

2013 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-AB350)

Received: 9/13/2013 Received By: agary
Wanted: As time permits Same as LRB:
For: David Craig (608) 266-3363 By/Representing: Nate Schacht
May Contact: Drafter: agary
Subject: Fin. Inst. - securities Addl. Drafters:
Extra Copies:

Submit via email: YES
Requester's email: Rep.Craig@legis.wisconsin.gov
Carbon copy (CC) to: aaron.gary@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Transaction exemptions from securities registration; intrastate offerings, crowdfunding, offerings through Internet sites; bank holding companies

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	agary 9/17/2013	evinz 9/18/2013		_____			
/P1	agary 9/19/2013	evinz 9/20/2013	rschluet 9/20/2013	_____	srose 9/18/2013		
/1				_____	sbasford 9/20/2013	sbasford 9/20/2013	

FE Sent For:

<END>

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FE Sent For:

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FE Sent For:

<END>

Gary, Aaron

From: Schacht, Nathan
Sent: Thursday, September 12, 2013 4:31 PM
To: Gary, Aaron
Subject: Sub-amendment to AB 350

Importance: High

Aaron,

Aaron, please draft a sub-amendment from the below instructions. I will have one more addition to the below by mid-day Monday. The final addition should be straight forward and will not impact any other portion of the bill. We would like a p-draft of the sub by COB next Wednesday (please let me know ASAP if that timeline is unworkable).

As always, please let me know if you have any questions or concerns.

Thank you,
Nate

Section 2- DELETE

-Create "Certified Investor" under 551.102.

- Define "certified investor" as:
 - Wisconsin resident.
 - Any of the following:
 - Net worth (joint or individual) of \$750,000 including equity in primary residence.
 - Individual income of \$100,000 or joint income of \$150,000. (both in two most recent years with the reasonable expectation of reaching the same income in the current year.)

-Create new exemption under 551.202

- New exemption:
 - A certified investor, or a person whom the issuer reasonably believes is a certified investor at the time of the sale of the security, provided that the offering meets the requirements of the federal exemption for intrastate offerings in Section 3(a)(11) of the Securities Act of 1933 (15 USC 77c(a)(11)) and Rule 147 adopted under the Securities Act of 1933 (17 CFR 230.147).

Section 4- DELETE

-Instead create an exemption for "bank holding companies, as defined in 12 USC 1841 (a), or savings and loan holding company, as defined in 12 USC 1467a (a) (1) (D)."

- As it relates to ch. 551, and admin rules regarding ch. 551, the exemption should do the following:
 - With respect to any financial statements required under Ch. 551, a bank holding company shall not be required to have such financial statements (i) prepared in accordance with generally accepted accounting principles; or (ii) examined and reported upon or reviewed by or compiled by an independent certified public accountant or other certified public accountant; and
 - A bank holding company whose securities have been registered under ch. 551, Stats, shall not be required to prepare or distribute to shareholders or provide to DFI at any time after such registration any financial statements, financial information, annual reports or other periodic reports in excess of those already required under sections 180.1620 and 180.1622, provided, however that every bank holding company whose securities have been registered under ch. 551, Stats and are held by 100 or more persons in this state, but none of whose securities are registered under section 12 of the securities exchange act of 1934 or exempted from registration by section 12 (g) (2) (B) or (G) thereof, shall distribute to the security holders not more than 120 days after the end of each fiscal year the annual financial statements prepared pursuant to section 180.1620.

Section 5- DELETE

Section 6- DELETE

-Instead create another exemption in 551.202 allowing offerings to 100 persons (exempting certified investors) IF the potential transaction would meet the requirements of the federal exemption for intrastate offerings in section 3 (a) (11) of the Securities Act of 1933 (15 USC 77c (a) (11)) and Rule 147 adopted under the Securities Act of 1933 (17 CFR 230.147). Add as requirements of the offerings that page 14, lines 17 through 21 are met. Also add that this exemption can be used in conjunction with the exemption created in section 9.

Section 7- DELETE

-Instead add provision to 551.202(24) increasing the 25 person limit to 100 (exempting certified investors) IF both the issuer and investor meet intrastate offerings in section 3 (a) (11) of the Securities Act of 1933 (15 USC 77c (a) (11)) and Rule 147 adopted under the Securities Act of 1933 (17 CFR 230.147).

Section 8

-Add the following to page 12, lines 7-8

- I am investing in a high-risk, speculative business venture. I may lose all of my investment, or under some circumstances more than my investment, and I can afford the loss of my investment.

Section 8 and 9

-Exempt certified investors from the limits in both of these sections (the same as currently is done for accredited investors).

Section 9

-Exempt certified investors from page 14, lines 17 through 19 restriction.

-Add a line about this exemption being able to be used in conjunction with exemption we create under section 6 above.

-Change "sale" to "offer" in line 1, page 15.

Section 10

- 551.202(26)(b)2 add:
 - *It is not required to register as a broker-dealer under the Securities Exchange Act of 1934.*
- 551.202(26)(b)2 add a provision that the division, by rule, may allow commissions if a future SEC rule allows for such while maintaining the exemption from federal broker-dealer registration. (we only want to allow the commission if it wouldn't bring the portal under SEC authority because of the fee structure change).

Section 11

- Line 13, change "division" to "Department of Financial Institutions".

Section 18

- Sections 8, 9, 10 should first apply 180 days after the effective date of the bill. All other sections should apply on the effective date of the bill.

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.

Gary, Aaron

From: Schacht, Nathan
Sent: Friday, September 13, 2013 10:55 AM
To: Gary, Aaron
Subject: RE: Sub-amendment to AB 350

Aaron, no need for an analysis as Rep. Craig wants an LC memo explaining the changes. I've given Scott Grosz our drafting instructions, which between that and maybe a phone call to you can get him enough info for the memo.

- 1- Yes, please include both.
- 2- Yes, please include both.
- 3- 1st day of 7th month works just fine.

I should have the other tweaks sometime today. Thanks.

Nathan Schacht
Office of State Representative David Craig

From: Gary, Aaron
Sent: Friday, September 13, 2013 10:52 AM
To: Schacht, Nathan
Subject: RE: Sub-amendment to AB 350

Nate,

I have entered this request as LRBs0114. I think I can meet this deadline but I can't promise. It is hard to tell exactly how long this will take until I start drafting it, and I do have another urgent request I'm working on, plus a bunch of amendments for upcoming hearings. Next Tuesday is also a senate floor period, and I expect some drafting for that (floor period activity takes priority for both drafters and support staff). If I'm in a time crunch, the sub might not have an analysis.

I do have a couple of questions about the instructions below.

1. For section 4 below, you refer to both bank holding companies and S&L holding companies, but the language below that refers only to bank holding companies. I assume you want it to apply to S&L holding companies also, right?
2. Sections 8 and 9: You want me to keep accredited investor in the sub, but also add certified investor, right?
3. Section 18: Typically we would write such a delayed effective date as the 1st day of the 7th month beginning after publication, so that it goes into effect at the beginning of a month, but I could use 180th day if that is what you want.

Aaron

Aaron R. Gary
Attorney, Legislative Reference Bureau
608.261.6926 (voice)
608.264.6948 (fax)
aaron.gary@legis.state.wi.us

From: Schacht, Nathan
Sent: Thursday, September 12, 2013 4:31 PM
To: Gary, Aaron

Gary, Aaron

From: Schacht, Nathan
Sent: Tuesday, September 17, 2013 1:15 PM
To: Gary, Aaron
Subject: RE: Sub-amendment to AB 350

Let's just leave it out. I'm thinking your 1st thought may be correct in that it is outdated.

Nathan Schacht
Office of State Representative David Craig

From: Gary, Aaron
Sent: Tuesday, September 17, 2013 1:09 PM
To: Schacht, Nathan
Subject: RE: Sub-amendment to AB 350

Our emails crossed. That sounds fine. I will proceed accordingly unless I hear differently. (Another possibility is just to refer to section 12 (g) (2) without specifying an alpha. This is a very minor issue, I think.)

Aaron

Aaron R. Gary
Attorney, Legislative Reference Bureau
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aaron.gary@legis.state.wi.us

From: Schacht, Nathan
Sent: Tuesday, September 17, 2013 12:23 PM
To: Gary, Aaron
Subject: RE: Sub-amendment to AB 350
Importance: High

Aaron,

Let's do this-

Section 4- DELETE

-Instead create an exemption for "bank holding companies, as defined in 12 USC 1841 (a), or savings and loan holding company, as defined in 12 USC 1467a (a) (1) (D)."

- As it relates to ch. 551, and admin rules regarding ch. 551, the exemption should do the following:
 - With respect to any financial statements required under Ch. 551, a bank holding company shall not be required to have such financial statements (i) prepared in accordance with generally accepted accounting principles; or (ii) examined and reported upon or reviewed by or compiled by an independent certified public accountant or other certified public accountant; and
 - A bank holding company whose securities have been registered under ch. 551, Stats, shall not be required to prepare or distribute to shareholders or provide to DFI at any time after such registration any financial statements, financial information, annual reports or other periodic reports in excess of those already required under sections 180.1620 and 180.1622, provided, however that every bank holding company whose securities have been registered under ch. 551, Stats and are held by 100 or more persons in this state, but none of whose securities are registered under section 12 of the securities exchange act of 1934 or ~~exempted from registration by section 12 (g) (2) (B) or (G) thereof~~, shall

distribute to the security holders not more than 120 days after the end of each fiscal year the annual financial statements prepared pursuant to section 180.1620.

This is all I have for now. Any additions we'll take care of after I have the p-draft.

Thanks.

Nathan Schacht
Office of State Representative David Craig

From: Gary, Aaron
Sent: Tuesday, September 17, 2013 10:54 AM
To: Schacht, Nathan
Subject: RE: Sub-amendment to AB 350

Thanks.

You indicated there would be an additional piece coming. Is that still the case?

Aaron

From: Schacht, Nathan
Sent: Tuesday, September 17, 2013 9:44 AM
To: Gary, Aaron
Subject: RE: Sub-amendment to AB 350
Importance: High

Aaron,

My apologies for not getting back to you yesterday, was out due to a family issue.

Regarding Sec 10 federal broker-dealer language, you are correct, meant to reference 551.205. Page 16, line 23-Page 17, line 13, is where I would add the language about federal broker-dealer reg. Our intent is that this serves as a notice to the internet site that they should make sure they don't have to be federally registered broker-dealers as well so they do not violate federal law.

Regarding the commissions, yes the intent is to allow commissions if the feds change in the future the ability of non-broker-dealers to collect commissions. The intent of the limits we place on the portal are an attempt to make sure these portals do not act as a broker-dealer, and from my understanding, collecting a commission is currently a flag that they are a broker-dealer to the SEC. If they change that standard, we'd like the stats changed as well.

Will have an answer to the bank holding reference shortly.

Nathan Schacht
Office of State Representative David Craig

From: Gary, Aaron
Sent: Monday, September 16, 2013 10:57 AM
To: Schacht, Nathan
Subject: RE: Sub-amendment to AB 350

Nate,

Another question.

On section 4, regarding the language I highlighted in red, I realize this language largely tracks DFI's rules, but the cross-references for the exemptions don't seem to be accurate. I suspect they are outdated – they refer to provisions relating to investment companies and insurance companies, which I wouldn't think a bank holding company would be. Is it the intent to instead refer to section 12 (g) (2) (C) or (H) [15 USC 78I (g) (2) (C) or (H)]?

Thanks. Aaron

Aaron R. Gary
Attorney, Legislative Reference Bureau
608.261.6926 (voice)
608.264.6948 (fax)
aaron.gary@legis.state.wi.us

From: Gary, Aaron
Sent: Friday, September 13, 2013 4:46 PM
To: Schacht, Nathan
Subject: RE: Sub-amendment to AB 350

Nate,

I am having difficulty understanding the instructions regarding section 10.

First, because this is identified as section 10 in your notes below, I assume you meant to refer to the provisions of s. 551.205 (not 551.202 (26)) as needing modification.

Under the bill, the Internet site operator must register with DFI. The Internet site operator must show that it is also registered as a broker-dealer with DFI unless the exception applies. See p. 16, lines 18-19. Is this (p. 16, lines 18-19) where you propose to add the language that the site operator is not required to be registered as a broker-dealer under federal law? Or did you want that added at p. 16, line 21? [And I'm wondering why such language should be added when the state has no say as to whether the site operator is required to be registered as a broker dealer under federal law? i.e. this added language would seem to do nothing] Or did you want to modify p. 16, line 19 to say that the site operator is registered as a broker dealer under state law [551.401] or under federal law?

In your next instruction for section 10 relating to commissions: as discussed above, the context of that provision is to create an exception describing when the Internet site operator is not required to register as a broker-dealer under state law. Is it your intent that p. 17, lines 1 to 9 be modified so that the site operator can accept commissions without losing the exception and having to register with DFI as a broker-dealer if a future SEC rule allows a similar registration exemption for federal broker dealer registration?

I guess the bottom line is that I'm finding the instructions too cryptic to draft, so can you please provide some clarification of the intent?

Thanks. Aaron

Aaron R. Gary
Attorney, Legislative Reference Bureau
608.261.6926 (voice)
608.264.6948 (fax)
aaron.gary@legis.state.wi.us

From: Schacht, Nathan
Sent: Friday, September 13, 2013 11:36 AM
To: Gary, Aaron
Subject: RE: Sub-amendment to AB 350

Aaron,

Just caught a mistake on my end. Please make this change:

Section 7- DELETE

~~-Instead add provision to 551.202(24) increasing the 25 person limit to 100 (exempting certified investors) IF both the issuer and investor meet intrastate offerings in section 3 (a) (11) of the Securities Act of 1933 (15 USC 77c (a) (11)) and Rule 147 adopted under the Securities Act of 1933 (17 CFR 230.147) the investor is a Wisconsin resident and the business is organized under the laws of this state, authorized to do business in this state and has its principal office in this state. This should have a 12 month period on it just like 551.202(14).~~

Thanks.

Nathan Schacht
Office of State Representative David Craig

From: Gary, Aaron
Sent: Friday, September 13, 2013 10:52 AM
To: Schacht, Nathan
Subject: RE: Sub-amendment to AB 350

Nate,

I have entered this request as LRBs0114. I think I can meet this deadline but I can't promise. It is hard to tell exactly how long this will take until I start drafting it, and I do have another urgent request I'm working on, plus a bunch of amendments for upcoming hearings. Next Tuesday is also a senate floor period, and I expect some drafting for that (floor period activity takes priority for both drafters and support staff). If I'm in a time crunch, the sub might not have an analysis.

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Aaron

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From: Schacht, Nathan
Sent: Thursday, September 12, 2013 4:31 PM
To: Gary, Aaron
Subject: Sub-amendment to AB 350
Importance: High

Aaron,

Gary, Aaron

From: Gary, Aaron
Sent: Tuesday, September 17, 2013 1:07 PM
To: Schacht, Nathan
Subject: RE: Sub-amendment to AB 350

see email - emails crossed
9/17 1:09 pm

Regarding the message just below:

The DFI rule from which these references derive provides an exception from the requirement that state-registered issuers distribute annual reports to shareholders. The exception applies if the securities issuer either 1) has any securities federally registered with the SEC or 2) is exempt from federal registration under two specific exceptions, one for registered investment companies and the other for insurance companies meeting certain requirements.

I question whether a bank holding company would ever be an "investment company," which is primarily an issuer which—

(A) is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities;
(defined in 15 USC 80a-3), like a mutual fund.

I'm not sure what the limitations are on bank holding companies, so I don't know if the bank holding company could be an insurance company or not (presumably yes).

Looking at this again, I don't believe the DFI cross-references are inaccurate. But the DFI rule was not focused on bank holding companies. I just wonder if it makes sense to include these references [(B) and (G)] in statutes that only apply to bank holding companies. Also, would referencing other exceptions [(C) and (H), below] from federal registration also make sense. These exceptions are for:

(C) any security, other than permanent stock, guaranty stock, permanent reserve stock, or any similar certificate evidencing nonwithdrawable capital, issued by a savings and loan association, building and loan association, cooperative bank, homestead association, or similar institution, which is supervised and examined by State or Federal authority having supervision over any such institution.

(H) any interest or participation in any collective trust funds maintained by a bank or in a separate account maintained by an insurance company which interest or participation is issued in connection with

(i) a stock-bonus, pension, or profit-sharing plan which meets the requirements for qualification under section 401 of title 26,
(ii) an annuity plan which meets the requirements for deduction of the employer's contribution under section 404(a)(2) of title 26, or
(iii) a church plan, company, or account that is excluded from the definition of an investment company under section 80a-3(c)(14) of this title.

There is no harm in being over-inclusive, so maybe I'll just include all of these references to the SEA of 1934 for now.

Aaron

Aaron R. Gary
Attorney, Legislative Reference Bureau
608.261.6926 (voice)

From: Gary, Aaron
Sent: Monday, September 16, 2013 10:57 AM
To: Schacht, Nathan
Subject: RE: Sub-amendment to AB 350

Nate,

Another question.

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Thanks. Aaron

INSTRUCTIONS

Section 4- DELETE

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 - A bank holding company whose securities have been registered under ch. 551, Stats, shall not be required to prepare or distribute to shareholders or provide to DFI at any time after such registration any financial statements, financial information, annual reports or other periodic reports in excess of those already required under sections 180.1620 and 180.1622, provided, however that every bank holding company whose securities have been registered under ch. 551, Stats and are held by 100 or more persons in this state, but none of whose securities are registered under section 12 of the securities exchange act of 1934 or exempted from registration by section 12 (g) (2) (B) or (G) thereof, shall distribute to the security holders not more than 120 days after the end of each fiscal year the annual financial statements prepared pursuant to section 180.1620.

Gary, Aaron

From: Schacht, Nathan
Sent: Tuesday, September 17, 2013 3:41 PM
To: Gary, Aaron
Subject: addition to sub for AB 350

Aaron,

If you haven't finished the draft please add these to d. (page 9, line 20).

- Price per share, unit, or interest.
- Restrictions on transfers.
- Disclosure of anticipated future issuance of shares or units, which may dilute the value of existing shares or units.

If you're done with the draft these can wait.

Thanks,
Nate

Nathan Schacht

Office of State Representative David Craig

83rd Assembly District

P: (608) 266-3363

E: nathan.schacht@legis.wi.gov

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