies of agreements, if any, with the owners of major parcels of vacant or undeveloped land in the district which disclose development fees or other payments to be made to support the proposed bonds while the district is being developed in accordance with the service plan;

(f) Recently audited financial statements of persons building or developing improvements in the district for contracts in excess of fifty thousand dollars;

(g) In a special district, copies of the service plan and any amendments thereto and copies of all reports required by law to be filed with the county or counties wherein the special district is located and, where appropriate, evidence of compliance with any other requirement of law imposed on special districts issuing bonds; and

(h) Such additional information as the securities commissioner requires by rule or order and as is required for full and fair disclosure respecting the bonds offered.

(3) A registration application under this section becomes effective when the securities commissioner so orders, if the application is not subject to a stop order under section 11-59-109. In the case of an order of effectiveness, the securities commissioner shall include in such order a list of the documents reviewed in connection with the application for registration.

(4) The date of filing shall be the date that the application for registration or an amendment to the application is received by the securities commissioner.

(5) Districts are subject to the open meetings law under part 4 of article 6 of title 24, C.R.S., and the open records law under article 72 of title 24, C.R.S.

**11-59-109. Denial, suspension, or revocation of registration.**

(1) The securities commissioner may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, any application for registration, if the securities commissioner finds that the order is in the public interest and any one of the following grounds exists:

(a) The application for registration as of its effective date, or as of any earlier date in the case of an order denying effectiveness, or any amendment to such application as of its effective date contains any false or misleading statement in violation of section 11-59-112;

(b) Any provision of this article or any rule, order, or condition imposed under this article has been violated in connection with this offering by the district, or its agents, servants, or employees, or any person occupying a similar status or performing similar functions, or any person directly or indirectly controlled by the district, or any underwriter;

(c) The security registered or sought to be registered is the subject of a permanent or temporary injunction of any court of competent jurisdiction entered under any other federal or state law applicable to the offering; or

(d) The terms of the offering are substantially inconsistent with the standards, guidelines, and criteria the securities commissioner promulgates by rule to effectuate the purposes of this article, including, but not limited to:

(I) Guidelines for amounts of capitalized interest in connection with the total bond proceeds of the district. In no case shall the use of capitalized interest for bond payments for more than three years be permitted.

(II) Appraisal requirements for land in the district;

(III) Procedures for the appointment of a trustee, if necessary, to represent the bondholders of a district;

(IV) Guidelines and criteria for indentures of trust and the contents thereof included in bonds of a district;

(V) Procedures for the review of general obligation bonds for parity with other existing bonds of a district;

(VI) Standards for disclosure to bondholders in the official statement on the bonds of a district;

(VII) Guidelines and criteria for appropriate bidding, competitive arrangements, and contracts, in connection with the issuance of bonds of a district;

(VIII) Standards for the review of bidding, competitive arrangements, and contracts for conflict of interest;

(IX) Standards for underwriter fees in connection with the issuance of the bonds; and

(X) Requirements that adequate, prompt, and effective remedies be available to bondholders in the bond resolution in the event of default in the payment of bonds issued pursuant to an application for registration declared effective by the securities commissioner or in the event of failure of the district to abide by its covenants as contained in the bond resolution or ordinance or to abide by the rules promulgated by the securities commissioner under this article or any applicable law.

(2) The securities commissioner may, by emergency order, summarily postpone or suspend the effectiveness of an application for registration pending final determination of any proceeding under this section.

(3) No stop order shall be entered under this section, except under subsection (2) of this section, without the provision to the district of an appropriate prior notice, an opportunity for a hearing, and written findings of fact and conclusions of law.

(4) The securities commissioner may vacate or modify a stop order if the securities commissioner finds that the conditions which prompted its entry have changed or that it is otherwise in the public interest to do so.

**11-59-110. Exemptions from registration.**

(1) Subject to the requirements of subsection (2) of this section, the following issues of bonds by a district are exempted from all of the provisions of sections 11-59-104 and 11-59-106:

(a) Bonds issued on or before December 31, 1991;

(b) Any issue of general obligation bonds where the total obligation represented by the issue together with any other general obligation of the district does not at the time of issuance exceed the greater of two million dollars or fifty percent of the valuation for assessment of the taxable property in the district as certified by the assessor;

(c) Any issue of bonds that is rated in one of its four highest rating categories by one or more nationally recognized organizations which regularly rate such obligations;

(d) Any issue of bonds by a district in which infrastructure is in place which has been determined by the board of such district to be necessary to construct or otherwise provide additional improvements specifically ordered by a federal or state regulatory agency to bring such district into compliance with applicable federal or state laws or regulations for the protection of the public health or the environment if the proceeds raised as a result of such issue are limited solely to the direct and indirect costs of the construction or improvements mandated and are used solely for those purposes;

(e) Any issue of bonds secured as to the payment of the principal and interest on the debt by a letter of credit, line of credit, or other credit enhancement, any of which must be irrevocable and unconditional, issued by a depository institution:

(I) With a net worth of not less than ten million dollars in excess of the obligation created by the issuance of the letter of credit, line of credit, or other credit enhancement;

(II) With the minimum regulatory capital as defined by the primary regulator of such depository institution to meet such obligation; and

(III) Where the obligation does not exceed ten percent of the total capital and surplus of the depository institution, as those terms are defined by the primary regulator of such depository institution;

(f) Any issue of bonds insured as to the payment of the principal and interest on the debt by a policy of insurance issued by an insurance company authorized to do business as an insurance company in this state and authorized for such risk by the insurance commissioner appointed pursuant to section 10-1-104, C.R.S.;

(g) Any issue of bonds not involving a public offering made exclusively to accredited investors, as that term is defined under sections 3(b) and (4)(2) of the federal "Securities Act of 1933" by regulation adopted thereunder by the securities and exchange commission;

(h) Any issue of bonds made pursuant to an order of a court of competent jurisdiction;

(i) Any issue of bonds by a district which has principal amounts payable from moneys other than the proceeds of an ad valorem tax, where the total of such obligations represented by the issue, together with other such bonds of the district, does not at the time of the issuance exceed two million dollars;

(j) Any issue of bonds of the district issued to the Colorado water resources and power development authority which evidences a loan from said authority to the district; and

(k) Any issue of bonds by a district that contains territory subject to an intergovernmental annexation agreement between the city and county of Denver and Adams county dated April 21, 1988, made pursuant to section 30-6-109.5, C.R.S.

(1.5) (a) The securities commissioner may make such rules, forms, and orders as are necessary to implement the provisions of subsection (1) of this section and to define any terms contained therein insofar as the definitions are not inconsistent with the provisions of this article.

(b) No such rule, form, or order may be made, amended, or rescinded unless the securities commissioner finds that the action is necessary or appropriate in the public interest or the protection of investors and is consistent with the purposes and provisions of this article. In prescribing rules and forms, the securities commissioner may cooperate with the securities and exchange commission, the municipal securities rule-making board, the department of local affairs, and the state auditor with a view to effectuating subsection (1) of this section and to achieving uniformity wherever practicable.

(c) The securities commissioner may, by rule or order, provide means by which bondholders, at their expense, may communicate with the holders of bonds of the same district so long as the confidentiality of the names and addresses of the bondholders is protected.

(2) As conditions to the applicability of the exemptions provided in subsection (1) of this section, the district issuing the bonds must file or cause to be filed with the securities commissioner at least five days prior to the first sale of such bonds:

(a) A notice of claim of exemption in the form and containing the information prescribed by the securities commissioner;

(b) A copy of the official statement to be distributed in connection with such offering; and

(c) An exemption fee, which shall be determined and collected pursuant to section 11-59-119.

(2.5) For purposes of the application of this section, exemption from registration under subsection (1) of this section shall not be contingent upon review or approval of any information filed with the securities commissioner under subsection (2) of this section.

(3) The securities commissioner may, by rule or order and subject to such terms and conditions as prescribed therein, exempt specified bonds or types of bonds or transactions therein from section 11-59-106 if the securities commissioner finds that the application of section 11-59-106 to such bonds or transactions is not necessary in the public interest and for the protection of investors.

#### **11-59-111. Unlawful representation concerning registration or exemption.**

(1) Neither the fact that an application for registration has been filed nor the fact that an application for registration has become effective constitutes a finding by the securities commissioner that any document filed under this article is true, is complete, and is not misleading. No such fact, nor the fact that an exemption or exception is available for a security or transaction, means that the securities commissioner has passed in any way upon the merits or qualifications of, or has recommended or given approval to, any security or transaction. In the case of an issue of bonds made pursuant to an order of registration effective under section 11-59-108, nothing in this subsection (1) shall prohibit the inclusion in the official statement used in connection with the offer or sale of such bonds a representation that the issue of bonds has been registered with the securities commissioner and a statement identifying the documents reviewed by the securities commissioner in the course of the registration process.

(2) It is unlawful to make, or cause to be made, to any prospective or existing investor or property owner any representation inconsistent with subsection (1) of this section.

#### **11-59-112. Misleading filing.**

It is unlawful for any person to make or cause to be made, in any document filed with the securities commissioner or in any proceeding under this article, any statement which the person knows or has reasonable grounds to know is, at the time and in light of the circumstances under which it is made, false or misleading in any material respect.

#### **11-59-113. Investigations and subpoenas.**

(1) The securities commissioner may make such public and private investigations within or outside of this state as the securities commissioner deems necessary to determine whether any person has violated or is about to violate any provision of this article or any rule or order under this article or to aid in the enforcement of this article or in the prescribing of rules and forms under this article, may require or permit any person to file a statement as to all the facts and circumstances concerning the matter to be investigated, and may publish information concerning any violation of this article or any rule or order under this article.

(2) For the purpose of any investigation or proceeding under this article, the securities commissioner or any officer designated by the securities commissioner may administer oaths and affirmations, subpoena witnesses, seek compulsion of their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the securities commissioner deems relevant or material to the inquiry.

(3) In case of contumacy by, or refusal to obey a subpoena issued to, any person, the district court of the city and county of Denver, upon application by the securities commissioner, may issue to the person an order requiring that person to appear before the securities commissioner, or the officer designated by the securities commissioner, to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

(4) No person is excused from attending and testifying or from producing any document or record before the securities commissioner, or in obedience to the subpoena of the securities commissioner or any officer designated by the commissioner, or in any proceeding instituted by the securities commissioner on the ground that the testimony or evidence, documentary or otherwise, required of that person may tend to incriminate the person or subject that person to a penalty or forfeiture; but no document, evidence, or other information compelled from an individual, after that individual claims the privilege against self-incrimination, under order of the district court of the city and county of Denver, or any information directly or indirectly derived from such document, evidence, or other information, may be used against an individual so compelled in any criminal case; except that the individual testifying is not exempt from prosecution and punishment for perjury in the first or second degree or contempt committed in testifying.

(5) Information in the possession of, filed with, or obtained by the securities commissioner in connection with a private investigation under this section shall be confidential. No such information may be disclosed by the securities commissioner or any officers or employees of the division except among themselves or when necessary or appropriate in connection with an investigation or a proceeding under this article or for any law enforcement purpose.

(6) It is unlawful for the securities commissioner or any officers or employees of the division to use for personal benefit any information which is filed with or obtained by the securities commissioner and which is not made public.

**11-59-114. Enforcement by injunction.**

(1) Whenever it appears to the securities commissioner upon sufficient evidence satisfactory to the securities commissioner that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this article or of any rule or order under this article, the securities commissioner may apply to the district court for the city and county of Denver to temporarily restrain or preliminarily or permanently enjoin the act or practice in question and to enforce compliance with this article or any rule or order under this article. In any such action, the securities commissioner shall not be required to plead or prove irreparable injury or the inadequacy of a remedy at law. Under no circumstances shall the court require the commissioner to post a bond.

(2) The securities commissioner may include in any action authorized by subsection (1) of this section a claim for restitution, disgorgement, or other equitable relief on behalf of some or all of the persons injured by the act or practice constituting the subject matter of the action.

**11-59-115. Criminal and civil penalties and damages.**

(1) Any person who willfully violates the provisions of section 11-59-112 commits a class 3 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

(2) Any person who willfully violates any of the provisions of this article, other than section 11-59-112, or any rule or order under this article commits a class 3 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S., and any second violation of this section shall be punishable by a civil penalty of fifty dollars per day to a maximum penalty of one thousand dollars.

(3) Conviction of violation of any provision of this article under this section shall also establish a prima facie case for liability for civil damages by any person injured thereby.

(4) The securities commissioner may refer such evidence as is available to the securities commissioner under authority of this article concerning any violation which constitutes the commission of any felony or misdemeanor to the attorney general or the appropriate district attorney, who may, with or without such a reference, prosecute the appropriate criminal proceedings under this article or otherwise as authorized by law, or the securities commissioner may refer such evidence to the United States attorney.

(5) Nothing in this article limits the power of the state to punish any person for any conduct which constitutes a crime by statute.

(6) No person shall be prosecuted, tried, or punished for any criminal violation of this article unless the indictment, information, complaint, or action for the same is found or instituted within five years after the commission of the offense.

**11-59-116. Administrative proceedings.**

Any administrative proceeding under this article shall be conducted pursuant to the provisions of section 24-4-105, C.R.S. The securities commissioner may refer the conduct of any administrative proceeding to an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S. Every hearing in an administrative proceeding shall be public unless the securities commissioner, in the commissioner's discretion, grants a request joined in by all the respondents that the hearing be conducted privately.

**11-59-117. Judicial review of orders.**

(1) Any person claiming to be aggrieved by a final order of the securities commissioner, including a refusal to issue an order, may obtain judicial review thereof, and the securities commissioner may obtain an order of court for its enforcement in a proceeding as provided in this section.

(2) Such proceeding shall be brought in the court of appeals by appropriate proceedings under section 24-4-106 (11), C.R.S.

(3) Such proceeding shall be initiated by the filing of a petition in the court of appeals and the service of a copy thereof upon the securities commissioner and upon all parties who appeared before the securities commissioner, and thereafter such proceeding shall be processed under the Colorado appellate rules. The court of appeals shall have jurisdiction of the proceeding and the questions determined therein and shall have power to grant such temporary relief or restraining order as it deems just and proper and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript an order enforcing, modifying, and enforcing as so modified or setting aside the order of the securities commissioner in whole or in part.

(4) An objection that has not been urged before the securities commissioner shall not be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances.

(5) The findings of the securities commissioner as to the facts shall be conclusive if supported by substantial evidence.

(6) The jurisdiction of the court shall be exclusive, and its judgment and order shall be final, subject to review as provided by law and the Colorado appellate rules.

(7) The commencement of proceedings under subsection (1) of this section does not, unless specifically ordered by the court, operate as a stay of the securities commissioner's order.

**11-59-118. Interpretation and interpretive opinions.**

(1) The provisions and rules of this article shall be coordinated with the provisions and rules of article 51 of this title to the extent that such coordination is consistent with both the purposes and provisions of this article.

(2) The securities commissioner may, in such commissioner's discretion, honor requests from interested persons for interpretive opinions regarding any provision of this article or any rule or order under this article. Any person making such a request shall pay an opinion fee, which shall be determined and collected pursuant to section 11-59-119 and which shall not be refundable. In response to any request for an interpretive opinion received under this section, the securities commissioner may waive any condition imposed under this article as it applies to the person making such request.

**11-59-119. Collection of fees - division of securities cash fund.**

(1) A fee payable under this article shall be deemed paid when the securities commissioner receives the payment.

(2) The securities commissioner shall transmit all fees collected under this article to the state treasurer, who shall credit the same to the division of securities cash fund created by section 11-51-707. Moneys credited to the division of securities cash fund shall be used as provided in this section and in section 11-51-707 and shall not be deposited in or transferred to the general fund of this state or any other fund.

(3) The securities commissioner shall set the amount of each fee which the securities commissioner is authorized by law to collect under this article. In the discretion of the commissioner, the securities commissioner may set application for registration or amendment fees payable under section 11-59-104 by establishing a basic filing fee up to a maximum of five hundred dollars, plus a scale of rates applied to the dollar amount of bonds to be registered, not to exceed five dollars per ten thousand dollars, up to a maximum of ten thousand dollars based on the dollar amount of bonds to be issued. The securities commissioner may set the exemption fee payable under section 11-59-110 up to a maximum of one hundred dollars. Such fees for a fiscal year may be adjusted by the securities commissioner no more often than twice during that fiscal year.

**11-59-120. Effective date.**

The rule-making authority of the securities commissioner and the provisions of section 11-59-104 (1) and section 11-59-105 shall take effect July 1, 1991, and, unless otherwise provided, all other provisions of this article shall take effect January 1, 1992.