

# 05hr\_SC-JCEDCA\_sb0566\_pt01



(FORM UPDATED: 08/11/2010)

## WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

### 2005-06

(session year)

### Senate

(Assembly, Senate or Joint)

### Committee on ... Job Creation, Economic Development and Consumer Affairs (SC-JCEDCA)

### COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

### INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
  - (**ab** = Assembly Bill)                      (**ar** = Assembly Resolution)                      (**ajr** = Assembly Joint Resolution)
  - (**sb** = Senate Bill)                              (**sr** = Senate Resolution)                              (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

\* Contents organized for archiving by: Mike Barman (LRB) (August/2012)

## Senate

### Record of Committee Proceedings

#### **Committee on Job Creation, Economic Development and Consumer Affairs**

##### **Senate Bill 566**

Relating to: creating income and franchise tax credits for the offering of a Wisconsin business; excluding from taxable income gains from a Wisconsin business; liability of shareholders; and exemptions from securities registration requirements.

By Senators Kanavas, Leibham, Stepp, Roessler and Zien; cosponsored by Representatives Hundertmark, Gard, Mursau, Strachota, Krawczyk, Lamb, Newcomer, Nischke, Vos, Hahn, F. Lasee, Bies, Townsend, Kreibich, Albers, Gunderson, Loeffelholz and Musser.

February 03, 2006      Referred to Committee on Job Creation, Economic Development and Consumer Affairs.

February 7, 2006      **PUBLIC HEARING HELD**

Present:    (4)      Senators Kanavas, Zien, Reynolds and Lassa.  
Absent:    (1)      Senator Decker.

##### Appearances For

- Ted Kanavas, Brookfield — Senator
- Jean Hundertmark, Madison — Representative, Wisconsin State Legislature - 40th Assembly District
- Jeff Schoepke, Madison — Wisconsin Manufacturers & Commerce

##### Appearances Against

- Conrad Goodkind, Milwaukee
- Brooke Billick, Milwaukee
- Lori Keating-Heinemann, Madison — DFI
- Patricia Struck, Madison — DFI

##### Appearances for Information Only

- None.

##### Registrations For

- Steve Baas, Milwaukee — MMAC

##### Registrations Against

- Joanne Ricca, Milwaukee — Wisconsin State AFL-CIO

May 4, 2006

Failed to pass pursuant to Senate Joint Resolution 1.

James Michel  
Committee Clerk

**SENATE BILL 566 (LRB -3753)**

An Act to repeal 180.0622 (2) (b); to renumber and amend 180.0622 (2) (a); to amend 71.05 (6) (a) 15., 71.21 (4), 71.26 (2) (a), 71.34 (1) (g), 71.45 (2) (a) 10., 77.92 (4), 551.23 (10), 551.23 (11) (a), 551.23 (11) (b), 551.23 (18) and 551.53 (1) (b); and to create 71.07 (5e), 71.07 (6g), 71.10 (4) (ce), 71.10 (4) (cg), 71.28 (5e), 71.30 (3) (epp), 71.47 (5e), 71.49 (1) (epp) and 551.02 (4w) of the statutes; relating to: creating income and franchise tax credits for the offering of a Wisconsin business; excluding from taxable income gains from a Wisconsin business; liability of shareholders; and exemptions from securities registration requirements. (FE)

**2006**

- 02-03. S. Introduced by Senators **Kanavas, Leibham, Stepp, Roessler** and **Zien**; cosponsored by Representatives **Hundertmark, Gard, Mursau, Strachota, Krawczyk, Lamb, Newcomer, Nischke, Vos, Hahn, F. Lasee, Bies, Townsend, Kreibich, Albers, Gunderson, Loeffelholz** and **Musser**.
- 02-03. S. Read first time and referred to committee on Job Creation, Economic Development and Consumer Affairs ..... 582
- 02-06. S. Senate substitute amendment 1 offered by Senator Kanavas (**LRB s0510**) ..... 585
- 02-07. S. Public hearing held.
- 02-08. S. Fiscal estimate received.
- 02-27. S. Fiscal estimate received.
- 02-28. S. Fiscal estimate received.
- 05-11. S. Failed to pass pursuant to Senate Joint Resolution 1 ..... 853

## Vote Record

### Committee on Job Creation, Economic Development and Consumer Affairs

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Date: 2/9/2006

Bill Number: SB 566

Moved by: \_\_\_\_\_ Seconded by: \_\_\_\_\_

Motion: \_\_\_\_\_

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| <u>Committee Member</u>    | <u>Aye</u>               | <u>No</u>                | <u>Absent</u>            | <u>Not Voting</u>        |
|----------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| Senator Ted Kanavas, Chair | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Senator David Zien         | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Senator Thomas Reynolds    | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Senator Julie Lassa        | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Senator Russell Decker     | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Totals: \_\_\_\_\_

Motion Carried

Motion Failed



# WISCONSIN STATE LEGISLATURE





# Wisconsin State AFL-CIO *...the voice for working families.*

David Newby, President • Sara J. Rogers, Exec. Vice President • Phillip L. Neuenfeldt, Secretary-Treasurer

To: Members of the Senate Job Creation, Economic Development and Consumer Affairs Committee

From: Phil Neuenfeldt, Secretary-Treasurer

Date: February 7, 2006

Re: **Opposition to Senate Bill 566**

**The Wisconsin State AFL-CIO opposes a specific provision included in SB 566 that will repeal Wisconsin's Shareholder Liability statute.** Over the years this statute has been used by the Attorney General in certain circumstances as a valuable tool to collect the unpaid wages due workers when a firm simply closes its doors.

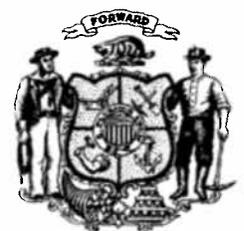
Those who want to eliminate this worker protection argue that it will help attract business to the state. It seems strange to argue that the businesses that Wisconsin seeks to attract are those that are more comfortable knowing they can leave their workers unpaid.

Current law imposes a *limited* personal liability on each shareholder of a corporation, for up to six months' wages for employees, but not to exceed the par value of shares owned by each shareholder. This provision does not affect the vast majority of responsible corporate shareholders, but it does protect employees against the unscrupulous shareholders who believe they can hide behind the corporation, take the profits, close the doors, fail to pay wages due and declare that the corporation has no assets.

We ask for your opposition to SB 566 to protect a statute that provides some limited ability for unpaid workers to collect their wages. We have reviewed Substitute Amendment 1 to SB 566 and it includes the statute repeal as well.



# WISCONSIN STATE LEGISLATURE





**State of Wisconsin**  
*Department of Financial Institutions*

Jim Doyle, Governor

Lorrie Keating Heinemann, Secretary

Testimony of  
Lorrie Keating Heinemann, Cabinet Secretary and Patricia Struck, Administrator, Division of Securities  
Department of Financial Institutions  
Senate Committee on Job Creation, Economic Development and Consumer Affairs  
Senate Bill 566  
February 7, 2006

Senator Kanavas, committee members, on behalf of the Department of Financial Institutions (DFI), thank you for the opportunity to provide testimony regarding Senate Bill 566 (SB 566).

First, we share your commitment to providing access to capital for entrepreneurs in Wisconsin. We are all aware that small businesses create over 70% of new jobs in our state and that it is important for young companies to have access to capital. Your work with the Department of Commerce on Act 255 has created great momentum on angel and seed investing in our state. Last week, Governor Doyle announced the great success of Act 255 and the creation of the Wisconsin Angel Network. As a result of this bipartisan effort on economic development, Wisconsin received an A for economic performance from the Corporation for Enterprise Development's 2006 Development Report Card – and this is the only time the state made their "honor roll" in the study's 19 year history.

We would like to continue working together with you to move Wisconsin forward, Senator, which is why we are here today to share our concerns with you regarding SB 566.

As you are aware, DFI regulates the securities markets in Wisconsin along with our federal counterparts at the Securities and Exchange Commission (SEC). As of December 31, 2005, over 1,800 broker-dealers and 92,000 securities agents were registered to sell securities in our state. In addition 17,626 mutual funds were registered with the DFI, and 936 registration and exemptions filings were filed with our Division of Securities. Our Division of Securities staff has a great depth of experience in regulating the securities markets.

We are honored to have Patricia Struck as our Division of Securities Administrator at DFI. Patty currently is the Chair of the prestigious National Association of State Securities Administrators, which is the association that has membership through North America (including Canada and Mexico) made up of state and provincial securities regulators. At a recent meeting that Patty had with SEC Chairman, Christopher Cox, he confirmed his conviction that "Investor confidence is key to healthy capital markets". As you know, Chairman Cox took his post in a time of great turbulence in the securities markets. We are all aware of the Enron and mutual fund scandals, and the impact that the resulting legislation, Sarbanes-Oxley, has had on the cost of doing business in the United States.

In DFI's mission to "protect consumers", our Securities Division is front and center in its role to protect the general public from investment scams. We are here to testify in opposition to SB 566 as we strongly believe that the securities law provisions in this legislation will prevent us from protecting consumers of financial services, and it could very well bring economic growth in our state to a startling halt.

Currently, under the Securities laws in virtually every state, including Wisconsin, before a business can offer its investment securities in a general public offering to investors using media advertising and unrestricted offers, the offering would have to go through a filing and registration process with the state securities regulatory agency for investor protection reasons. This process includes a requirement that all investors must be provided with a full disclosure document to enable them to make a fully informed investment decision.

While all states, including Wisconsin, also have non-public offering exemptions from the need to go through the securities registration process, no state allows unrestricted media advertising and unlimited general circulation in connection with their non-public offering exemptions. In addition, very few states allow unlicensed "finders" to be able to solicit investors, whether in a registered public offering context or in a limited offering registration exemption context. Wisconsin already is a leader in the regulatory treatment of finders by providing a licensing exemption in Wis. Stats.

*Office of the Secretary*

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① Finders

② Angel Deals →

Exempt → small offerings

125 → 300  
125 → 100

551.31(1)(d) for finders so long as their solicitation activity is restricted to accredited investors. Significantly, the American Bar Association's 2005 Report and Recommendations Regarding Finders would restrict contacts by finders to accredited investors. Surely the professional securities broker-dealers and registered representatives would have concerns about their businesses being taken over by "finders" who would be basically "unregulated" and would have no suitability requirements to follow.

While Wisconsin has the same registration filing and disclosure document requirements for public offerings of securities by businesses, we have the most generous registration exemptions of any state in the country in terms of allowing entrepreneurs to seek investment capital. Our general advertising and solicitation exemptions may be used in two offering contexts where investor protections are provided: First, exemptions apply where the offering is restricted to "accredited investors" who are sophisticated investors which meet high income and net worth criteria and are capable of making complicated investment decisions (See Wis. Stats. 551.23(8)(g), first enacted in 1993), and second where a full disclosure document is provided to investors to enable them to make a fully informed investment decision (See DFI-Sec 2.028).

The securities law changes that would be made under SB 566 would make it "open season" on Wisconsin investors in the following respects:

First, by permitting any and all methods of media advertising and widespread solicitation methods to be used, Wisconsin public investors could be bombarded by a flood of investment solicitations by both in-state and out-of-state businesses—both legitimate and non-legitimate—using newspaper ads, radio and TV ads, Internet spam, mass mail, or hand-distributing solicitation materials on street corners, at UW Badger games or at the grocery store, and with only an after-the-fact filing requirement for the materials with DFI that is of no investor protection value whatever.

Second, the bill could unleash an unlimited number of unlicensed, unqualified persons ("finders") that would be allowed to solicit and entice investors into investing in whatever business' securities the finder happened to be selling that day. ~~Because the bill does not limit the number of businesses a finder can solicit on behalf of, if a prospective investor does not want to buy a particular company's stock, the finder can switch to solicitation materials for a different company's bonds or maybe interests in a limited partnership.~~ These finders would not have to follow the same rules as the 92,000 licensed brokers in our state, yet they would be able to collect a fee without fear of any regulatory oversight.

to see they have registered

The reason investor protections are put in place for offers to non-accredited investors is that these investors are not in a position where high risk investments are suitable for them, and the loss of even a small amount of money might significantly impact their financial future.

By expanding the "limited offeree" exemption in Wis. Stats. 551.23(11) to permit offers to up to 300 Wisconsin investors per offering (keeping in mind this exemption could be used by out-of-state businesses) Wisconsin could be opened up to a flood of solicitations by offerings from businesses across the country. Furthermore, these offerings could result in purchases by up to 300 Wisconsin investors, which could drain the pool of money that could have gone into legitimate Wisconsin-based businesses.

It is our concern that Wisconsin investors will be wary of making investments in any business, thus drying up sources of investment capital for legitimate Wisconsin businesses. This situation is exactly what happened in Colorado in the 1980s when Colorado legislators repealed their securities law regulations, creating an open season on investors, and ended up repealing those changes in the 1990s due to the loss in investor confidence.

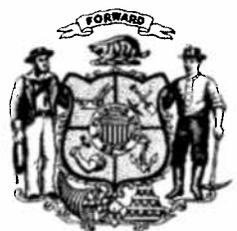
We believe the securities law provisions of this legislation create additional opportunities to mislead unsuspecting, unsophisticated investors, which is not in the best interest of consumers. According to the Department of Agriculture, Trade and Consumer Protection, "Investment complaints" moved up to #4 in 2005 on their top ten list of consumer complaints. We believe enacting this legislation could move these complaints even further up the list.

We strongly oppose the securities provisions in SB 566 in its current form. We believe those provisions undermine investor confidence and could jeopardize the progress we have made in creating healthy capital markets in Wisconsin; such as our bipartisan work to substantially increase the amount angel investing in our state.

Again, thank you for allowing us to share our concerns about SB 566. We would be happy to answer any questions committee members might have.



# WISCONSIN STATE LEGISLATURE



SB 566

**Brooke J. Billick Testimony  
In Opposition to the 2005 Bill Bearing  
LRB Reference No. 3753/2  
February 7, 2006**

State Bar  
Committee

1  
2  
3  
4  
5  
6 My name is Brooke Billick and I appreciate the opportunity to speak today in opposition  
7 to the 2005 Bill bearing LRB Reference No. 3753/2, relating to the creation of income and  
8 franchise tax credits for the offerings of a Wisconsin business and modification of certain  
9 exemptions from securities registration.

10 I have been a practicing attorney in the State of Wisconsin for over 26 years specializing  
11 in corporate and securities law. I spent the first 15 years of my career as an attorney in private  
12 practice where I represented securities brokerage firms, investment advisers, individual investors  
13 and publicly and privately held corporations. I was then employed as the chief legal officer for  
14 the investment management and mutual fund operations of Marshall & Ilsley Corporation. For  
15 the past 2 years, I have been the chief compliance officer for Artisan Partners Limited  
16 Partnership, a Milwaukee based investment management firm, and the Artisan Funds.

17 I am currently the chair of the Securities Law Committee of the State Bar of Wisconsin's  
18 Business Law Section. For the past 3 years, I have also chaired a Business Law Section  
19 committee formed for the purpose of examining a new Uniform Securities Act and adapting the  
20 act for introduction in the Wisconsin Legislature to update and replace the current Wisconsin  
21 securities law, Chapter 551. We are hopeful that this legislation will be formally introduced  
22 during this legislative session.

23 The bill has a laudable goal of seeking to encourage investment in Wisconsin businesses.  
24 However, the bill removes important safeguards that currently exist for purposes of investor  
25 protection in this state. The likely result of this bill will be increased investor fraud, losses to  
26 Wisconsin citizens and litigation that will far outweigh any incremental additional investment in  
27 Wisconsin business that would result from its passage.

28 I would like to highlight a few of the practical problems with this draft legislation:

- 29
- 30 ■ This bill creates a class of professional unlicensed "finders" who can receive  
31 direct or indirect compensation for introducing prospective investors to brokers or  
companies seeking financing. Unlike securities brokers or agents, these finders

1 are not subject to regulatory requirements, such as training and licensing  
2 oversight. The goal of these finders will be to finders will be to locate any  
3 potential investor, regardless of that investor's sophistication or experience. In  
4 doing so, the finders can be expected to make promises of financial gain,  
5 understate investing risks and simply misrepresent the nature of the investments.  
6 They will say whatever it takes to get someone to invest without regulatory  
7 oversight. The expected outcome will be an increase in litigation after the money  
8 is lost and when the money is gone.

- 9 ■ The bill raises the number of possible offerees and investors under the Wisconsin  
10 registration exemptions to inappropriate levels without appropriate disclosure  
11 requirements. The registration exemptions in Sections 551.23(10) and 551.23(11)  
12 are intended to afford legitimate registration exemptions for truly private offerings  
13 of securities. These provisions are intended to protect the average Wisconsin  
14 investor by limiting the number of unaccredited, unsophisticated investors to a  
15 relatively small number. Public offerings, on the other hand, must be registered  
16 and must satisfy specific prospectus disclosure requirements. Raising the number  
17 of potential unaccredited offerees and investors in the manner proposed will  
18 transform these types of investments into public offers, subject to the risk that  
19 investors will commit money without an understanding of the nature of the  
20 business and corresponding risks.
- 21 ■ This bill will increase the burdens on the staff of the Department of Financial  
22 Institutions. For example, by eliminating the requirement of filing of advertising  
23 prior to offers and sales, it will be more difficult for the staff to intervene in  
24 abusive situations prior to investment. Once the money has been paid, it is far  
25 more difficult to intervene in order to stop fraudulent activity or to seek  
26 recoveries.

27 Venture capital investing in start-up businesses is very risky. Most businesses fail within  
28 a few years after formation. The greatest source of venture capital financing is from wealthy  
29 individual and institutional investors who are considered to be accredited investors. They will  
30 not be affected by this bill. Accredited investors are aware of these risks and have both the

1 ability and the financial resources to evaluate and offset these risks. They make their bets that, in  
2 the long run, the losses they incur through many private investments will be offset by the few  
3 instances where the business succeeds. The average Wisconsin investor does not have the  
4 sophistication or the financial resources to incur losses from the type of fraudulent activity that  
5 can be expected if current safeguards are eliminated.

6 I have represented clients that were involved in fraudulent offerings. While I was in  
7 private practice, I represented people involved in the Newman Companies scandals in the Green  
8 Bay area during the 1980's. Average Wisconsin investors lost millions by investing in  
9 commercial paper offered by unscrupulous businessmen. I am very concerned that this  
10 legislation, if adopted, will present huge risks to Wisconsin investors.

11 Daniel Eastman sent an email to me today, which I am submitting along with my  
12 testimony. Dan is a former Wisconsin Commissioner of Securities who has been actively  
13 involved in the venture capital process since leaving public office. In his email to me, Dan also  
14 expresses his opposition to this bill and I respectfully urge you to consider his remarks.

15 There is one provision in this bill that I do support. The bill seeks to repeal Wis. Stat.  
16 Section 180.0622(2)(b), which imposes potential liability on shareholders of Wisconsin  
17 corporations for wage claims of employees. This provision is an anachronism that distinguishes  
18 Wisconsin's corporation law from virtually all, if not all, other states. This provision does not  
19 provide a meaningful recovery to employees of Wisconsin businesses that go bankrupt, but it has  
20 discouraged corporations from choosing Wisconsin as a place of incorporation.

21 Thank you again for this opportunity to present my views on this proposed bill.

**Billick, Brooke**

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**From:** Dan Eastman [daneast@execpc.com]  
**Sent:** Monday, February 06, 2006 11:45 PM  
**To:** Billick, Brooke; blombard@reinhardt.com; cmweber@rwbaird.com; david.cohen@dfi.state.wi.us; edward.fallone@marquette.edu; jebolt@access4less.net; JWestphal@wisbar.org; leslie.vanbuskirk@dfi.state.wi.us; markkaprelian@northwesternmutual.com; mrowe@ruder.com; mmcdonagh@mzmilw.com; mclayton@nccusl.org; Pmkriill@GKLAW.COM; Patricia.Struck@dfi.state.wi.us; RJB@mtfn.com; Randall.Schumann@dfi.state.wi.us; RPC@quarles.com; RPMORRIS@quarles.com; sdguse@mbf-law.com; TNelson@foleylaw.com; WJS@quarles.com  
**Cc:** bla@dewittross.net; KHowley@reinhardt.com; thomasfrenn@yahoo.com; WJS@quarles.com  
**Subject:** RE: LRB 3753/2

Brooke, et. al.....

With respect to the proposed Securities Law legislation and the upcoming public hearing, I have some strong concerns about some of the provisions. I will be traveling tomorrow so I won't be able to attend the hearing. But, I'd like to go on record, at least with the securities bar, as opposing any significant changes to the Wisconsin Securities Law without prior consideration by the business law section and the securities law committee.

Specific concerns:

An un-licensed person earning a "finder's fee" is low hanging fruit for the plaintiffs bar. Aiding and abetting, conspiracy, etc.... If you take the money, you are liable when things go bad. And... most of these deals go bad. Would a law firm or accounting firm, post-Enron/Sarbanes Oxley, really want to compromise the balance sheet by selling this stuff for a finders fee?

I see no Federal/NASD licensing exemption and creating a state licensing exemption would create a significant regulatory burden on DFI as they try to sift through the facts in each case to determine whether the parties are in or out of compliance. Licensing and securities fraud are separate things. I doubt that many of the new "finders" will have the sophistication to understand the state and Federal anti-fraud obligations inherent in any private placement. Also, if no Wisconsin licensed, NASD member firms are interested in these deals, why should un-licensed folk be allowed to sell them to the public?

Selling unregistered securities to 300 of your closest friends and relatives doesn't sound like a good idea. Distribution is too wide to be effectively a private placement. Other states do just fine under the Uniform Accredited Investor exemption. We will as well.

Finally, as I have spent almost all of my career in the private equity arena, and, as the company I helped found (and continue to work for) has raised over \$30 million in private and public equity over the last 6 years, I have become aware of the fact that real deals raise real money from real investors on the coasts and in Chicago. These communities have a base of sophisticated investors who know what to look for in corporate structure, etc. and, frankly, they don't need the help of state regulators when it comes to private equity investing. Consequently, we don't raise money from non-accredited investors because they simply don't have the economic staying power, the strategic value or the market access we need to grow. Any Wisconsin bio start-up had better find real money and real investors, rather than the blokes at the health club (or wherever the gullible hang out now-a-days). In short, if Wisconsin starts to grow some real technology companies, the sophisticated money will find them.

As we have spent the better part of the past three years re-drafting the Wisconsin Securities Law to adopt many of the provisions of the Uniform Act (we even had Joel Seligman assist us in that process!) we should not support this legislation in the frenzy of election year politics without thoughtful consideration by the state bar. I strongly urge the legislature to work with the bar as it performs its traditional roll of reviewing substantive legislation before acting on material changes. The public interest ins at stake here. If Wisconsin becomes the "Wild West" of private equity, all legitimate Wisconsin businesses will suffer the consequences and Wisconsin will remain an economic afterthought.

2/7/2006

Thanks

Dan Eastman

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**From:** brooke.billick@artisanpartners.com [mailto:brooke.billick@artisanpartners.com]

**Sent:** Wednesday, February 01, 2006 6:10 PM

**To:** blombard@reinhartlaw.com; cmweber@rwbaird.com; daneast@execpc.com; david.cohen@dfi.state.wi.us; edward.fallone@marquette.edu; jebolt@access4less.net; JWestphal@wisbar.org; leslie.vanbuskirk@dfi.state.wi.us; markkaprelian@northwesternmutual.com; mrowe@ruder.com; mmcdonagh@mzmilw.com; mclayton@nccusl.org; Pmkrill@GKLAW.COM; Patricia.Struck@dfi.state.wi.us; RJB@mtfn.com; Randall.Schumann@dfi.state.wi.us; RPC@quarles.com; RPMORRIS@quarles.com; sdguse@mbf-law.com; TNelson@foleylaw.com; WJS@quarles.com

**Cc:** bla@dewittross.net; KHowley@reinhartlaw.com; thomasfrenn@yahoo.com; WJS@quarles.com

**Subject:** FW: LRB 3753/2

Ladies and Gentlemen,

Unfortunately, I do not have any current news about the Uniform Securities Act to share with you at this time.

However, I do want to share with you the attached bill proposal that I received this afternoon from Patty Struck, Randy Schumann and Leslie VanBuskirk at the Wisconsin Division of Securities. In the purported interest of fostering a favorable investment climate for Wisconsin businesses, the attached draft bill proposes a number of changes, including changes to current registration exemptions under 551.23(10) and 551.23(11). The bill proposes to:

- Grant broker-dealers an income and franchise tax credit based on offering proceeds for Wisconsin businesses;
- Permit investors to claim a non-refundable state income tax credit for gains resulting from the sales of investments in Wisconsin businesses, provided those gains are held in a segregated account with a financial institution, and then reinvested in another Wisconsin business within 180 days;
- Create a new class of professional unlicensed "finders" who can be compensated for "identifying and/or introducing" potential investors to broker-dealers or issuers for investments of up to \$1 million per issuer;
- Amend 551.23(10) to (i) increase the number of security holders from 25 to 100 (excluding 551.23(8) institutional and accredited investors from this headcount); (ii) eliminate the preapproval requirement by the Division of Securities for advertising (changing the requirement to filing within 3 business days); and (iii) permit compensation to be paid to finders, in addition to licensed broker-dealers and agents;
- Amend 551.23(11) to (i) increase the number of offerees from 25 during any 12-month period of time to permit offers to up 300 persons (in addition to 551.23(8) institutional and accredited investors); (ii) permit direct or indirect commissions or remuneration to finders and licensed broker-dealers and agents (currently, no commissions are permitted to any offerees other than institutional or accredited investors); and (iii) permit published advertising, provided the advertising is filed with the Division within 3 business days (advertising is not currently permitted).

There are legitimate concerns that the expansion of the limited offering registration exemptions, in the manner proposed in this bill, creates risks for Wisconsin investors through fraudulent activity that outweigh the potential for additional capital formation in the state.

There is one provision in this bill that the State Bar's Business Law Section has sought to eliminate for years--the potential liability of Wisconsin corporation shareholders for wage claims under section 180.622(2)(b). This provision is worth supporting in order to eliminate an anachronistic provision that distinguishes Wisconsin's corporation law from virtually all other states.

A public hearing is scheduled on this bill for Tuesday, February 7, at 1:00 pm, at the Public Safety Building, 2100 N. North Calhoun Road, Brookfield, Wisconsin

Best regards, Brooke

-----Original Message-----

**From:** Van Buskirk, Leslie [mailto:Leslie.VanBuskirk@dfi.state.wi.us]

**Sent:** Wednesday, February 01, 2006 2:35 PM

**To:** Billick, Brooke

**Subject:** LRB 3753/2

Hi Brooke,

Here is the draft legislation Patty called you about. We have pretty huge concerns about the impact of the exemptions from registration in sections 17-21. I don't recall anyone in our committee sessions stating that a change to this extent was warranted, and we added back in the accredited investor exemptions, which I believe makes us already much more liberal in our exemptions than any other state.

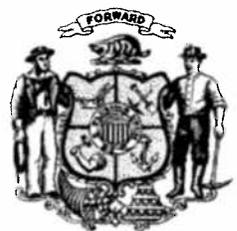
Thanks for taking a look at this-

Leslie

<<05-37532.pdf>> <<05-37532dn.pdf>>



# WISCONSIN STATE LEGISLATURE





# JEAN HUNDERTMARK

STATE REPRESENTATIVE

40TH ASSEMBLY DISTRICT

Date?

Senate Bill 566  
Representative Jean Hundertmark  
Senate Committee on Job Creation, Economic Development and Consumer Affairs

Thank you, Chairman and committee members for allowing me to testify on Senate Bill 566. This legislation is sorely needed and would greatly improve our investment climate here in Wisconsin.

While the package includes a number of proposals, I would like to focus on two parts that I believe would be the greatest help in increasing venture capital in our state: the repeal of the shareholder liability statute and the exclusion from capital gains for income reinvested in Wisconsin businesses.

I would like to begin with what I consider one of the biggest impediments to increasing investment capital here in Wisconsin. I am certain that at one time, shareholder liability had a legitimate place in state statutes. However this antiquated law is now standing in the way of maximizing Wisconsin's potential for developing and expanding business.

When an individual or a group makes a decision to invest, they do so knowing that they can either profit from that investment, or lose money on it. In 48 other states, high-risk ventures can mean taking a chance to personally lose the total amount of that investment. But not in Wisconsin. We are currently one of only two states in which an investor is personally liable for the wages of unpaid workers. Investors could end up losing not only their original investment, but also an additional amount equal to it. This has required a number of investors to factor in location as they make their decision. Wisconsin companies automatically become less than desirable as an investment option.

I strongly believe that workers should be paid for the work that they do. As the former Chair of the Assembly Labor Committee, I worked with groups representing both labor and financial institutions to craft a compromise on the priority of a wage claim lien. The change was included in a universal banking bill that was signed into law during the following session. This placed wage claim liens ahead of the liens of financial institutions, resulting in workers being better protected than they were in the past.

While changing the shareholder liability statute gets us on an even playing field with our neighbors, we need to do more to encourage investment in our state. We can accomplish this by providing incentives for the reinvestment of capital gains in our Wisconsin companies. This is a win-win situation for all the parties involved. Investors

will be able to take advantage of the tax incentive. Businesses will have access to more investment capital that will help them to begin or expand. And the state will see an increase in tax revenues as more jobs are created through business expansion. It is a small step that we can take to spur business growth in our state.

Thank you again for allowing me to testify today. This legislation is essential to helping grow our investment climate in Wisconsin. Confident investment in our companies is one of the best ways to create the high paying jobs that are needed. Wisconsin's per capita income has fallen below our midwestern neighbors. It is our responsibility to find ways to turn that around. SB 566 is a good beginning.

Thank you, and I'd be happy to answer any questions.