

WisACT 87

- 822 -

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Assembly Bill 1

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## 1983 Wisconsin Act 87

AN ACT to amend 551.02 (2) (b) and 551.32 (1) (c) (intro.); to repeal and recreate 551.23 (10); and to create 551.23 (19) of the statutes, relating to exemptions from securities registration.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

SECTION 1. 551.02 (2) (b) of the statutes is amended to read:

551.02 (2) (b) Effecting transactions exempted by s. 551.23, other than transactions exempted under s. 551.23 (10) or (19) in which the individual receives a commission or other remuneration directly or indirectly for soliciting or selling to any person in this state; or

SECTION 2. 551.23 (10) of the statutes, as affected by 1983 Wisconsin Act 27, is repealed and recreated to read:

551.23 (10) Any offer or sale of its securities by an issuer having its principal office in this state, if the aggregate number of persons holding directly or indirectly all of the issuer's securities, after the securities to be issued are sold, does not exceed 15, exclusive of persons under sub. (8), if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state, except to broker-dealers and agents licensed in this state, and if no advertising is published unless it has been permitted by the commissioner.

SECTION 3. 551.23 (19) of the statutes is created to read:

551.23 (19) (a) Any offer or sale of securities made in reliance on the exemptions provided by Rule 505 or 506 of Regulation D under the securities act of 1933 and the conditions and definitions provided by Rules 501 to 503 thereunder, if the offer or sale also satisfies the additional conditions and limitations in pars. (b) to (f).

(b) No commission or other remuneration may be paid or given, directly or indirectly, to any person for soliciting or selling to any person in this state in reliance on the exemption under par. (a), except to broker-dealers and agents licensed in this state.

(c) 1. Unless the cause for disqualification is waived under subd. 2, no exemption under par. (a) is available for the securities of an issuer unless the issuer did not know and in the exercise of reasonable care could not have known that any of the following apply to any of the persons described in Rule 252 (c) to (f) of Regulation A under the securities act of 1933:

a. The person has filed a registration statement which is the subject of an effective order entered against the issuer, its officers, directors, general partners, controlling persons or affiliates thereof, pursuant to any state's law within 5 years before the filing of a notice required under par. (d) denying effectiveness to, or suspending or revoking the effectiveness of, the registration statement.

b. The person has been convicted of any felony or misdemeanor in connection with the offer, sale or purchase of any security or franchise, or any felony involving fraud or deceit, including but not limited to forgery, embezzlement, obtaining money under false pretenses, larceny or conspiracy to defraud.

c. The person is subject to an effective administrative order or judgment entered by a state securities administrator within 5 years before the filing of a notice required under par. (d), which prohibits, denies or revokes the use of any exemption from securities registration, which prohibits the transaction of business by the person as a broker-dealer or agent, or which is based on fraud, deceit, an untrue statement of a material fact or an omission to state a material fact.

d. The person is subject to any order, judgment or decree of any court entered within 5 years before the filing of a notice required under par. (d), temporarily, preliminarily or permanently restraining or enjoining the person from engaging in or continuing any conduct or practice in connection with the offer, sale or purchase of any security, or the making of any false filing with any state.

2. a. Any disqualification under this paragraph involving a broker-dealer or agent is waived if the broker-dealer or agent is or continues to be licensed in this state as a broker-dealer or agent after notifying the commissioner of the act or event causing disqualification.

b. The commissioner may waive any disqualification under this paragraph upon a showing of good cause that it is not necessary under the circumstances that use of the exemption be denied.

(d) Not later than the earlier of the date on which the first use of an offering document or the first sale is made in this state in reliance on the exemption under par. (a), there is filed with the commissioner a notice comprised of offering material in compliance with the requirements of Rule 502 of Regulation D under the securities act of 1933, a completed Form D as prescribed by Rule 503 of Regulation D under the securities act of 1933, and a fee of \$200. Material amendments to the offering document shall be filed with the commissioner not later than the date of their first use in this state.

(e) 1. As to all sales in this state, the issuer shall reasonably believe immediately before making any sale that:

a. The investment is suitable for the purchaser; and

b. The purchaser, either alone or with the purchaser's representative, has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of the prospective investment.

2. The failure to satisfy the conditions of subd. 1 as to a purchaser shall not affect the availability of the exemption under par. (a) as to other purchasers.

(f) The commissioner may, by order, increase the number of purchasers or waive any other conditions of the exemption under par. (a) for a particular offering. The commissioner shall not require the filing of advertising used in connection with offers or sales in reliance on the exemption. The exemption may be revoked by order of the commissioner, but only if the offering constitutes or would constitute a violation of s. 551.31 and notice thereof has been received by the issuer, or constitutes or would constitute a violation of s. 551.41.

SECTION 4. 551.32 (1) (c) (intro.) of the statutes is amended to read:

551.32 (1) (c) (intro.) Licensing under this subchapter is effective 30 days after an application is filed, other than for an application for license as an agent for an issuer of securities exempted under s. 551.23 (10) or (19) in which case licensing is effective 10 business days after the application is filed or such earlier time as the commissioner permits, except:

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