

ONE HUNDRED FIFTH LEGISLATURE - FIRST SESSION - 2017
COMMITTEE STATEMENT
LB148

Hearing Date: Tuesday January 31, 2017
Committee On: Banking, Commerce and Insurance
Introducer: Schumacher
One Liner: Change provisions of the Securities Act of Nebraska

Roll Call Vote - Final Committee Action:
Advanced to General File

Vote Results:

Aye: 8 Senators Baker, Brewer, Craighead, Kolterman, Lindstrom, McCollister, Schumacher, Williams
Nay:
Absent:
Present Not Voting:

Verbal Testimony:

Proponents:

Senator Paul Schumacher
Director Mark Quandahl
Jack Herstein
Bart Dillashaw
Jeffrey Schaffart

Representing:

Introducer
NE Department of Banking and Finance
Self
NE State Bar Association
NE State Bar Association

Opponents:

Representing:

Neutral:

Representing:

Summary of purpose and/or changes:

LB148 would amend various sections of the Securities Act of Nebraska based on recommendations developed pursuant to interim study resolution LR431 of 2016, which called on the Banking, Commerce and Insurance Committee to consider the updating of the Act. LB 148 contains a number of substantive changes to the Act as well as many changes that better harmonize the language in the Act but are not substantive in nature. The bill provides section by section as follows:

Section 1 would amend Section 8-1101 by amending the definitions of terms used throughout the Act as outlined below:

Section 8-1101(2) defines "broker-dealer" and lists a number of exclusions from the definition. The exclusions portion of the definition would be amended in these respects:

Current law excludes issuers effecting transactions in their own securities if the security is exempt under Section 8-1110(5) of the Act. The amendment updates the cross-reference to the statutory subdivisions.

Current law excludes persons with no place of business in this state who effect transactions exclusively with other broker-dealers, specified types of financial institutions, and other institutional buyers. The bill would add credit unions to the list to which sales could be made without triggering registration requirements.

A new exclusion would be added for certain Canadian broker-dealers who have no office or physical presence in this state and whose activities are limited to effecting transactions with Canadian citizens temporarily in Nebraska or transactions with Canadian citizens in Nebraska provided that such transactions are limited to Canadian self-directed, tax advantaged retirement plans.

Section 8-1101(3) would be amended to include a definition of "Department."

Section 8-1101(14) would be amended to update references to federal securities acts as the acts existed on January 1, 2017.

Section 2 would adopt a new section which provides that all references to federal rules or regulations adopted under the Investment Advisors Act of 1940 or the Securities Act of 1933 means those rules and regulations as they existed on January 1, 2017, with the exception of Rule 147 and Rule 147A adopted under the Securities Act of 1933. On October 26, 2016, the SEC unanimously adopted new Rule 147A and amended Rule 147. These rules will become effective on April 20, 2016; thus this section references the date that the rules were published in the Federal Register, November 21, 2016.

Section 3 would amend Section 8-1102, the anti-fraud statute, by updating all references to "rules, regulations," to "rules and regulations" in order to better harmonize the Act. These changes are not substantive in nature and were included by the Bill Drafter.

Section 4 would amend Section 8-1103, which is the principal registration statute in the Act for firms and individuals providing securities-related services and products, in these respects:

Currently, Section 8-1103(9)(a) provides authority to the Director of the Department to deny, suspend, or revoke a registration of a broker-dealer, issuer-dealer, agent, investment adviser, or investment advisor representative, if the Director finds that such person meets any one of twelve listed criteria. An additional criterion set out in new subdivision (9)(a)(xiii) would clarify the Director's authority to deny, suspend or revoke a registration if the person has refused to cooperate with the Department in an examination.

Section 8-1103(9) would be further amended to provide, within new subdivision (9)(c)(i), that the Director may, by rule and regulation or order, determine that a violation of any provision of fair practices or ethical rules or standards adopted by the Securities and Exchange Commission or the Financial Industry Regulatory Authority will constitute a dishonest or unethical practice in the securities or commodities business.

A new Subsection 8-1103(10)(b) would be added to authorize the Director to issue a notice of abandonment if an applicant for registration fails to respond to a notice or notices from the Department to correct deficiencies in the application within one hundred twenty days.

Non-substantive changes to the statute proposed to harmonize and update the Act, include:

Providing a cross-reference to the fees subsection

Providing uniformity in references to bonds and legal actions

Updating references to rules and regulations

Removing an obsolete reference to predecessor Acts

Section 5 would amend Section 8-1106, the registration of securities by coordination statute, to update references to rules and regulations and numbering of subsections. These changes are not substantive.

Section 6 would amend Section 8-1107, which governs the registration of securities by qualification, as follows:

By providing, within subsection (2)(j), that an issuer which does not have articles of incorporation or bylaws, must file the substantial equivalent of such documents with the registration statement.

By providing, within subsection (2)(m), that an issuer seeking to register such securities with the Department shall provide a signed consent of any accountant, engineer, appraiser, or other person who is named in the registration statement as having prepared or certified any report or valuation used in connection with the registration.

By clarifying the information that must be included with the prospectus provided by the issuer to prospective investors through a reordering of the statute's subsections.

Non-substantive changes to the statute proposed to harmonize and update the Act include the updating of gender references, a reference to federal securities rules, and a reorganization of subsections 2(n) and 2(o).

Section 7 would amend Section 8-1108, which contains general requirements for the registration of securities, by removing obsolete language related to the predecessor act to the Securities Act and a duplicative adjective relating to federal law. These changes are not substantive in nature.

Section 8 would amend Section 8-1108.01, which provides authority to the Director of the Department to take certain administrative action, by making non-substantive changes to better harmonize the Act, including clarifying that the Director (in addition to a hearing officer) may extend the time for a hearing, and updating a reference to rules and regulations and a reference to legal action.

Section 9 would amend Section 8-1109, relating to stop orders, by updating a reference to rules and regulations to better harmonize the Act. This change is not substantive in nature.

Section 10 would amend Section 8-1109.01, which governs administrative orders relating to securities registration statements, to provide that violation of a Department rule and regulation may be grounds for such an order.

Section 11 would amend Section 8-1109.02, which provides for a hearing on administrative orders relating to securities registration statements, to clarify that the Director may extend the time for a hearing. Current law provides that a hearing officer may do so. This is a non-substantive change.

Section 12 would amend Section 8-1110, which provides for exemptions from the registration of securities, by updating the exchange exemption in Section 8-1110(5). The amendment would provide:

An exemption for any security that is a federal covered security under Section 18(b)(1) of the Securities Act of 1933, which are securities issued by issuers who have securities listed on an exchange approved by the Securities & Exchange Commission ("SEC"):

Authorization for the Director of the Department to approve additional exchanges by rule and regulation or order.

Clarification that the exemption applies to put or call option contracts, warrants, and subscription rights with respect to such exempt securities.

An exemption for certain options or derivative securities designated by the SEC under the Securities Exchange Act of 1934.

Section 13 would amend Section 8-1111, which provides for transactional exemptions from registration (securities, broker-dealer, agent) under the Act, as outlined below:

Section 8-1111(2) contains two amendments:

Subdivision (2)(a)(v) would remove a reference to a class of equity securities designated for trading on the National Association of Securities Dealers Automated Quotation System as it is now a registered securities exchange.

Language which currently appears at the end of Section 8-1111 is moved into new subsection (2)(c), which is a more appropriate placement as it refers only to Subsection (2).

Section 8-1111(5) would be amended to update a reference to the Interstate Land Sales Full Disclosure Act as that Act existed on January 1, 2017.

Section 8-1111(8) would be amended to expand the exemption for accredited investors to:

Further exempt from registration sales to corporations, business trusts, partnerships and trusts with assets over five million dollars, provided that the entity was not formed for the specific purpose of acquiring the securities being offered.

Further exempt from registration sales to an entity in which all of the equity owners are individual accredited investors.

Give the Director of the Department the authority to exempt additional institutional buyers by rule and regulation or order.

Section 8-1111(15) would be amended to expand the scope of the agricultural cooperative exemption to an exemption for any cooperative formed as a corporation under Sections 21-1301 or 21-1401 or a limited cooperative association formed under the Nebraska Limited Cooperative Association Act.

Section 8-1111(16) contains a non-substantive amendment updating a reference to rules and regulations.

Section 8-1111(17) would be amended to clarify the scope of the exemption for securities issued in connection with employee benefit plans and to align Nebraska's exemption with federal exemption in SEC Rule 701. The amendments provide that the exemption:

Applies to offers and sales to directors, general partners, trustees of a business trust, officers, consultants, or advisors.

Is available if the individual was an employee at the time that securities were offered, even if the employee leaves employment.

Applies to offers and sales to insurance agents who are exclusive insurance agents of the issuer, the issuer's subsidiary or parents, or those who derive more than fifty percent of their annual income from those organizations.

Section 8-1111(20) contains a non-substantive amendment updating a reference to rules and regulations.

Section 8-1111(22), relating to viatical settlement contracts, would be amended to provide that the Director may by order require additional information from an issuer.

Section 8-1111(23), which provides for an intrastate exemption, would be amended to increase the maximum amount of securities that can be offered pursuant to this exemption from \$250,000.00 to \$750,000.00. Non-substantive harmonizing references to the Department are also included in the amendment.

Section 8-1111(24) would be amended to authorize issuers to choose to comply with either SEC Rule 147 or with SEC Rule 147A, which was approved by the SEC on October 26, 2016. The amendment will allow issuers conducting an intrastate crowdfunding offering to utilize Rule 147A which is designed to facilitate intrastate crowdfunding, most importantly by loosening the restrictions on advertising of an intrastate offering. Non-substantive amendments to Subsection (24) include updated references to the Department and removal of federal citations for named federal Acts.

Section 14 would amend Section 8-1115 by updating language relating to rules and regulations, forms, the Department, and the Securities Act, which will better harmonize the Act. These changes are not substantive in nature.

Section 15 would amend Section 8-1116 by clarifying that the Director of the Department shall not be required to post bond in a civil proceeding under the Act, and by harmonizing language relating to rules and regulations and orders under the Act.

Section 16 would amend Section 8-1117 to harmonize language relating to rules and regulations. These changes are not substantive in nature.

Section 17 would amend Section 8-1118 to update language relating to legal actions and rules and regulations. These changes are not substantive in nature and will harmonize the Act.

Section 18 would amend Section 8-1120, which relates to the Department's administration of the Act, as follows:

To update staff position titles that the Director may appoint to carry out the mandates of the Act.

To incorporate the state's prohibition against nepotism into the Act.

To delete obsolete language related to fund transfers from the Securities Act Cash Fund.

To authorize the Director to authorize or mandate electronic or other filing systems.

To include harmonizing language related to rules and regulations and to remove references to officers of the Department.

Section 19 would amend section 8-1122.01 by adding the descriptive "federal" to a reference to the Philanthropy Protection Act of 1995. This change is not substantive in nature.

Section 20 would amend Section 8-1123 to incorporate new section 2 into the act.

Section 21 would provide for the repeal of amendatory sections.

Brett Lindstrom, Chairperson