

LEGISLATIVE BILL 894

Approved by the Governor February 19, 1998.

Introduced by Executive Board: Coordsen, 32, Chairperson

AN ACT relating to the Securities Act of Nebraska; to amend sections 8-1105, 8-1113, 8-1116, 8-1117, 8-1121, 8-1122, and 70-734, Reissue Revised Statutes of Nebraska; to eliminate references to a repealed section; to harmonize provisions; and to repeal the original sections.
Be it enacted by the people of the State of Nebraska,

Section 1. Section 8-1105, Reissue Revised Statutes of Nebraska, is amended to read:

8-1105. (1) The following securities may be registered by notification, whether or not they are also eligible for registration by coordination under section 8-1106:

(a) Any security whose issuer and any predecessors have been in continuous operation for at least five years if:

(i) There has been no default during the current fiscal year or within the three preceding fiscal years in the payment of principal, interest, or dividends on any security of the issuer or any predecessor with a fixed maturity or a fixed interest or dividend provision; and

(ii) The issuer and any predecessors during the past three fiscal years have had average net earnings, determined in accordance with generally accepted accounting practices, which are applicable to all securities without a fixed maturity or a fixed interest or dividend provision and which equal at least five percent of the amount of securities without a fixed maturity or a fixed interest or dividend provision outstanding at the date the registration statement is filed, as measured by the maximum offering price or the market price on a day selected by the registrant within thirty days before the date of filing the registration statement, whichever is higher, or if there is neither a readily determinable market price nor an offering price, book value on a day selected by the registrant within ninety days of the date of filing the registration statement, or if the issuer and any predecessors have not had any securities without a fixed maturity or a fixed interest or dividend provision outstanding for three full fiscal years, equal to at least five percent of the amount, as measured by the maximum public offering price, of such securities which will be outstanding if all the securities being offered or proposed to be offered, whether or not they are proposed to be registered or offered in this state, are issued; and

(b) Any security, other than a certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease, registered for nonissuer distribution if any security of the same class has ever been registered under sections 8-1101 to 8-1124 the Securities Act of Nebraska or a predecessor act, or the security being registered was originally issued pursuant to an exemption under the provisions of sections 8-1101 to 8-1124 Securities Act of Nebraska or a predecessor act.

(2) A registration statement under this section shall contain the following information and be accompanied by the following documents, in addition to payment of the registration fee prescribed in section 8-1108 and, if required under section 8-1112, a consent to service of process meeting the requirements of that section:

(a) A statement demonstrating eligibility for registration by notification;

(b) With respect to the issuer: Its name, address, and form of organization; the state or foreign jurisdiction; and the date of its organization; and the general character and location of its business;

(c) A description of the securities being registered;

(d) Total amount of securities to be offered and amount of securities to be offered in this state;

(e) The price at which the securities are to be offered for sale to the public; any variation therefrom at which any portion of the offering is to be made to any persons, other than as underwriting and selling discounts or commissions; and the estimated maximum aggregate underwriting and selling discounts or commissions and finders' fees including cash, securities, or anything else of value;

(f) Names and addresses of the managing underwriters and a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter;

(g) Description of any security options outstanding or to be created in connection with the offering;

(h) Any adverse order, judgment, or decree previously entered in connection with the offering by any court or the Securities and Exchange Commission;

(i) A copy of any offering circular or prospectus to be used in connection with the offering; and

(j) In the case of any registration under subdivision (1)(b) of this section which does not also satisfy the conditions of subdivision (1)(a) of this section, a balance sheet of the issuer as of a date within four months prior to the filing of the registration statement, and a summary of earnings for each of the two fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessors' existence if less than two years.

(3) If no stop order is in effect and no proceeding is pending under section 8-1109, a registration statement under this section shall automatically become effective at 3 o'clock Central Standard Time in the afternoon of the second full business day after the filing of the registration statement or the last amendment, or at such earlier time as the director shall determine.

Sec. 2. Section 8-1113, Reissue Revised Statutes of Nebraska, is amended to read:

8-1113. It shall be unlawful for any person to make or cause to be made, in any document filed with the director or in any proceeding under sections 8-1101 to 8-1124 the Securities Act of Nebraska, any statement which is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect.

Sec. 3. Section 8-1116, Reissue Revised Statutes of Nebraska, is amended to read:

8-1116. Whenever it shall appear appears to the director that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of sections 8-1101 to 8-1124 the Securities Act of Nebraska or any rule or order under sections 8-1101 to 8-1124, he the act, the director may in his or her discretion bring an action in any court of competent jurisdiction to enjoin any such acts or practices and to enforce compliance with sections 8-1101 to 8-1124 the Securities Act of Nebraska or any rule or order under sections 8-1101 to 8-1124 the act. Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant's assets. The director may not be required to post a bond.

Sec. 4. Section 8-1117, Reissue Revised Statutes of Nebraska, is amended to read:

8-1117. (1) Any person who willfully violates any provision of sections 8-1101 to 8-1124 the Securities Act of Nebraska except section 8-1113, or who willfully violates any rule or order under the provisions of sections 8-1101 to 8-1124 act, or who willfully violates the provisions of section 8-1113 knowing the statement made to be false or misleading in any material respect shall be guilty of a Class IV felony. No indictment may be returned or information filed under sections 8-1101 to 8-1124 the act more than five years after the alleged violation.

(2) The director may refer such evidence as may be available concerning violations of sections 8-1101 to 8-1124 the act or of any rule or order under sections 8-1101 to 8-1124 the act to the Attorney General or the proper county attorney, who may in his or her discretion, with or without such a reference, institute the appropriate criminal proceedings under the provisions of sections 8-1101 to 8-1124 act.

(3) Nothing in sections 8-1101 to 8-1124 the act shall limit the power of the state to punish any person for any conduct which constitutes a crime by statute or at common law.

Sec. 5. Section 8-1121, Reissue Revised Statutes of Nebraska, is amended to read:

8-1121. In any proceeding under the provisions of sections 8-1101 to 8-1124 Securities Act of Nebraska, the burden of proving an exemption or an exception from a definition shall be upon the person claiming it.

Sec. 6. Section 8-1122, Reissue Revised Statutes of Nebraska, is amended to read:

8-1122. Sections 8-1101 to 8-1124 The Securities Act of Nebraska shall be so construed as to effectuate their its general purpose to make uniform the law of those states which enact them it and to coordinate the interpretation and administration of sections 8-1101 to 8-1124 the act with the related federal regulation.

Sec. 7. Section 70-734, Reissue Revised Statutes of Nebraska, is amended to read:

70-734. Whenever any corporation organized under sections 70-701 to 70-738 ~~shall have the Electric Cooperative Corporation Act~~ has borrowed money from any federal agency, the obligations issued to secure the payment of such money shall be exempt from the provisions of sections 8-1101 to 8-1124, ~~nor shall the provisions of said sections the Securities Act of Nebraska, and the act shall not apply to the issuance of membership certificates.~~

Sec. 8. Original sections 8-1105, 8-1113, 8-1116, 8-1117, 8-1121, 8-1122, and 70-734, Reissue Revised Statutes of Nebraska, are repealed.