

One Hundred Fifth Legislature - First Session - 2017

Introducer's Statement of Intent

LB148

Chairperson: Senator Brett Lindstrom

Committee: Banking, Commerce and Insurance

Date of Hearing: January 31, 2017

The following constitutes the reasons for this bill and the purposes which are sought to be accomplished thereby:

LB 148 is the product of Legislative Resolution 431 from the Second Session of the One Hundred Fourth Legislature. The purpose of 2016's LR 431 was to study whether the Securities Act of Nebraska should be updated." Over the interim, the Banking, Commerce & Insurance Committee assembled a working group including Senators, Committee staff, the Department of Banking and Finance, and interested stakeholders, to conduct a review of the Securities Act of Nebraska. LB 148 incorporates the recommendations of the working group for amendments to the Securities Act of Nebraska as follows:

AMENDED DEFINITIONS

LB 148 would update the definitions in Section 8-1101. Specifically, the definition of broker-dealer would be amended to exclude from the definition certain entities that make sales to credit unions, and to exclude certain Canadian broker-dealers. LB 148 also proposes to add a definition of "Department" to the Act.

PROVIDE FOR FIXED DATES FOR CROSS REFERENCED FEDERAL ACTS AND REGULATION

LB 148 would update the cross-referenced federal statutes to refer to those statutes as they existed on January 1, 2017. LB 148 proposes to add a new section which provides that all references to federal rules or regulations adopted under the Investment Advisors Act of 1940 or the Securities Act of 1933 mean those rules and regulations as they existed on January 1, 2017, with the exception of Rule 147 and Rule 147A adopted under the Securities Act of 1933. On October 26, 2016, the SEC unanimously adopted new Rule 147A and amended Rule 147. These rules will become effective on April 20, 2016; thus this section references the date that the rules were published in the Federal Register, November 21, 2016.

CLARIFICATION OF DEPARTMENT'S ENFORCEMENT AUTHORITY WITH RESPECT TO REGISTERED ENTITIES

LB 148 proposes a number of amendments to clarify the Department's enforcement authority with regards to broker-dealers, issuer-dealers, investment advisers, and investment adviser representatives. Section 8-11103(9)(a) would be amended to clarify that the Director can initiate an enforcement action against a registered entity for failure to cooperate with an examination. Further, Section 8-1103(9)(a) would be amended by adding a new subdivision to provide that the Director may by rule and regulation, or order, determine that a violation of any provision of fair practices or ethical rules or standards adopted by the Securities and Exchange Commission or the Financial Industry Regulatory Authority constitute a dishonest or unethical practice in the securities or commodities business. Finally, a new section 8-1103(10)(b) would be added which would authorize the Director to issue a notice of abandonment if an applicant for registration fails to respond to a notice or notices from the Department to correct deficiencies within one hundred twenty days.

CLARIFICATION OF REQUIREMENTS FOR ISSUERS REGISTERING SECURITIES BY QUALIFICATION

LB 148 proposes to amend Section 8-1107 by requiring issuers seeking to register securities by qualification with the Department to submit signed consents from any person who is named in the registration statement as having prepared or certified any report or valuation used in connection with the registration. This would include, but not be limited to, any accountant, engineer, or appraiser. This section would be further amended to clarify the information that must be included with the prospectus provided by the issuer to prospective investors.

AMENDING PROVISIONS GOVERNING EXEMPTIONS FROM REGISTRATION

LB 148 proposes a number of amendments to Sections 8-1110 and 8-1111, which contain the exemptions from registration requirements of the Act. These amendments would make it easier for issuers seeking to raise capital to do so without having to register their securities with the Department, while preserving the important investor protections contained in the Act.

Section 12 of LB 148 would amend Section 8-1110 by updating the exchange exemption in Section 8-1110(5). The amendment would provide an exemption for any security that is a federal covered security under Section 18(b)(1) of the Securities Act of 1933, which are securities issued by issuers who have securities listed on an exchange approved by the Securities and Exchange Commission. The amendment would authorize the director to approve additional exchanges by rule and regulation or order, and would clarify the types of securities which qualify for the exchange exemption.

Section 13 of LB 148 would make a number of amendments to Section 8-1111. Section 8-1111(8) would be amended to add certain entities to the definition of accredited investors. These entities include corporations, business trusts, partnerships and trusts with assets over five million dollars. In addition, sales to an entity in which all of the equity owners are individual accredited investors would be exempt from registration under the Act. The section would be further amended to give the Director of the Department authority to exempt additional institutional buyers by rule and regulation or order.

Section 8-1111(17) would be amended to clarify the scope of the exemption for securities issued in connection with employee benefit plans. The amendment would expand the exemption to include offers and sales to directors, general partners, trustees of a business trust, officers, consultants, or advisors, and would clarify that the exemption is available if the individual was an employee at the time that securities were offered, even if the employee leaves employment. The amendment also would provide that the exemption applies to offers and sales to insurance agents who are exclusive insurance agents of the issuer, the issuer's subsidiary or parents, or those who derive more than fifty percent of their annual income from those organizations. As a result of these amendments, Nebraska's exemption for employee benefit plans would be aligned with the federal exemption contained in SEC Rule 701.

Section 8-1111(23) would be amended to increase the maximum amount that can be raised pursuant to this exemption from \$250,000.00 to \$750,000.00. Section 8-1111(24) would be amended to authorize issuers conducting an intrastate crowdfunding offering to rely upon new SEC Rule 147A. Rule 147A is designed to better facilitate intrastate crowdfunding, most importantly, by loosening restrictions on advertising of an intrastate offering.

CLARIFY THE DEPARTMENT'S ADMINISTRATION OF THE ACT

LB 148 proposes a number of amendments to Section 8-1120 regarding the Department's administration of the Act. First, LB 148 proposes to amend this section to clarify that the Director may appoint a deputy director responsible for administering the Act, rather than an assistant director and to update staff position titles. Second, LB 148 would authorize the Director to authorize or require that any document required to be filed with the Department be filed electronically or through any other method designated by the Director. Finally, obsolete provisions governing fund transfers would be repealed.

Principal Introducer: _____

Senator Paul Schumacher