

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 113

FINAL READING

Introduced by Pankonin, 2; Gloor, 35; Pirsch, 4.

Read first time January 09, 2009

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to the Securities Act of Nebraska; to amend
2 sections 8-1110, 8-1116, and 8-1123, Reissue Revised
3 Statutes of Nebraska; to change provisions relating
4 to exempt securities; to prohibit tampering with or
5 falsifying evidence; to provide additional equitable
6 powers for courts with respect to violations of the
7 act; to harmonize provisions; to repeal the original
8 sections; and to declare an emergency.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 8-1110, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 8-1110 Sections 8-1104 to 8-1109 shall not apply to any
4 of the following securities:

5 (1) Any security, including a revenue obligation, issued
6 or guaranteed by the State of Nebraska, any political subdivision,
7 or any agency or corporate or other instrumentality thereof or any
8 certificate of deposit for any of the foregoing;

9 (2) Any security issued or guaranteed by Canada, any
10 Canadian province, any political subdivision of any such province,
11 any agency or corporate or other instrumentality of one or more
12 of the foregoing, or any other foreign government with which the
13 United States currently maintains diplomatic relations, if the
14 security is recognized as a valid obligation by the issuer or
15 guarantor;

16 (3) Any security issued or guaranteed by any federal
17 credit union or any credit union or similar association organized
18 and supervised under the laws of this state;

19 (4) Any security issued or guaranteed by any railroad,
20 other common carrier, public utility, or holding company which
21 is: (a) ~~Subject to the jurisdiction of the Interstate Commerce~~
22 ~~Commission;~~ ~~(b)~~ a A registered holding company under the Public
23 Utility Holding Company Act of 1935 or a subsidiary of such a
24 company within the meaning of that act; ~~(e)~~ (b) regulated in
25 respect of its rates and charges by a governmental authority of the

1 United States or any state or municipality; or ~~(d)~~ (c) regulated
2 in respect of the issuance or guarantee of the security by a
3 governmental authority of the United States, any state, Canada, or
4 any Canadian province;

5 (5) (a) Any security listed on the Chicago Stock Exchange,
6 the Chicago Board Options Exchange, Tier I of the Pacific Stock
7 Exchange, Tier I of the Philadelphia Stock Exchange, or any other
8 stock exchange or market system approved by the director, if, in
9 each case, quotations have been available and public trading has
10 taken place for such class of security prior to the offer or
11 sale of that security in reliance on the exemption; any other
12 security of the same issuer which is of senior or substantially
13 equal rank; any security called for by subscription rights or
14 warrants so listed or approved; or any warrant or right to purchase
15 or subscribe to any of the foregoing or to any security listed
16 on the New York Stock Exchange, the American Stock Exchange, or
17 the National Association of Securities Dealers Automated Quotation
18 National Market System. NASDAQ Global Market.

19 (b) The issuer of any security which has been approved
20 for listing or designation on notice of issuance on such exchanges
21 or market systems, and for which no quotations have been available
22 and no public trading has taken place for any of such issuer's
23 securities, may rely upon the exemption stated in subdivision
24 (5) (a) of this section, if a notice is filed with the director,
25 together with a filing fee of two hundred dollars, prior to first

1 use of a disclosure document covering such securities in this
2 state, except that failure to file such notice in a timely manner
3 may be cured by the director in his or her discretion.

4 (c) The director may adopt and promulgate rules and
5 regulations which, after notice to such exchange or market system
6 and an opportunity to be heard, remove any such exchange or market
7 system from the exemption stated in subdivision (5)(a) of this
8 section if the director finds that the listing requirements or
9 market surveillance of such exchange or market system is such that
10 the continued availability of such exemption for such exchange or
11 market system is not in the public interest and that removal is
12 necessary for the protection of investors;

13 (6) Any security which meets all of the following
14 conditions:

15 (a) The issuer is organized under the laws of the United
16 States or a state or has appointed a duly authorized agent in the
17 United States for service of process and has set forth the name and
18 address of such agent in its prospectus;

19 (b) A class of the issuer's securities is required to be
20 and is registered under section 12 of the Securities Exchange Act
21 of 1934 and has been so registered for the three years immediately
22 preceding the offering date;

23 (c) Neither the issuer nor a significant subsidiary has
24 had a material default during the last seven years, or during the
25 issuer's existence if such existence is less than seven years, in

1 the payment of (i) principal, interest, dividends, or sinking-fund
2 installments on preferred stock or indebtedness for borrowed money
3 or (ii) rentals under leases with terms of three or more years;

4 (d) The issuer has had consolidated net income, without
5 taking into account extraordinary items and the cumulative effect
6 of accounting changes, of at least one million dollars in four of
7 its last five fiscal years, including its last fiscal year, and if
8 the offering is of interest-bearing securities the issuer has had
9 for its last fiscal year net income before deduction for income
10 taxes and depreciation of at least one and one-half times the
11 issuer's annual interest expense, taking into account the proposed
12 offering and the intended use of the proceeds. However, if the
13 issuer of the securities is a finance company which has liquid
14 assets of at least one hundred five percent of its liabilities,
15 other than deferred income taxes, deferred investment tax credit,
16 capital stock, and surplus, at the end of its last five fiscal
17 years, the net income requirement before deduction for interest
18 expense shall be one and one-fourth times its annual interest
19 expense. For purposes of this subdivision: (i) Last fiscal year
20 means the most recent year for which audited financial statements
21 are available, if such statements cover a fiscal period ending not
22 more than fifteen months from the commencement of the offering;
23 (ii) finance company means a company engaged primarily in the
24 business of wholesale, retail, installment, mortgage, commercial,
25 industrial, or consumer financing, banking, or factoring; and (iii)

1 liquid assets means (A) cash, (B) receivables payable on demand or
2 not more than twelve months following the close of the company's
3 last fiscal year less applicable reserves and unearned income,
4 and (C) readily marketable securities less applicable reserves and
5 unearned income;

6 (e) If the offering is of stock or shares other than
7 preferred stock or shares, such securities have voting rights which
8 include (i) the right to have at least as many votes per share
9 and (ii) the right to vote on at least as many general corporate
10 decisions as each of the issuer's outstanding classes of stock or
11 shares, except as otherwise required by law; and

12 (f) If the offering is of stock or shares other than
13 preferred stock or shares, such securities are owned beneficially
14 or of record on any date within six months prior to the
15 commencement of the offering by at least one thousand two hundred
16 persons, and on such date there are at least seven hundred fifty
17 thousand such shares outstanding with an aggregate market value
18 of at least three million seven hundred fifty thousand dollars
19 based on the average bid price for such day. When determining
20 the number of persons who are beneficial owners of the stock or
21 shares of an issuer, for purposes of this subdivision, the issuer
22 or broker-dealer may rely in good faith upon written information
23 furnished by the record owners;

24 (7) Any security issued or guaranteed as to both
25 principal and interest by an international bank of which the

1 United States is a member; or

2 (8) Any security issued by any person organized and
3 operated not for private profit but exclusively for religious,
4 educational, benevolent, charitable, fraternal, social, athletic,
5 or reformatory purposes, as a chamber of commerce, or as a trade or
6 professional association.

7 Sec. 2. It shall be unlawful for any person with respect
8 to any investigation or other proceeding under the Securities Act
9 of Nebraska to: (1) Alter, destroy, mutilate, or conceal; (2) make
10 a false entry in or by any means falsify; or (3) remove from
11 any place or withhold from investigators or officials any record,
12 document, or electronic or physical evidence with the intent to
13 impede, obstruct, avoid, evade, or influence the investigation or
14 administration of any other proceeding under the act.

15 Sec. 3. Section 8-1116, Reissue Revised Statutes of
16 Nebraska, is amended to read:

17 8-1116 Whenever it appears to the director that any
18 person has engaged or is about to engage in any act or practice
19 constituting a violation of any provision of the Securities Act of
20 Nebraska or any rule or order under the act, the director may in
21 his or her discretion bring an action in any court of competent
22 jurisdiction to enjoin any such acts or practices and to enforce
23 compliance with the Securities Act of Nebraska or any rule or order
24 under the act. Upon a proper showing, a permanent or temporary
25 injunction, restraining order, or writ of mandamus shall be granted

1 and a receiver or conservator may be appointed for the defendant's
2 assets. Upon a proper showing by the director, the court may
3 invoke its equitable powers under the law and issue an order of
4 rescission, restitution, or disgorgement, an order freezing assets,
5 an order requiring an accounting, or a writ of attachment or writ
6 of general or specific execution, directed to any person who has
7 engaged in or is engaging in any act constituting a violation
8 of any provision of the Securities Act of Nebraska, any rule and
9 regulation adopted and promulgated under the act, or any order of
10 the director issued thereunder. The director may not be required to
11 post a bond.

12 Sec. 4. Section 8-1123, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 8-1123 Sections 8-1101 to 8-1123 and section 2 of this
15 act shall be known and may be cited as the Securities Act of
16 Nebraska.

17 Sec. 5. Original sections 8-1110, 8-1116, and 8-1123,
18 Reissue Revised Statutes of Nebraska, are repealed.

19 Sec. 6. Since an emergency exists, this act takes effect
20 when passed and approved according to law.