



# State of Wisconsin

LEGISLATIVE REFERENCE BUREAU



## Appendix A ... segment III

### LRB BILL HISTORY RESEARCH APPENDIX

The drafting file for 2013 LRB-2664/P5 \* (For: Rep. Craig)

has been copied/added to the drafting file for

**2013 LRB-2190** (For: Rep. Craig)

Are These "Companion Bills" ?? ... No



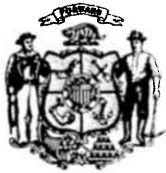
## **RESEARCH APPENDIX - PLEASE KEEP WITH THE DRAFTING FILE**

Date Transfer Requested: 08/12/2013 (Per: ARG)

\* Note: LRB-2664's Appendix A (early version of LRB-2190) did not need to be included ... per ARG.



The attached draft was incorporated into the new draft listed above. For research purposes the attached materials were added, as a appendix, to the new drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.



State of Wisconsin  
2013 - 2014 LEGISLATURE



LRB-2664/P2  
ARG:sac/fj

P3

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

By Tues  
7-30  
pm

EMDT  
P m has  
been  
pur

gen cut

1 AN ACT *to create* 227.01 (13) (zz), 551.202 (26), 551.205, 551.607 (2) (g) and  
2 551.614 (1m) of the statutes; relating to: exemptions from securities  
3 registration requirements.

INSERT  
1A

*Analysis by the Legislative Reference Bureau*

Under the Wisconsin Uniform Securities Law (WUSL), a person may not offer or sell any security in this state unless the security is registered with the Division of Securities in the Department of Financial Institutions (division), the security or transaction is exempt from registration, or the security is a federal covered security. Certain notice filing requirements may apply to federal covered securities. A "security" is defined broadly under the WUSL and includes stocks, notes, bonds, investment contracts, limited partnership interests, and certain other financial interests. Current law identifies various securities transactions that are exempt from registration with the division, such as a sale or offer to sell to an accredited investor or an institutional investor.

Also,

This bill creates ~~an~~ <sup>two</sup> additional transaction exemption<sup>s</sup> to securities registration. Under ~~this~~ exemption, an offer or sale of a security by an issuer is exempt from registration if the offer or sale is conducted in accordance with specified requirements, including the following: 1) the issuer of the security is a business entity organized under the laws of this state and authorized to do business in this state; 2) the transaction meets exemption requirements under federal law and rules of the federal Securities and Exchange Commission (SEC) for intrastate securities offerings; 3) the amount of money to be received for ~~all~~ sales of the security in reliance on the exemption does not exceed either \$2,000,000 or \$1,000,000, adjusted every

the first

with certain exceptions,

*under state law*  
*(B) which term is discussed below*

*chartered*

*pays a \$50 fee and a fee*

five years for inflation, depending on whether the issuer has or has not, respectively, undergone a financial audit and made it available; 4) the issuer does not accept more than \$5,000 from any single purchaser unless the purchaser is an accredited investor; 5) the offering is made exclusively through an Internet site and the Internet site is registered with the division or ~~exempt from registration~~; 6) the issuer files notice of the offering with the division at least ten days before commencing the offering and the notice contains specified information, including a copy of a disclosure statement to be provided to prospective investors and an escrow agreement with a depository institution located in this state in which the investor funds will be deposited; 7) the issuer is not an investment company or an SEC reporting company; 8) the issuer informs all prospective purchasers that the securities have not been registered and are subject to limitations on resale, includes a specified legend conspicuously on the cover page of the disclosure document, requires each purchaser to sign a written or electronic acknowledgment containing certain information, and obtains from each purchaser evidence that the purchaser is a resident of this state; 9) all payments for purchase of securities are held by the issuer in the depository institution identified in the escrow agreement ~~under 6)~~, ~~above~~ 10) a copy of the disclosure document provided to the division is given to each prospective investor at the time of the offer, and 11) ~~the exemption is not used in conjunction with any other exemption to securities registration~~. The bill also requires the securities issuer to file a quarterly report with the division, and make it available to investors, for so long as securities issued under the exemption are outstanding.

*financial*

*financial*

*and*

*above above*

*paying a \$100 fee and*  
In addition, all Internet sites through which the securities are offered are generally required to be registered with the division. Registration is accomplished by the Internet site operator filing a statement with the division that contains specified information. ~~However, registration with the division is not required if all of the following apply with respect to the Internet site and its operator:~~ 1) it does not offer investment advice or recommendations; 2) it does not solicit purchases, sales, or offers to buy securities; 3) it does not compensate persons for the solicitation or based on the sale of securities; 4) it is not compensated based on the amount of securities sold, and it does not hold, manage, possess, or otherwise handle investor funds or securities; 5) it does not engage in other activities prohibited by the division. The Internet site operator and the securities issuer must also maintain records of all offers and sales of securities effected through the Internet site and provide the division with access to these records on request.

*INSERT 2B*

*INSERT 2A*

*INSERT 2C*

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

INSEPT 3-2

551.206

1 227.01 (13) (zz) Adjusts, under s. ~~551.205~~, the amounts specified in s.

2 551.202 (26) (c) 1. ~~and~~ *a. and 1. b. and sub. (27)(c) 1. a. and*

3 SECTION 2. 551.202 (26) of the statutes is created to read: *1. b.*

4 551.202 (26) An offer or sale of a security by an issuer if the offer or sale is  
5 conducted in accordance with all of the following requirements:

6 (a) The issuer of the security is a business entity organized under the laws of  
7 this state and authorized to do business in this state.

8 (b) The transaction meets the requirements of the federal exemption for  
9 intrastate offerings in section 3 (a) (11) of the Securities Act of 1933 (15 USC 77c (a)  
10 (11)) and Rule 147 adopted under the Securities Act of 1933 (17 CFR 230.147).

11 *1. Except as provided in subd. 2.*  
12 (c) ~~The~~ sum of all cash and other consideration to be received for all sales of the  
13 security in reliance on the exemption under this subsection does not exceed the  
14 following amount:

INSEPT 3-12

15 *g.* If the issuer has not undergone and made available to each prospective  
16 investor and the administrator the documentation resulting from a financial audit  
17 of its most recently completed fiscal year which complies with generally accepted  
18 accounting principles, \$1,000,000 subject to adjustment under s. ~~551.205~~ *551.206* less the  
19 aggregate amount received for all sales of securities by the issuer within ~~12~~ *6*  
20 months *6 months or later* before the first offer or sale made in reliance on the exemption under this  
21 subsection.

INSEPT 3-18

22 *b. 2.* If the issuer has undergone and made available to each prospective investor  
23 and the administrator the documentation resulting from a financial audit of its most  
24 recently completed fiscal year which complies with generally accepted accounting  
principles, \$2,000,000 subject to adjustment under s. ~~551.205~~ *551.206*, less the aggregate

551.206

INSEPT 4-2

1 amount received for all sales of securities by the issuer within the 12 months before  
2 the first offer or sale made in reliance on the exemption under this subsection.

3 (d) The issuer does not accept more than \$5,000 from any single purchaser  
4 unless the purchaser is an accredited investor, ~~as defined in Rule 501 (a) adopted~~  
5 ~~under the Securities Act of 1933 (17 CFR 230.501 (a))~~

6 (e) The offering under this subsection is made exclusively through one or more  
7 Internet sites and each Internet site is registered with the division under s. 551.205

8 (1) (b) ~~is exempt from registration under s. 551.205 (1) (b) 2.~~

9 (f) Not less than 10 days prior to the commencement of an offering of securities  
10 in reliance on the exemption under this subsection, the issuer files a notice with the  
11 administrator, in writing or in electronic form as prescribed by the administrator,  
12 containing all of the following:

INSEPT 11-11

13 1. A notice of claim of exemption from registration, specifying that the issuer  
14 will be conducting an offering in reliance on the exemption under this subsection,  
15 accompanied by the filing fee specified in s. 551.614 (1m).

16 2. A copy of the disclosure statement to be provided to prospective investors in  
17 connection with the offering, containing all of the following:

18 a. A description of the company, its type of entity, the address and telephone  
19 number of its principal office, its history, its business plan, and the intended use of  
20 the offering proceeds, including any amounts to be paid, as compensation or  
21 otherwise, to any owner, executive officer, director, managing member, or other  
22 person occupying a similar status or performing similar functions on behalf of the  
23 issuer.

24 b. The identity of all persons owning more than 10 percent of the ownership  
25 interests of any class of securities of the company.

1           c. The identity of the executive officers, directors, managing members, and  
2 other persons occupying a similar status or performing similar functions in the name  
3 of and on behalf of the issuer, including their titles and their prior experience.

4           d. The terms and conditions of the securities being offered and of any  
5 outstanding securities of the company, the minimum and maximum amount of  
6 securities being offered, if any, and either the percentage ownership of the company  
7 represented by the offered securities or the valuation of the company implied by the  
8 price of the offered securities.

9           e. The identity of any person who has been or will be retained by the issuer to  
10 assist the issuer in conducting the offering and sale of the securities, including any  
11 Internet site operator but excluding persons acting solely as accountants or  
12 attorneys and employees whose primary job responsibilities involve the operating  
13 business of the issuer rather than assisting the issuer in raising capital.

14           f. For each person identified as required under subd. 2. e., a description of the  
15 consideration being paid to the person for such assistance.

16           g. A description of any litigation or legal proceedings involving the company or  
17 its management.

18           h. The names and addresses, including the Uniform Resource Locator, of each  
19 Internet site that will be used by the issuer to offer or sell securities under this  
20 subsection.

21           i. Any additional information material to the offering, including, if appropriate,  
22 a discussion of significant factors that make the offering speculative or risky. This  
23 discussion shall be concise and organized logically and may not be limited to risks  
24 that could apply to any issuer or any offering.

INSEAT 6-1

1           3. An escrow agreement with a bank of other depository institution located in  
2 this state in which the investor funds will be deposited, providing that all offering  
3 proceeds will be released to the issuer only when the aggregate capital raised from  
4 all investors is equal to or greater than the minimum target offering amount  
5 specified in the business plan as necessary to implement the business plan and that  
6 all investors may cancel their commitments to invest if that target offering amount  
7 is not raised by the time stated in the disclosure document.

8           (g) The issuer is not, either before or as a result of the offering, an investment  
9 company, as defined in section 3 of the Investment Company Act of 1940 (15 USC  
10 80a-3), or an entity that would be an investment company but for the exclusions  
11 provided in section 3 (c) of the Investment Company Act of 1940 (15 USC 80a-3 (c)),  
12 or subject to the reporting requirements of section 13 or 15 (d) of the Securities  
13 Exchange Act of 1934 (15 USC 78m or 78o (d)).

14           (h) The issuer informs all prospective purchasers of securities offered under  
15 this subsection that the securities have not been registered under federal or state  
16 securities law and that the securities are subject to limitations on resale. The issuer  
17 shall display the following legend conspicuously on the cover page of the disclosure  
18 document:

19           IN MAKING AN INVESTMENT DECISION, INVESTORS MUST RELY ON  
20 THEIR OWN EXAMINATION OF THE ISSUER AND THE TERMS OF THE  
21 OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THESE  
22 SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR  
23 STATE SECURITIES COMMISSION OR DIVISION OR OTHER REGULATORY  
24 AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT  
25 CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS

1 DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL  
2 OFFENSE. THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON  
3 TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR  
4 RESOLD EXCEPT AS PERMITTED BY SUBSECTION (e) OF SEC RULE 147 (17  
5 CFR 230.147 (e)) AS PROMULGATED UNDER THE SECURITIES ACT OF 1933,  
6 AS AMENDED, AND THE APPLICABLE STATE SECURITIES LAWS,  
7 PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. INVESTORS  
8 SHOULD BE AWARE THAT THEY WILL BE REQUIRED TO BEAR THE  
9 FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF  
10 TIME.

11 (i) The issuer requires each purchaser to certify in writing or electronically as  
12 follows:

13 I UNDERSTAND AND ACKNOWLEDGE THAT:

14 I am investing in a high-risk, speculative business venture. I may lose all of my  
15 investment, and I can afford the loss of my investment.

16 This offering has not been reviewed or approved by any state or federal  
17 securities commission or division or other regulatory authority and that no such  
18 person or authority has confirmed the accuracy or determined the adequacy of any  
19 disclosure made to me relating to this offering.

20 The securities I am acquiring in this offering are illiquid, that there is no ready  
21 market for the sale of such securities, that it may be difficult or impossible for me to  
22 sell or otherwise dispose of this investment, and that, accordingly, I may be required  
23 to hold this investment indefinitely.



1 I may be subject to tax on my share of the taxable income and losses of the  
2 company, whether or not I have sold or otherwise disposed of my investment or  
3 received any dividends or other distributions from the company.

4 .... (Signature)

5 (j) The issuer obtains from each purchaser of a security offered under this  
6 subsection evidence that the purchaser is a resident of this state and, if applicable,  
7 is an accredited investor.

8 (k) All payments for purchase of securities offered under this subsection are  
9 directed to and held by the ~~bank or depository~~ <sup>financial</sup> institution specified in par. (f) 3. The  
10 bank or depository institution shall notify the administrator of the receipt of  
11 payments for securities and the identity and residence of the investors. This  
12 information shall be confidential as provided in s. 551.607 (2) (g).

13 (L) The issuer of securities offered under this subsection provides a copy of the  
14 disclosure document provided to the administrator under par. (f) 2. to each  
15 prospective investor at the time the offer of securities is made to the prospective  
16 investor.

17 ~~(m) The exemption under this subsection is not used in conjunction with any  
18 other exemption under this section or s. 551.201, except that an offer or sale to an  
19 officer, director, partner, trustee, or individual occupying similar status or  
20 performing similar functions with respect to the issuer or to a person owning 10  
21 percent or more of the outstanding shares of any class or classes of securities of the  
22 issuer does not count toward the monetary limitation in ~~par. (f) 1. and 2.~~ <sup>subd. 1. a. and 1. b.</sup>~~

23 SECTION 3. 551.205 of the statutes is created to read:

24 **551.205 Additional provisions related to crowdfunding exemption for**  
25 **intrastate offerings through Internet sites. (1) All of the following**

INSEAT 8-22

1 requirements apply to an offer or sale of securities pursuant to the exemption under  
2 s. 551.202 (26):

3 (a) Prior to any offer or sale of securities, the issuer shall provide to the Internet  
4 site operator evidence that the issuer is organized under the laws of this state and  
5 is authorized to do business in this state.

INSERT 9-7

6 (b) 1. Except as provided in subd. 2, the Internet site operator shall register  
7 with the division by filing a statement. This statement shall include all of the  
8 following:

9 a. That the Internet site operator is a business entity organized under the laws  
10 of this state and authorized to do business in this state.

11 b. That the Internet site is being utilized to offer and sell securities pursuant  
12 to the exemption under s. 551.202 (26)

INSERT 9-14

13 c. The identity and location of, and contact information for, the Internet site  
14 operator and the issuer.

INSERT 9-15

15 2. The Internet site operator is not required to register with the division if all  
16 of the following apply with respect to the Internet site and its operator:

17 a. It does not offer investment advice or recommendations.

18 b. It does not solicit purchases, sales, or offers to buy the securities offered or  
19 displayed on the Internet site.

20 c. It does not compensate employees, agents, or other persons for the  
21 solicitation or based on the sale of securities displayed or referenced on the Internet  
22 site.

23 d. It is not compensated based on the amount of securities sold, and it does not  
24 hold, manage, possess, or otherwise handle investor funds or securities.

INSERT 9-24

INSERT 10-2

1 96. It does not engage in such other activities as the division, by rule, determines  
2 are prohibited of such an Internet site.

3 (c) The issuer and the Internet site operator shall maintain records of all offers  
4 and sales of securities effected through the Internet site and shall provide ready  
5 access to the records to the division, upon request. The division may access, inspect,  
6 and review any Internet site registered under this subsection as well as its records.

7 (2) An issuer of a security, the offer and sale of which is exempt under s. 551.202  
8 (26), shall provide, free of charge, a quarterly report to the issuer's investors until no  
9 securities issued under s. 551.202 (26) are outstanding. An issuer may satisfy the  
10 reporting requirement of this subsection by making the information available on an  
11 Internet site if the information is made available within 45 days after the end of each  
12 fiscal quarter and remains available until the succeeding quarterly report is issued.  
13 An issuer shall file each quarterly report under this subsection with the division and,  
14 if the quarterly report is made available on an Internet site, the issuer shall also  
15 provide a written copy of the report to any investor upon request. The report shall  
16 contain all of the following:

17 (a) Compensation received by each director and executive officer, including  
18 cash compensation earned since the previous report and on an annual basis and any  
19 bonuses, stock options, other rights to receive securities of the issuer or any affiliate  
20 of the issuer, or other compensation received.

INSERT 10-77

21 (b) An analysis by management of the issuer of the business operations and  
22 financial condition of the issuer.

INSERT 10-24

23 At 5-year intervals after January 1, 2014, the division shall adjust the  
24 monetary amounts specified in s. 551.202 (26) (c) 1. Add 2, to reflect changes since  
25 January 1, 2014, in the consumer price index for all urban consumers, ~~Urban~~

551.206 Adjustments.

Milwaukee-Racine area

INSERT 11-3

1 average, as determined by the U.S. department of labor. Each adjustment shall be  
2 rounded to the nearest multiple of \$50,000. Each adjustment under this ~~the~~ section  
3 shall be published on the department of financial institutions Internet site.

4 **SECTION 4.** 551.607 (2) (g) of the statutes is created to read:

5 551.607 (2) (g) Any record received under s. 551.202 (26) (k) relating to  
6 payments for securities and the identity and residence of the investors.

7 **SECTION 5.** 551.614 (1m) of the statutes is created to read:

8 551.614 (1m) FILING FEES RELATING TO CERTAIN REGISTRATION EXEMPTIONS. There  
9 shall be a nonrefundable filing fee of ~~\$100~~ for every notice of claim of exemption filed  
10 under s. 551.202 (26) (f) 1.

\$50

11 **SECTION 6. Initial applicability.**

12 (1) This act first applies to securities offered or sold on the effective date of this  
13 subsection.

14 (END)

INSERT 11-10

**2013-2014 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-2664/P3ins  
MDK:.....

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**INSERT 1A: SEE EXCERPT FROM 13-2190/1**

**INSERT 2A:**

Also, the bill exempts the Internet site operator from registration with the division as a broker-dealer if

**INSERT 2B:**

5) the fee it charges for securities offerings satisfies specified requirements; 6) it complies with specified advertising restrictions; and

**INSERT 2C: SEE EXCERPT FROM 13-2664/P1**

**INSERT 2C: INSERT 2A TO INSERT 2C:**

with certain exceptions, the amount of money to be received for sales of the security in reliance on the exemption does not exceed either \$2,000,000 or \$1,000,000, adjusted every five years for inflation, depending on whether the issuer has or has not, respectively, undergone a financial audit and made it available;

**INSERT 2C: INSERT 3A TO INSERT 2C:**

6) unless permitted by the division, no general solicitation or general advertising is made for the securities;

**INSERT 3-2: SEE EXCERPT FROM 13-2190/1**

**INSERT 3-2: INSERT 2-2 TO INSERT 3-2:**

except as provided in ss. 551.401 (2) (cm), 551.403 (2) (a) 2m., and 551.405 (2) (a) 2m.,

**INSERT 3-12:**

, excluding sales to any accredited investor or institutional investor,

**INSERT 3-18:**

exempt from registration under this section or s. 551.201

**INSERT 4-2:**

2. An offer or sale to an officer, director, partner, trustee, or individual occupying similar status or performing similar functions with respect to the issuer or to a person owning 10 percent or more of the outstanding shares of any class or

1 classes of securities of the issuer does not count toward the monetary limitation in  
2 subd. 1.a. and 1. b.

3 **INSERT 4-11:**

4 which the administrator shall make available as an electronic document on the  
5 department of financial institutions Internet site,

6 **INSERT 6-1:**

7 , savings bank, savings and loan association, or credit union chartered under the  
8 laws of

9 **INSERT 8-22: SEE EXCERPT FROM 13-2664/P1**

10 **INSERT 8-22: INSERT 3-12 TO INSERT 9-14 TO INSERT 8-22:**

11 , excluding sales to any accredited investor or institutional investor,

12 **INSERT 8-22: INSERT 3-18 TO INSERT 9-14 TO INSERT 8-22:**

13 exempt from registration under this section or s. 551.201

14 **INSERT 8-22: INSERT 9-19 TO INSERT 8-22:**

15 2. An offer or sale to an officer, director, partner, trustee, or individual  
16 occupying similar status or performing similar functions with respect to the issuer  
17 or to a person owning 10 percent or more of the outstanding shares of any class or  
18 classes of securities of the issuer does not count toward the monetary limitation in  
19 subd. 1.a. and 1. b.

20 **INSERT 8-22: INSERT 9-25 TO INSERT 8-22:**

21 (f) No general solicitation or general advertising is made in connection with the  
22 offer to sell or sale of the securities unless it has been permitted by the administrator.

23 **INSERT 8-22: INSERT 10-1 TO INSERT 8-22:**

24 , savings bank, savings and loan association, or credit union chartered under the  
25 laws of

1                   **INSERT 8-22: INSERT 10-6 TO INSERT 8-22:**  
2           , accompanied by the filing fee specified in s. 551.614 (1m). The administrator shall  
3           prescribe the form required for the notice and make the form available as an  
4           electronic document on the department of financial institutions Internet site.

5                   **INSERT 8-22: INSERT 10-14 TO INSERT 8-22:**  
6           , savings bank, savings and loan association, or credit union

7                                   **INSERT 9-7:**  
8           , accompanied by the filing fee specified in s. 551.614 (1m),

9                                   **INSERT 9-14:**  
10           d. Except as provided in subd. 2., that the Internet site operator is registered  
11           as a broker-dealer under s. 551.401.

12                                   **INSERT 9-15:**  
13           as a broker-dealer under s. 551.401<sup>e</sup>

14                                   **INSERT 9-24:**  
15           e. The fee it charges an issuer for an offering of securities on the Internet site  
16           is a fixed amount for each offering, a variable amount based on the length of time that  
17           the securities are offered on the Internet site, or a combination of such fixed and  
18           variable amounts.

19           f. It does not identify, promote, or otherwise refer to any individual security  
20           offered on the Internet site in any advertising for the Internet site.

21                                   **INSERT 10-2:**  
22           3. If any change occurs in the information that an Internet site operator  
23           submits to the division in a statement filed under subd. 1., the Internet site operator  
24           shall notify the division within 30 days after the change occurs.

25                                   **INSERT 10-22:**

1           **SECTION 1.** 551.206 of the statutes is created to read:

2   **INSERT 10-24:**

3           a. and 1. b. and (27) (c) 1. a. and 1. b.

4   **INSERT 11-3:**

5           **SECTION 2.** 551.401 (1) of the statutes is amended to read:

6           **551.401 (1) REGISTRATION REQUIREMENT.** It is unlawful for a person to transact  
7           business in this state as a broker-dealer unless the person is registered under this  
8           chapter as a broker-dealer or is exempt from registration as a broker-dealer under  
9           sub. (2) or (4) or s. 551.205 (1)(b) 2.

History: 2007 a. 196.

10   **INSERT 11-10:**

11           ↗ a nonrefundable filing fee of \$50 for every notice provided under s. 551.202 (27) (h),  
12           and a nonrefundable filing fee of \$100 for every statement filed under s. 551.205 (1)  
13           (b) 1.



# "RESEARCH APPENDIX"

... Drafting History Reproduction Request Form ...

DRAFTING ATTORNEYS: PLEASE COMPLETE THIS FORM AND GIVE TO MIKE BARMAN

(Request Made By: MDK) (Date: 7/28/13)

## Note:

**BOTH DRAFTS SHOULD HAVE THE SAME "REQUESTOR"**

(exception: companion bills)



Please transfer the drafting file for  
~~2011 LRB - 2190~~ (For: Rep. / Sen. Craig)  
2013 to the drafting file for

2013 LRB - 2664 (For: Rep. / Sen. Craig)

-----OR-----

Please copy the drafting file for  
2013 LRB \_\_\_\_\_ (include the version) (For: Rep. / Sen. \_\_\_\_\_)  
and place it in the drafting file for

2013 LRB \_\_\_\_\_ (For: Rep. / Sen. \_\_\_\_\_)

Are These "Companion Bills" ?? ... Yes No

If yes, who in the initial requestor's office authorized the copy/transfer of the drafting history ("guts") from the original file: \_\_\_\_\_

*gone*  
*amb*



State of Wisconsin  
2013 - 2014 LEGISLATURE



LRB-2190/1  
ARG:eev:jm

INSEPT 1A ;

**2013 BILL**

1 AN ACT to amend 551.102 (11) (o), 551.202 (13) (am), 551.202 (14) (a) (intro.) and  
2 551.202 (24); and to create 551.102 (1g) of the statutes; relating to:  
3 exemptions from securities registration requirements.

**Analysis by the Legislative Reference Bureau**

Under the Wisconsin Uniform Securities Law (WUSL), a person may not offer or sell any security in this state unless the security is registered with the Division of Securities in the Department of Financial Institutions (division), the security or transaction is exempt from registration, or the security is a federal covered security. Certain notice filing requirements may apply to federal covered securities. A "security" is defined broadly under the WUSL and includes stocks, notes, bonds, investment contracts, limited partnership interests, and certain other financial interests.

Under current law, certain securities transactions are exempt from registration with the division. Among these exempt transactions is a sale or offer to sell to an accredited investor, as defined under federal law. For purposes of this registration exemption, "accredited investor" includes, among others, banks or other financial institutions; federally registered broker-dealers; insurance companies; investment companies; private business development companies; certain persons having designated positions with the securities issuer; certain trusts with assets of more than \$5,000,000; and entities in which all of the equity owners are accredited investors. For purposes of this registration exemption, an "accredited investor" also includes any person who comes within any of the following categories, or whom the

**BILL**

INSEAT 1A (cont'd):

Securities

securities issuer reasonably believes comes within any of the following categories, at the time of the sale of the securities to that person: 1) any natural person who had an individual income in excess of \$200,000 in each of the two most recent years or joint income with that person's spouse in excess of \$300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year; or 2) any natural person whose individual net worth, or joint net worth with that person's spouse, exceeds \$1,000,000. For purposes of calculating net worth, the person's primary residence is generally not included as an asset and indebtedness secured by the residence is generally not included as a liability, but there are exceptions.

~~This bill creates a state law definition of "accredited investor" and changes the criteria for being an accredited investor as described in items 1) and 2), above, but only for purposes relating to this registration exemption.~~ For purposes of registration exemptions, This bill creates a state law definition of "accredited investor" and changes the criteria for being an accredited investor as described in items 1) and 2), above, but the individual income threshold in item 1), above, from \$200,000 to \$100,000 and lowers the joint income threshold in item 1), above, from \$300,000 to \$150,000. The bill also lowers the net worth threshold in item 2), above, from \$1,000,000 to \$750,000 and specifies that the net worth calculation includes the person's primary residence as both an asset and a liability.

Under current law, another securities transaction that is exempt from registration with the division is a sale or offer to sell to an institutional investor, as defined under state law. Current law defines "institutional investor" to include, among others, banks and other financial institutions; insurance companies; investment companies; federally registered broker-dealers; private business development companies meeting certain standards; certain qualified institutional buyers, as defined under federal law; and other entities of institutional character with assets of more than \$10,000,000.

This bill modifies this definition of "institutional investor," lowering the asset threshold for other entities of institutional character from \$10,000,000 to \$2,500,000. This change affects this registration exemption and also provisions in which: a broker-dealer is exempt from registration with the division if it engages in only certain transactions, including transactions with institutional investors; and, a federal covered investment adviser without a place of business in this state is exempt from notice filing with the division if it has only certain types of clients in this state, including institutional investors.

Under current law, another securities transaction that is exempt from registration with the division is a transaction pursuant to an offer directed to not more than 25 persons in this state, not including accredited investors and institutional investors, during a 12-month period if certain requirements are met, including that general solicitation or advertising is not made. The division may modify this registration exemption, including increasing or decreasing the number of offerees permitted.

This bill modifies this registration exemption to increase the number of offerees permitted from 25 persons to ~~100~~ persons. 50

Under current law, another securities transaction that is exempt from registration with the division is an offer or sale by a securities issuer having its

**BILL**

*INSEPT 1A (cont'd)*

principal office in this state of its securities if the aggregate number of persons holding all of the issuer's securities, after the securities to be issued are sold, does not exceed 25, not including accredited investors and institutional investors, and if certain other requirements are met, including that no advertising is published. *(same?)*

This bill modifies this registration exemption to increase the aggregate number of persons who may hold the issuer's securities from 25 persons to 100 persons. *(50)*

For further information see the ~~state fiscal estimate, which will be printed as an appendix to this bill.~~

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

1           SECTION 1. 551.102 (1g) of the statutes is created to read:

2           551.102 (1g) "Accredited investor," for purposes of s. 551.202 (13) (am) only, has

3           the meaning given in Rule 501 (a) (1), (2), (3), (4), (7), and (8) adopted under the

4           Securities Act of 1933 (17 CFR 230.501 (a) (1), (2), (3), (4), (7), and (8)) and also means

5           any person who comes within any of the following categories, or whom the issuer

6           reasonably believes comes within any of the following categories, at the time of the

7           sale of the securities to that person:

8           (a) 1. Subject to subd. 2., any natural person whose individual net worth, or

9           joint net worth with that person's spouse, exceeds \$750,000.

10          2. For purposes of calculating net worth under subd. 1., the person's primary

11          residence shall be included as an asset and indebtedness secured by the primary

12          residence shall be included as a liability. This subdivision does not apply to any

13          calculation of a person's net worth made in connection with a purchase of securities

14          in accordance with a right to purchase the securities if the right was held by the

15          person on July 20, 2010, the person qualified as an accredited investor under 17 CFR

16          230.501 (a) (5) on the basis of net worth at the time the person acquired the right, and

17          the person held securities of the same issuer, other than this right, on July 20, 2010.

*END OF INSEPT 1A*

INSERT 2C

five years for inflation, depending on whether the issuer has or has not, respectively, undergone a financial audit and made it available; 4) the issuer does not accept more than \$5,000 from any single purchaser unless the purchaser is an accredited investor; 5) the issuer files notice of the offering with the division at least ten days before commencing the offering or using any publicly available Internet site in connection with the offering, and the notice contains specified information, including a copy of a disclosure statement to be provided to prospective investors and an escrow agreement with a depository institution located in this state in which the investor funds will be deposited; 6) the issuer is not an investment company or an SEC reporting company; 7) the issuer informs all prospective purchasers that the securities have not been registered and are subject to limitations on resale, includes a specified legend conspicuously on the cover page of the disclosure document, requires each purchaser to sign a written acknowledgment containing certain information, and obtains from each purchaser evidence that the purchaser is a resident of this state; 8) all payments for purchase of securities are held by the issuer in the depository institution identified in the escrow agreement under 5), above; 9) a copy of the disclosure document provided to the division is given to each prospective investor at the time of the offer; and 10) the exemption is not used in conjunction with any other exemption to securities registration. The bill also requires the securities issuer to file a quarterly report with the division, and make it available to investors, for so long as securities issued under the exemption are outstanding.

If securities offered under this exemption will be sold through an Internet site, additional requirements apply. The Internet site is generally required to be registered with the division. Registration is accomplished by the Internet site provider filing a statement with the division that contains specified information. However, registration with the division is not required if all of the following apply with respect to the Internet site and its operator: 1) it does not offer investment advice or recommendations; 2) it does not solicit purchases, sales, or offers to buy securities; 3) it does not compensate persons for the solicitation or based on the sale of securities; 4) it is not compensated based on the amount of securities sold, and it does not hold, manage, possess, or otherwise handle investor funds or securities; 5) it does not engage in other activities prohibited by the division. The Internet site operator and the securities issuer must also maintain records of all offers and sales of securities effected through the Internet site and provide the division with access to these records on request.

The second transaction exemption to securities registration created by the bill is similar to the first. Under the second exemption, an offer or sale of a security by an issuer is exempt from registration if the offer or sale is conducted in accordance with specified requirements, including the following: 1) the issuer of the security is a business entity organized under the laws of this state and authorized to do business in this state; 2) the transaction meets exemption requirements under federal law and rules of the SEC for intrastate securities offerings; 3) ~~the amount of money to be received for all sales of the security in reliance on the exemption does not exceed \$1,000,000;~~ 4) the issuer does not accept more than \$5,000 from any single purchaser unless the purchaser is an accredited investor; 5) no commission or other

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*pays a \$50 fee and*

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*INSEAT 2C (cont'd)*

*IN SEAT 2A to INSEAT 2C*

*8*

*9*

*and 10)*

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remuneration is paid for any person's participation in the offer or sale of securities unless the person is registered as a broker-dealer or securities agent; (6) all funds received from investors are deposited into a depository institution authorized to do business in this state, and all the funds are used in accordance with representations made to investors; 7) before the use of any general solicitation or the sale of the security, the issuer provides a notice of the offering to the division containing specified information; 8) the issuer is not an investment company or an SEC reporting company; 9) the issuer informs all purchasers that the securities have not been registered and makes disclosures required by SEC rule, including disclosures related to limitations on resale of the securities; and 10) the exemption is not used in conjunction with any other exemption to securities registration.

For further information see the state fiscal estimate, which will be printed as an appendix to this bill.

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

1 SECTION 1. 227.01 (13) (zz) of the statutes is created to read:  
 2 227.01 (13) (zz) Adjusts, under s. 551.205 (3), the amounts specified in s.  
 3 551.202 (26) (c) 1. and 2.

4 SECTION 2. 551.202 (26) of the statutes is created to read:  
 5 551.202 (26) An offer or sale of a security by an issuer if the offer or sale is  
 6 conducted in accordance with all of the following requirements:

7 (a) The issuer of the security is a business entity organized under the laws of  
 8 this state and authorized to do business in this state.

9 (b) The transaction meets the requirements of the federal exemption for  
 10 intrastate offerings in section 3 (a) (11) of the Securities Act of 1933 (15 USC 77c (a)  
 11 (11)) and Rule 147 adopted under the Securities Act of 1933 (17 CFR 230.147).

12 (c) The sum of all cash and other consideration to be received for all sales of the  
 13 security in reliance on the exemption under this subsection does not exceed the  
 14 following amount:

*END OF INSEAT 2C*

**BILL**

INSEAT 3-2

principal office in this state of its securities if the aggregate number of persons holding all of the issuer's securities, after the securities to be issued are sold, does not exceed 25, not including accredited investors and institutional investors, and if certain other requirements are met, including that no advertising is published.

This bill modifies this registration exemption to increase the aggregate number of persons who may hold the issuer's securities from 25 persons to 100 persons.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

1 SECTION 1. 551.102 (1g) of the statutes is created to read:

INSEAT 2-2

2 551.102 (1g) "Accredited investor," ~~for purposes of s. 551.202 (18) (a) only,~~ has  
3 the meaning given in Rule 501 (a) (1), (2), (3), (4), (7), and (8) adopted under the  
4 Securities Act of 1933 (17 CFR 230.501 (a) (1), (2), (3), (4), (7), and (8)) and also means  
5 any person who comes within any of the following categories, or whom the issuer  
6 reasonably believes comes within any of the following categories, at the time of the  
7 sale of the securities to that person:

8 (a) 1. Subject to subd. 2., any natural person whose individual net worth, or  
9 joint net worth with that person's spouse, exceeds \$750,000.

10 2. For purposes of calculating net worth under subd. 1., the person's primary  
11 residence shall be included as an asset and indebtedness secured by the primary  
12 residence shall be included as a liability. This subdivision does not apply to any  
13 calculation of a person's net worth made in connection with a purchase of securities  
14 in accordance with a right to purchase the securities if the right was held by the  
15 person on July 20, 2010, the person qualified as an accredited investor under 17 CFR  
16 230.501 (a) (5) on the basis of net worth at the time the person acquired the right, and  
17 the person held securities of the same issuer, other than this right, on July 20, 2010.

BILL

INSEPT 3-2 (cont'd):

1 (b) Any natural person who had an individual income in excess of \$100,000 in  
2 each of the two most recent years or joint income with that person's spouse in excess  
3 of \$150,000 in each of those years and has a reasonable expectation of reaching the  
4 same income level in the current year.

5 SECTION 2. 551.102 (11) (o) of the statutes is amended to read:

6 551.102 (11) (o) Any other person, other than an individual, of institutional  
7 character with total assets in excess of ~~\$10,000,000~~ \$2,500,000 not organized for the  
8 specific purpose of evading this chapter.

9 SECTION 3. 551.202 (13) (am)<sup>(intro.)</sup> of the statutes is amended to read:

10 551.202 (13) (am)<sup>(intro.)</sup> An accredited investor, as defined in Rule 501 (a) adopted  
11 under the Securities Act of 1933 (17 CFR 230.501 (a)), provided that prior to the sale  
12 in this state to an accredited investor described in Rule 501 (a) (5) or (6) adopted  
13 under the Securities Act of 1933 s. 551.102 (1g) (a) or (b), the seller files a consent  
14 to service of process with the administrator in the form required under s. 551.611.  
15 Failure to file the consent as required is a cause for administrative action by the  
16 administrator under s. 551.604 but does not result in the loss of this exemption. This  
17 consent is not required to be filed if any of the following apply:

18 SECTION 4. 551.202 (14) (a) (intro.) of the statutes is amended to read:

19 551.202 (14) (a) (intro.) Subject to par. (b), any transaction pursuant to an offer  
20 directed by the offeror to not more than 25 ~~100~~ persons in this state excluding those  
21 persons designated in sub. (13) but including persons exempt under sub. (24), during  
22 any period of 12 consecutive months whether or not the offeror or any of the offerees  
23 is then present in this state if all of the following apply:

24 SECTION 5. 551.202 (24) of the statutes is amended to read:

50



**BILL**

50

INSEPT 3-2 (cont'd):

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551.202 (24) 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 25 ~~100~~ exclusive of persons under sub. (13), 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 division of securities.

**SECTION 6. Initial applicability.**

(1) This act first applies to securities offered or sold on the effective date of this subsection.

(END)

END. FINSEPT 3-2

INSEPT 8-27

1 (m) The exemption under this subsection is not used in conjunction with any  
2 other exemption under this section or s. 551.201, except that an offer or sale to an  
3 officer, director, partner, trustee, or individual occupying similar status or  
4 performing similar functions with respect to the issuer or to a person owning 10  
5 percent or more of the outstanding shares of any class or classes of securities of the  
6 issuer does not count toward the monetary limitation in par. (c) 1. and 2.

7 SECTION 3. 551.202 (27) of the statutes is created to read:

8 551.202 (27) An offer or sale of a security by an issuer if the offer or sale is  
9 conducted in accordance with all of the following requirements:

10 (a) The issuer of the security is a business entity organized under the laws of  
11 this state and authorized to do business in this state.

12 (b) The transaction meets the requirements of the federal exemption for  
13 intrastate offerings in section 3 (a) (11) of the Securities Act of 1933 (15 USC 77c (a)  
14 (11)) and Rule 147 adopted under the Securities Act of 1933 (17 CFR 230.147).

INSEPT  
9-14

15 (c) The sum of all cash and other consideration to be received for all sales of the  
16 security in reliance on the exemption under this subsection does not exceed  
17 \$1,000,000, less the aggregate amount received for all sales of securities by the issuer  
18 within the 12 months before the first offer or sale made in reliance on the exemption  
19 under this subsection.

INSEPT  
9-19

20 (d) The issuer does not accept more than \$5,000 from any single purchaser  
21 unless the purchaser is an accredited investor as defined in Rule 501 (a) adopted  
22 under the Securities Act of 1933 (17 CFR 230.501 (a)).

23 (e) No commission or other remuneration is paid or given, directly or indirectly,  
24 for any person's participation in the offer or sale of securities for the issuer unless the  
25 person is registered as a broker-dealer or agent under this chapter.

INSEPT 9-25

INSEAT 8-22 (cont'd)

1 ~~g~~ (f) All funds received from investors are deposited into a bank ~~or depository~~  
2 ~~institution authorized to do business in~~ this state, and all the funds are used in  
3 accordance with representations made to investors.

4 ~~h~~ (g) Before the use of any general solicitation of the <sup>100th</sup> ~~25th~~ sale of the security,  
5 ~~whichever occurs first,~~ the issuer provides a notice to the administrator in writing  
6 or in electronic form; <sup>INSEAT 10-6</sup> Notwithstanding s. 551.204 (1) and (3), the notice shall be  
7 limited to all of the following:

8 1. Stating that the issuer is conducting an offering in reliance on the exemption  
9 under this subsection.

10 2. Identifying the names and addresses of all of the following persons:

- 11 a. The issuer.
- 12 b. All persons who will be involved in the offer or sale of securities on behalf of
- 13 the issuer.
- 14 c. The bank <sup>INSEAT 10-14</sup> ~~or other depository institution~~ in which investor funds will be
- 15 deposited.

16 ~~i~~ (h) The issuer is not, either before or as a result of the offering, an investment  
17 company, as defined in section 3 of the Investment Company Act of 1940 (15 USC  
18 80a-3), or subject to the reporting requirements of section 13 or 15 (d) of the  
19 Securities Exchange Act of 1934 (15 USC 78m or 78o (d)).

20 ~~j~~ (i) The issuer informs all purchasers that the securities have not been  
21 registered under this chapter and makes the disclosures required under subsection  
22 (f) of Rule 147 adopted under the Securities Act of 1933 (17 CFR 230.147 (f)).

23 ~~k~~ (j) The exemption under this subsection is not used in conjunction with any  
24 other exemption under this section or s. 551.201, except that an offer or sale to an  
25 officer, director, partner, trustee, or individual occupying similar status or

EMD of INSEAT  
6-22

INSEAT  
10-1

INSEAT 9-14 to INSEAT 8-22

1 227.01 (13) (zz) Adjusts, under s. 551.205 (3), the amounts specified in s.  
2 551.202 (26) (c) 1. and 2.

3 SECTION 2. 551.202 (26) of the statutes is created to read:

4 551.202 (26) An offer or sale of a security by an issuer if the offer or sale is  
5 conducted in accordance with all of the following requirements:

6 (a) The issuer of the security is a business entity organized under the laws of  
7 this state and authorized to do business in this state.

8 (b) The transaction meets the requirements of the federal exemption for  
9 intrastate offerings in section 3 (a) (11) of the Securities Act of 1933 (15 USC 77c (a)  
10 (11)) and Rule 147 adopted under the Securities Act of 1933 (17 CFR 230.147).

11 (c) ~~The~~ sum of all cash and other consideration to be received for all sales of the  
12 security in reliance on the exemption under this subsection <sup>1. Except as provided in subd. 2.00</sup> does not exceed the  
13 following amount:

14 a. If the issuer has not undergone and made available to each prospective  
15 investor and the administrator the documentation resulting from a financial audit  
16 of its most recently completed fiscal year which complies with generally accepted  
17 accounting principles, \$1,000,000 subject to adjustment under s. ~~551.205~~ <sup>551.206</sup>, less the  
18 aggregate amount received for all sales of securities by the issuer within ~~12~~ <sup>6</sup>  
19 months before <sup>or after</sup> the first offer or sale made in reliance on the exemption under this  
20 subsection. INSEAT 3-18

21 b. If the issuer has undergone and made available to each prospective investor  
22 and the administrator the documentation resulting from a financial audit of its most  
23 recently completed fiscal year which complies with generally accepted accounting  
24 principles, \$2,000,000 subject to adjustment under s. ~~551.205 (B)~~ <sup>551.206</sup>, less the aggregate

↑ 2. A IS the parent - entire reliance deleted company own

INSEAT 3-12

INSEAT 9-14 to INSEAT 8-22 (cont'd):

1 amount received for all sales of securities by the issuer within the 12 months before  
2 the first offer or sale made in reliance on the exemption under this subsection.

3 ~~(d) The issuer does not accept more than \$5,000 from any single purchaser  
4 unless the purchaser is an accredited investor, as defined in Rule 501 (a) adopted  
5 under the Securities Act of 1933 (17 CFR 230.501 (a)).~~

6 ~~(e) The offering under this subsection is made exclusively through one or more  
7 Internet sites and each Internet site is registered with the division under s. 551.205  
8 (1) (b) 1. or exempt from registration under s. 551.205 (1) (b) 2.~~

9 ~~(f) Not less than 10 days prior to the commencement of an offering of securities  
10 in reliance on the exemption under this subsection, the issuer files a notice with the  
11 administrator, in writing or in electronic form as prescribed by the administrator,  
12 containing all of the following:~~

13 ~~1. A notice of claim of exemption from registration, specifying that the issuer  
14 will be conducting an offering in reliance on the exemption under this subsection,  
15 accompanied by the filing fee specified in s. 551.614 (1m).~~

16 ~~2. A copy of the disclosure statement to be provided to prospective investors in  
17 connection with the offering, containing all of the following:~~

18 ~~a. A description of the company, its type of entity, the address and telephone  
19 number of its principal office, its history, its business plan, and the intended use of  
20 the offering proceeds, including any amounts to be paid, as compensation or  
21 otherwise, to any owner, executive officer, director, managing member, or other  
22 person occupying a similar status or performing similar functions on behalf of the  
23 issuer.~~

24 ~~b. The identity of all persons owning more than 10 percent of the ownership  
25 interests of any class of securities of the company.~~

END OF INSEAT 9-14 to INSEAT 8-22

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**Kunkel, Mark**

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**From:** Schacht, Nathan  
**Sent:** Tuesday, July 30, 2013 3:26 PM  
**To:** Kunkel, Mark  
**Subject:** Final securities exemption for bill

**Importance:** High

Mark, please add the below exemption as well. When do you think we'll have the draft?

551.201(3)(d) A bank holding company, as defined in 12 USC 1841(a), or savings and loan holding company, as defined in 12 USC § 1467A(a)(1)(D), with no significant assets other than securities of one or more entities listed in pars (a), (b) and (c) and the subsidiaries of each such entity.

**Nathan Schacht**

Office of State Representative David Craig  
83rd Assembly District  
P: (608) 266-3363

E: [nathan.schacht@legis.wi.gov](mailto:nathan.schacht@legis.wi.gov)

NOTE: Emails sent to and from this account may be subject to open records requests and should not be considered private.

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\*\*\* Current through PL 113-22, approved 7/25/13 \*\*\*

TITLE 12. BANKS AND BANKING  
CHAPTER 17. BANK HOLDING COMPANIES

**Go to the United States Code Service Archive Directory**

12 USCS § 1841

§ 1841. Definitions

- (a)
- (1) Except as provided in paragraph (5) of this subsection, "bank holding company" means any company which has control over any bank or over any company that is or becomes a bank holding company by virtue of this Act.
- (2) Any company has control over a bank or over any company if--
- (A) the company directly or indirectly or acting through one or more other persons owns, controls, or has power to vote 25 per centum or more of any class of voting securities of the bank or company;
- (B) the company controls in any manner the election of a majority of the directors or trustees of the bank or company; or
- (C) the Board determines, after notice and opportunity for hearing, that the company directly or indirectly exercises a controlling influence over the management or policies of the bank or company.
- (3) For the purposes of any proceeding under paragraph (2)(C) of this subsection, there is a presumption that any company which directly or indirectly owns, controls, or has power to vote less than 5 per centum of any class of voting securities of a given bank or company does not have control over that bank or company.
- (4) In any administrative or judicial proceeding under this Act, other than a proceeding under paragraph (2)(C) of this subsection, a company may not be held to have had control over any given bank or company at any given time unless that company, at the time in question, directly or indirectly owned, controlled, or had power to vote 5 per centum or more of any class of voting securities of the bank or company, or had already been found to have control in a proceeding under paragraph (2)(C).
- (5) Notwithstanding any other provision of this subsection--
- (A) No bank and no company owning or controlling voting shares of a bank is a bank holding company by virtue of its ownership or control of shares in a fiduciary capacity, except as provided in paragraphs (2) and (3) of subsection (g) of this section. For the purpose of the preceding sentence, bank shares shall not be deemed to have been acquired in a fiduciary capacity if the acquiring bank or company has sole discretionary authority to exercise voting rights with respect thereto; except that this limitation is applicable in the case of a bank or company acquiring such shares prior to the date of enactment of the Bank Holding Company Act Amendments of 1970 [enacted Dec. 31, 1970] only if the bank or company has the right consistent with its obligations under the instrument, agreement, or other arrangement establishing the fiduciary relationship to divest itself of such voting rights and fails to exercise that right to divest within a reasonable period not to exceed one year after the date of enactment of the Bank Holding Company Act Amendments of 1970 [enacted Dec. 31, 1970].
- (B) No company is a bank holding company by virtue of its ownership or control of shares acquired by it in connection with its underwriting of securities if such shares are held only for such period of time as will permit the sale thereof on a reasonable basis.
- (C) No company formed for the sole purpose of participating in a proxy solicitation is a bank holding company by virtue of its control of voting rights of shares acquired in the course of such solicitation.

(D) No company is a bank holding company by virtue of its ownership or control of shares acquired in securing or collecting a debt previously contracted in good faith, until two years after the date of acquisition. The Board is authorized upon application by a company to extend, from time to time for not more than one year at a time, the two-year period referred to herein for disposing of any shares acquired by a company in the regular course of securing or collecting a debt previously contracted in good faith, if, in the Board's judgment, such an extension would not be detrimental to the public interest, but no such extension shall in the aggregate exceed three years.

(E) No company is a bank holding company by virtue of its ownership or control of any State-chartered bank or trust company which--

(i) is wholly owned by 1 or more thrift institutions or savings banks; and

(ii) is restricted to accepting--

(I) deposits from thrift institutions or savings banks;

(II) deposits arising out of the corporate business of the thrift institutions or savings banks that own the bank or trust company; or

(III) deposits of public moneys.

(F) No trust company or mutual savings bank which is an insured bank under the Federal Deposit Insurance Act is a bank holding company by virtue of its direct or indirect ownership or control of one bank located in the same State, if (i) such ownership or control existed on the date of enactment of the Bank Holding Company Act Amendments of 1970 [enacted Dec. 31, 1970] and is specifically authorized by applicable State law, and (ii) the trust company or mutual savings bank does not after that date acquire an interest in any company that, together with any other interest it holds in that company, will exceed 5 per centum of any class of the voting shares of that company, except that this limitation shall not be applicable to investments of the trust company or mutual savings bank, direct and indirect, which are otherwise in accordance with the limitations applicable to national banks under section 5136 of the Revised Statutes (12 USC § 24).

(6) For the purposes of this Act, any successor to a bank holding company shall be deemed to be a bank holding company from the date on which the predecessor company became a bank holding company.



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\*\*\* Current through PL 113-22, approved 7/25/13 \*\*\*

TITLE 12. BANKS AND BANKING  
CHAPTER 12. SAVINGS ASSOCIATIONS

**Go to the United States Code Service Archive Directory**

12 USCS § 1467a

§ 1467a. Regulation of holding companies

(a) Definitions.

(1) In general. As used in this section, unless the context otherwise requires—

....

(D) Savings and loan holding company.

(i) In general. Except as provided in clause (ii), the term "savings and loan holding company" means any company that directly or indirectly controls a savings association or that controls any other company that is a savings and loan holding company.

(ii) The term "savings and loan holding company" does not include--

(I) a bank holding company that is registered under, and subject to, the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.), or to any company directly or indirectly controlled by such company (other than a savings association);

(II) a company that controls a savings association that functions solely in a trust or fiduciary capacity as described in section 2(c)(2)(D) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)(D)); or

(III) a company described in subsection (c)(9)(C) solely by virtue of such company's control of an intermediate holding company established pursuant to section 10A [12 USCS § 1467b].