



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

Appendix A ... segment IV



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



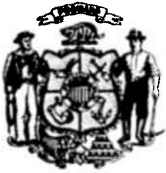
RESEARCH APPENDIX - **PLEASE KEEP WITH THE DRAFTING FILE**

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/P3
ARG&MDK:sac&eev:gc

O-NOTE

stays at P 3

by WED 7-31 NOON

Prof 7/31 Jm

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

INSEPT 1A

1 AN ACT to amend 551.102 (11) (c), 551.202 (13) (am), 551.202 (14) (a) (intro.),
2 551.202 (24) and 551.401 (1); and to create 227.01 (13) (zz), 551.102 (1g),
3 551.202 (26), 551.202 (27), 551.205, 551.206, 551.607 (2) (g) and 551.614 (1m)
4 of the statutes; relating to: exemptions from securities registration
5 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

INSEPT 1B

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 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.

For purposes of securities 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. The bill lowers 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 50 persons.

Under current law

INSE 7 3A

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 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 50 persons.

Also, this bill creates two additional transaction exemptions to securities registration. Under the first 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) 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; 4) the issuer does not accept more than \$5,000 from any single purchaser unless the purchaser is an accredited investor under state law; 5) the offering is made exclusively through an Internet site and the Internet site is registered with the division; 6) the issuer pays a \$50 fee and 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 financial institution chartered 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 financial institution identified in the above escrow agreement; and 10) a copy of the disclosure document provided to the division is given to each prospective investor at the time of the offer. 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.

In addition, all Internet sites through which the securities are offered are required to be registered with the division. Registration is accomplished by the Internet site operator paying a \$100 fee and filing a statement with the division that contains specified information. Also, the bill exempts the Internet site operator from registration with the division as a broker-dealer 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) the fee it charges for securities offerings satisfies specified requirements; 6) it complies with specified advertising restrictions; and 7) 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) 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; 4) the issuer does not accept more than \$5,000 from any single purchaser unless the purchaser is an accredited investor under state law; 5) no commission or other 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) unless permitted by the division, no general solicitation or general advertising is made for the securities; 7) all funds received from investors are deposited into a financial institution chartered in this state, and all the funds are used in accordance with representations made to investors; 8) before the 100th sale of the security, the issuer pays a \$50 fee and provides a notice of the offering to the division containing specified information; 9) the issuer is not an investment company or an SEC reporting company; and 10) 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.

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. 551.206, the amounts specified in s. 551.202
- 3 (26) (c) 1. a. and 1. b. and (27) (c) 1. a. and 1. b.
- 4 **SECTION 2.** 551.102 (1g) of the statutes is created to read:

1 551.102 (1g) "Accredited investor," except as provided in ss. 551.401 (2) (cm),
2 551.403 (2) (a) 2m., and 551.405 (2) (a) 2m., has the meaning given in Rule 501 (a)
3 (1), (2), (3), (4), (7), and (8) adopted under the Securities Act of 1933 (17 CFR 230.501
4 (a) (1), (2), (3), (4), (7), and (8)) and also means any person who comes within any of
5 the following categories, or whom the issuer reasonably believes comes within any
6 of the following categories, at the time of the sale of the securities to that person:

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

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

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

21 **SECTION 3.** 551.102 (11) (o) of the statutes is amended to read:
22 551.102 (11) (o) Any other person, other than an individual, of institutional
23 character with total assets in excess of ~~\$10,000,000~~ \$2,500,000 not organized for the
24 specific purpose of evading this chapter.

25 **SECTION 4.** 551.202 (13) (am) (intro.) of the statutes is amended to read:

INSEAT 5-24

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

9 **SECTION 5.** 551.202 (14) (a) (intro.) of the statutes is amended to read:

10 551.202 (14) (a) (intro.) Subject to par. (b), any transaction pursuant to an offer
11 directed by the offeror to not more than ~~25~~ 50 persons in this state excluding those
12 persons designated in sub. (13) but including persons exempt under sub. (24), during
13 any period of 12 consecutive months whether or not the offeror or any of the offerees
14 is then present in this state if all of the following apply:

15 **SECTION 6.** 551.202 (24) of the statutes is amended to read:

16 551.202 (24) Any offer or sale of its securities by an issuer, having its principal
17 office in this state, if the aggregate number of persons holding directly or indirectly
18 all of the issuer's securities, after the securities to be issued are sold, does not exceed
19 ~~25~~ 50, exclusive of persons under sub. (13), if no commission or other remuneration
20 is paid or given directly or indirectly for soliciting any person in this state, except to
21 broker-dealers and agents licensed in this state, and if no advertising is published
22 unless it has been permitted by the division of securities.

23 **SECTION 7.** 551.202 (26) of the statutes is created to read:

24 551.202 (26) An offer or sale of a security by an issuer if the offer or sale is
25 conducted in accordance with all of the following requirements:

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

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

6 (c) 1. Except as provided in subd. 2., the sum of all cash and other consideration
7 to be received for all sales of the security in reliance on the exemption under this
8 subsection, excluding sales to any accredited investor or institutional investor, does
9 not exceed the following amount:

10 a. If the issuer has not undergone and made available to each prospective
11 investor and the administrator the documentation resulting from a financial audit
12 of its most recently completed fiscal year which complies with generally accepted
13 accounting principles, \$1,000,000 subject to adjustment under s. 551.206, less the
14 aggregate amount received for all sales of securities exempt from registration under
15 this section or s. 551.201 by the issuer within 6 months before or 6 months after the
16 first offer or sale made in reliance on the exemption under this subsection.

17 b. If the issuer has undergone and made available to each prospective investor
18 and the administrator the documentation resulting from a financial audit of its most
19 recently completed fiscal year which complies with generally accepted accounting
20 principles, \$2,000,000 subject to adjustment under s. 551.206, less the aggregate
21 amount received for all sales of securities by the issuer within the 12 months before
22 the first offer or sale made in reliance on the exemption under this subsection.

23 2. An offer or sale to an officer, director, partner, trustee, or individual
24 occupying similar status or performing similar functions with respect to the issuer
25 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 (d) The issuer does not accept more than \$5,000 from any single purchaser
4 unless the purchaser is an accredited investor.

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

8 (f) Not less than 10 days prior to the commencement of an offering of securities
9 in reliance on the exemption under this subsection, the issuer files a notice with the
10 administrator, in writing or in electronic form as prescribed by the administrator,
11 which the administrator shall make available as an electronic document on the
12 department of financial institutions Internet site, 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.

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.

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

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

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

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

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

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

14 I UNDERSTAND AND ACKNOWLEDGE THAT:

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

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

21 The securities I am acquiring in this offering are illiquid, that there is no ready
22 market for the sale of such securities, that it may be difficult or impossible for me to
23 sell or otherwise dispose of this investment, and that, accordingly, I may be required
24 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 financial institution specified in par. (f) 3. The bank or
10 depository institution shall notify the administrator of the receipt of payments for
11 securities and the identity and residence of the investors. This information shall be
12 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 **SECTION 8.** 551.202 (27) of the statutes is created to read:

18 551.202 (27) An offer or sale of a security by an issuer if the offer or sale is
19 conducted in accordance with all of the following requirements:

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

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

1 (c) 1. Except as provided in subd. 2., the sum of all cash and other consideration
2 to be received for all sales of the security in reliance on the exemption under this
3 subsection, excluding sales to any accredited investor or institutional investor, does
4 not exceed the following amount:

5 a. If the issuer has not undergone and made available to each prospective
6 investor and the administrator the documentation resulting from a financial audit
7 of its most recently completed fiscal year which complies with generally accepted
8 accounting principles, \$1,000,000 subject to adjustment under s. 551.206, less the
9 aggregate amount received for all sales of securities exempt from registration under
10 this section or s. 551.201 by the issuer within 6 months before or 6 months after the
11 first offer or sale made in reliance on the exemption under this subsection.

12 b. If the issuer has undergone and made available to each prospective investor
13 and the administrator the documentation resulting from a financial audit of its most
14 recently completed fiscal year which complies with generally accepted accounting
15 principles, \$2,000,000 subject to adjustment under s. 551.206, less the aggregate
16 amount received for all sales of securities by the issuer within the 12 months before
17 the first offer or sale made in reliance on the exemption under this subsection.

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

23 (d) The issuer does not accept more than \$5,000 from any single purchaser
24 unless the purchaser is an accredited investor.

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

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

6 (g) All funds received from investors are deposited into a bank, savings bank,
7 savings and loan association, or credit union chartered under the laws of this state,
8 and all the funds are used in accordance with representations made to investors.

9 (h) Before the 100th sale of the security, the issuer provides a notice to the
10 administrator in writing or in electronic form, accompanied by the filing fee specified
11 in s. 551.614 (1m). The administrator shall prescribe the form required for the notice
12 and make the form available as an electronic document on the department of
13 financial institutions Internet site. Notwithstanding s. 551.204 (1) and (3), the
14 notice shall be limited to all of the following:

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

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

18 a. The issuer.

19 b. All persons who will be involved in the offer or sale of securities on behalf of
20 the issuer.

21 c. The bank, savings bank, savings and loan association, or credit union in
22 which investor funds will be deposited.

23 (i) The issuer is not, either before or as a result of the offering, an investment
24 company, as defined in section 3 of the Investment Company Act of 1940 (15 USC

1 80a-3), or subject to the reporting requirements of section 13 or 15 (d) of the
2 Securities Exchange Act of 1934 (15 USC 78m or 78o (d)).

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

6 SECTION 9. 551.205 of the statutes is created to read:

7 **551.205 Additional provisions related to crowdfunding exemption for**
8 **intrastate offerings through Internet sites.** (1) All of the following
9 requirements apply to an offer or sale of securities pursuant to the exemption under
10 s. 551.202 (26):

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

14 (b) 1. The Internet site operator shall register with the division by filing a
15 statement, accompanied by the filing fee specified in s. 551.614 (1m), that includes
16 all of the following:

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

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

21 c. The identity and location of, and contact information for, the Internet site
22 operator.

23 d. Except as provided in subd. 2., that the Internet site operator is registered
24 as a broker-dealer under s. 551.401.

1 2. The Internet site operator is not required to register as a broker-dealer
2 under s. 551.401 if all of the following apply with respect to the Internet site and its
3 operator:

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

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

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

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

12 e. The fee it charges an issuer for an offering of securities on the Internet site
13 is a fixed amount for each offering, a variable amount based on the length of time that
14 the securities are offered on the Internet site, or a combination of such fixed and
15 variable amounts.

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

18 g. It does not engage in such other activities as the division, by rule, determines
19 are prohibited of such an Internet site.

20 3. If any change occurs in the information that an Internet site operator
21 submits to the division in a statement filed under subd. 1., the Internet site operator
22 shall notify the division within 30 days after the change occurs.

23 (c) The issuer and the Internet site operator shall maintain records of all offers
24 and sales of securities effected through the Internet site and shall provide ready

1 access to the records to the division, upon request. The division may access, inspect,
2 and review any Internet site registered under this subsection as well as its records.

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

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

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

19 **SECTION 10.** 551.206 of the statutes is created to read:

20 **551.206 Adjustments.** At 5-year intervals after January 1, 2014, the division
21 shall adjust the monetary amounts specified in s. 551.202 (26) (c) 1. a. and 1. b. and
22 (27) (c) 1. a. and 1. b. to reflect changes since January 1, 2014, in the consumer price
23 index for all urban consumers, Milwaukee-Racine area average, as determined by
24 the U.S. department of labor. Each adjustment shall be rounded to the nearest

1 multiple of \$50,000. Each adjustment under this section shall be published on the
2 department of financial institutions Internet site.

3 **SECTION 11.** 551.401 (1) of the statutes is amended to read:

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

8 **SECTION 12.** 551.607 (2) (g) of the statutes is created to read:

9 551.607 (2) (g) Any record received under s. 551.202 (26) (k) relating to
10 payments for securities and the identity and residence of the investors.

11 **SECTION 13.** 551.614 (1m) of the statutes is created to read:

12 551.614 (1m) FILING FEES RELATING TO CERTAIN REGISTRATION EXEMPTIONS. There
13 shall be a nonrefundable filing fee of \$50 for every notice of claim of exemption filed
14 under s. 551.202 (26) (f) 1., a nonrefundable filing fee of \$50 for every notice provided
15 under s. 551.202 (27) (h), and a nonrefundable filing fee of \$100 for every statement
16 filed under s. 551.205 (1) (b) 1.

17 **SECTION 14. Initial applicability.**

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

20

(END)

DNote

2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2664/P3ins2
MDK:.....

1 no ¶

INSERT 1A:

This bill creates an exemption from registration for certain securities, revises requirements under current law regarding certain exempt transactions, and exempts additional transactions from registration.

Security exemption. Under current law, certain securities are exempt from registration with the division, including a security issued by certain banks or other depository institutions, if the security represents an interest in or direct obligation of the bank or other depository institution or if the security is guaranteed by the bank or other depository institution. This bill also exempts a security issued by a bank or savings and loan holding company, as defined under federal law, if the security represents an interest in or direct obligation of the holding company or if the security is guaranteed by the holding company. In addition, to qualify for the exemption, the holding company must have no significant assets other than the following: 1) securities issued by banks or other depository institutions that are exempt from registration under current law; and 2) securities issued by subsidiaries of such banks or other depository institutions.

2

INSERT 1B:

Exempt transactions under current law.

3

INSERT 3A:

Additional exempt transactions.

4

INSERT 5-24:

LPS: existing text continues on same line as insert, no new ¶. (same as in insert 1A)

5

SECTION 1. 551.201 (3) (d) of the statutes is created to read:

6

551.201 (3) (d) A bank holding company, as defined in 12 USC 1841 (a), or

7

savings and loan holding company, as defined in 12 USC 1467a (a) (1) (D), with no

8

significant assets other than securities of one or more entities specified in par. (a),

9

(b), or (c) or of one or more subsidiaries of such entities.

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2664/P3dn

MDK:j:...

- date -

See

Rep. Craig:

Please review this version to make sure it achieves your intent. In particular, note the following:

1. A bank or savings and loan holding company described in proposed s. 551.201 (3) (d) is a "target company" under s. 552.01 (6) (c). Is that okay?
2. I moved proposed s. 551.202 (26) (m) in LRB-2664/P2 to proposed s. 551.202 (26) (c) 2. Likewise, I moved proposed s. 551.202 (27) (j) in LRB-2664/P1 to proposed s. 551.202 (27) (c) 2.
3. Should the Division of Securities be required to make the Internet site operator filing statement available as an electronic document on DFI's Internet site? See proposed s. 551.205 (1) (b) 1.
4. Because proposed s. 551.205 (1) (b) 2. creates an exemption to broker-dealer registration for certain Internet site operators, I also amended s. 551.401 (1), which refers to broker-dealer registration exemptions. Do you also want to create exemptions to agent registration for agents of exempt Internet site operators? If so, you should consider whether you want to amend s. 551.402 (2) (b) or (f).
5. I moved proposed s. 551.205 (3) in the previous version to proposed s. 551.206, as the adjustment applies to the exemption under s. 551.202 (27), in addition to the exemption under s. 551.202 (26).

Mark D. Kunkel
Senior Legislative Attorney
Phone: (608) 266-0131
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**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2664/P3dn
MDK:sac:jm

July 31, 2013

Rep. Craig:

Please review this version to make sure it achieves your intent. In particular, note the following:

1. A bank or savings and loan holding company described in proposed s. 551.201 (3) (d) is a "target company" under s. 552.01 (6) (c). Is that okay?
2. I moved proposed s. 551.202 (26) (m) in LRB-2664/P2 to proposed s. 551.202 (26) (c) 2. Likewise, I moved proposed s. 551.202 (27) (j) in LRB-2664/P1 to proposed s. 551.202 (27) (c) 2.
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4. Because proposed s. 551.205 (1) (b) 2. creates an exemption to broker-dealer registration for certain Internet site operators, I also amended s. 551.401 (1), which refers to broker-dealer registration exemptions. Do you also want to create exemptions to agent registration for agents of exempt Internet site operators? If so, you should consider whether you want to amend s. 551.402 (2) (b) or (f).
5. I moved proposed s. 551.205 (3) in the previous version to proposed s. 551.206, as the adjustment applies to the exemption under s. 551.202 (27), in addition to the exemption under s. 551.202 (26).

Mark D. Kunkel
Senior Legislative Attorney
Phone: (608) 266-0131
E-mail: mark.kunkel@legis.wisconsin.gov

Kunkel, Mark

From: Schacht, Nathan
Sent: Friday, August 02, 2013 12:16 PM
To: Kunkel, Mark
Subject: Securities Bill Edits

Importance: High

Mark,

Need these changes made to 2664/P3 (please return a P4 as soon as possible).

Drafter's Note-

Yes to Q3 and Q4. Please make relevant changes to make those occur.

Section 4- Make the following change:

"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 specified in par. (a), (b), or (c) ~~or of one or more subsidiaries of such entities.~~"

Section 8 (page 12)-

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

Section 8, s. 551.202(26)(c)1.b. and Section 9, s. 551.202(27) (c)1.b.-

If the issuer has undergone and made available to each prospective investor and the administrator the documentation resulting from a financial audit of its most recently completed fiscal year which complies with generally accepted accounting principles, \$2,000,000 subject to adjustment under s. 551.206, ~~less the aggregate amount received for all sales of securities by the issuer within the 12 months before the first offer or sale made in reliance on the exemption under this subsection less the aggregate amount received for all sales of securities exempt from registration under this section or s. 551.201 by the issuer within 6 months before or 6 months after the first offer or sale made in reliance on the exemption under this subsection.~~

Question #1- Page 11, line 16-17. Mentions misrepresentation is a crime. Is it?

Question #2- Page 8, line 20. "is registered...under s. 551.205(1)(b)". Does it need to say "is registered, or exempt from registration,...under s. 551.205(1)(b)"?

Nathan Schacht

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

E: 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.

Kunkel, Mark

From: Schacht, Nathan
Sent: Friday, August 02, 2013 1:44 PM
To: Kunkel, Mark
Cc: Gary, Aaron
Subject: RE: Securities Bill Edits

Let's ignore my question for now and get the new draft done. I'm going to have at least 1 more edit by mid-next week, so if I can have an answer by then it would be fine.

Thanks.

Nathan Schacht
Office of State Representative David Craig

From: Kunkel, Mark
Sent: Friday, August 02, 2013 1:42 PM
To: Schacht, Nathan
Cc: Gary, Aaron
Subject: RE: Securities Bill Edits

Regarding Question 2 at the end of your email below, the answer is no, because in the P3 version, you eliminated the exemption from registration. Recall that in the P2 version of LRB-2664, an Internet site operator was required to register, unless the Internet site operator satisfied certain requirements. See page 9, line 6 of the P2, which refers to the exception which begins on page 9, line 15 of the P2. However, in the P3, you got rid of that exception to registration. Instead, you exempt in Internet site operator from registration as a broker-dealer if the requirements are satisfied. Compare the foregoing lines in the P2 with the material in the P3 beginning at page 16, line 1, and beginning at page 16, line 12.

Regarding Question 1, I will need to research that issue, and I don't know if I can get you the answer today. Note that Aaron is back in the office Monday morning, and he may be able to more answer the question.

You want the next version as soon as possible, and I can get that to you later today. If you need to make any changes based on the answer to Question 1, we could generate another version, if necessary, on Monday. Will that work for you?

--Mark

From: Schacht, Nathan
Sent: Friday, August 02, 2013 12:16 PM
To: Kunkel, Mark
Subject: Securities Bill Edits
Importance: High

Mark,

Need these changes made to 2664/P3 (please return a P4 as soon as possible).

Drafter's Note-
Yes to Q3 and Q4. Please make relevant changes to make those occur.

Section 4- Make the following change:

"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 specified in par. (a), (b), or (c) or of one or more subsidiaries of such entities."

Section 8 (page 12)-

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

Section 8, s. 551.202(26)(c)1.b. and Section 9, s. 551.202(27) (c)1.b.-

If the issuer has undergone and made available to each prospective investor and the administrator the documentation resulting from a financial audit of its most recently completed fiscal year which complies with generally accepted accounting principles, \$2,000,000 subject to adjustment under s. 551.206, ~~less the aggregate amount received for all sales of securities by the issuer within the 12 months before the first offer or sale made in reliance on the exemption under this subsection~~ less the aggregate amount received for all sales of securities exempt from registration under this section or s. 551.201 by the issuer within 6 months before or 6 months after the first offer or sale made in reliance on the exemption under this subsection.

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Nathan Schacht

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83rd Assembly District

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