

LEGISLATIVE BILL 1157

Approved by the Governor April 7, 1988

Introduced by Landis, 46

AN ACT relating to the Securities Act of Nebraska; to amend section 8-1108, Reissue Revised Statutes of Nebraska, 1943; to change a provision relating to registration of securities; to provide procedures for registration of an indefinite amount of securities; to provide an operative date; and to repeal the original section.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 8-1108, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

8-1108. (1) A registration statement may be filed by the issuer, by any other person on whose behalf the offering is to be made, or by a registered broker-dealer. Any document filed under ~~sections 8-1101 to 8-1124~~ the Securities Act of Nebraska or a predecessor act within five years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the document is currently accurate. The director may by rule, regulation, or otherwise permit the omission of any item of information or document from any registration statement.

(2) The director may require as a condition of registration by qualification that (a) the proceeds from the sale of the registered security be impounded until the issuer receives a specified amount, (b) the applicant comply with the federal Securities Act of 1933 if it appears to the director to be in the public interest or that the registered security is or will be offered in such manner as to be subject to such act, (c) such reasonable conditions, restrictions, or limitations upon the offering as may be in the public interest, or (d) any security issued within the past three years, or to be issued, to a promoter for a consideration substantially different from the public offering price or to any person for a consideration other than cash, be delivered in escrow to him or her or to some other depository satisfactory to him or her under an escrow agreement that the owners of such securities shall not

be entitled to sell or transfer such securities or to withdraw such securities from escrow until all other stockholders who have paid for their stock in cash shall have been paid a dividend or dividends aggregating not less than six percent of the initial offering price shown to the satisfaction of the director to have been actually earned on the investment in any common stock so held. The director shall not reject a depository solely because of location in another state. In case of dissolution or insolvency during the time such securities are held in escrow, the owners of such securities shall not participate in the assets until after the owners of all other securities shall have been paid in full.

(3) For Except as provided in subsections (5) and (6) of this section, for the registration of securities by notification, or coordination, or qualification, there shall be paid to the director a registration fee of one-tenth of one percent of the aggregate offering price of the securities which are to be offered in this state, but the fee shall in no case be less than fifty dollars. When a registration statement is withdrawn before the effective date or a preeffective stop order is entered under section 8-1109, the director shall retain fifty dollars of the fee. Any issuer who sells securities in this state in excess of the aggregate amount of securities registered may, at the discretion of the director and while such registration is still effective, apply to register the excess securities sold to persons within this state by paying a registration fee of three-tenths of one percent for the difference between the initial fee paid and the fee required in this subsection. Registration of the excess securities, if granted, shall be effective retroactively to the date of the existing registration.

(4) When securities are registered by notification, or by coordination, or by qualification, they may be offered and sold by a registered broker-dealer. Every registration shall remain effective for one year or until sooner revoked by the director or sooner terminated upon request of the registrant with the consent of the director. All outstanding securities of the same class as a registered security shall be considered to be registered for the purpose of any nonissuer transaction. A registration statement which has become effective may not be withdrawn for one year from its effective date if any securities of the same class are outstanding.

(5)(a) An open-end management company or a

face-amount certificate company, as those terms are defined in the Investment Company Act of 1940, may elect to register an indefinite amount of securities for a registration period of one year under a registration statement if the following conditions are met:

(i) Such company registered securities in this state in the registration period immediately preceding the initial election of indefinite registration;

(ii) Such company pays an initial registration fee for the registration period equal to the amount paid to this state in the preceding registration period, but the fee shall in no case be less than one hundred dollars;

(iii) Within sixty calendar days after the company's registration period expires, such company shall file a sales report containing the total aggregate offering price of the securities sold in this state during the registration period just expired; and

(iv) If the sales report required by subdivision (5)(a)(iii) of this section shows that the company sold securities in excess of the amount of securities for which the registration fee was paid, the company shall pay an additional registration fee of one-tenth of one percent of the aggregate offering price of the excess securities sold. If the company sold securities in an amount less than the number for which a registration fee has been paid for the registration period just ended, the company shall receive a credit for the excess registration fee paid in an amount not to exceed ten thousand dollars. No fees shall be returned.

(b) During the sixty-day period specified in subdivision (5)(a)(iii) of this section, the registration shall be considered continuous. Failure to file the sales report and pay any additional fees owed shall be cause for the issuance of a stop order.

(c) Upon the filing of the sales report required by subdivision (5)(a)(iii) of this section and the payment of any fees required by subdivision (5)(a)(iv) of this section, any company may elect to continue to register an indefinite amount of securities for another registration period and annually thereafter upon payment of the required fee pursuant to subdivision (5)(a)(ii) of this section, plus the excess fee which may be owed pursuant to subdivision (5)(a)(iv) of this section, or in the event a credit is owed to the company under subdivision (5)(a)(iv) of this section, the fee shall be equal to the fees paid for the preceding registration period less any credit owed. Subdivisions (5)(a)(ii), (iii), and (iv) and (5)(b) of this section

shall be applicable to all such additional registrations.

(d) An election to register securities under this subsection shall preclude the use of any other method for future registrations unless such other method is approved by the director.

(6)(a) A unit investment trust, as that term is defined in the Investment Company Act of 1940, may elect to register an indefinite amount of securities for a registration period of one year or less under a registration statement if the following conditions are met:

(i) The unit investment trust registrant electing to register an indefinite amount of securities pays an initial fee of one hundred dollars with the application for registration;

(ii) Within sixty calendar days after the occurrence of the earlier of (A) the expiration of the trust's registration period, (B) the termination of the offering by the registrant, or (C) one hundred twenty calendar days after the completion of the offering, each trust files a sales report containing the total aggregate offering price of the securities sold in this state for the registration period just expired or terminated; and

(iii) If the sales report required by subdivision (6)(a)(ii) of this section shows that the trust sold securities in excess of the amount of securities for which the registration fee was paid, the trust pays an additional registration fee of one-tenth of one percent of the aggregate offering price of the excess securities sold. The initial fee of one hundred dollars shall be deducted from the fee paid pursuant to this subdivision. If this calculation results in a negative amount, no payment need be made and no credit or refund shall be allowed or returned for that negative amount.

(b) Failure to file the sales report and pay the fee specified in this subsection shall be cause for the issuance of a stop order.

(7) The director may require the person who filed the registration statement to file reports, not more often than quarterly, to keep reasonably current the information contained in the registration statement and to disclose the progress of the offering with respect to registered securities which (a) are issued by a face-amount certificate company or a redeemable security issued by an open-end management company or unit investment trust as those terms are defined in the

Investment Company Act of 1940, or (b) are being offered and sold directly by or for the account of the issuer.

(8) (6) A registration of securities shall be effective for a period of one year or such shorter period as the director may determine.

Sec. 2. This act shall become operative on August 1, 1988.

Sec. 3. That original section 8-1108, Reissue Revised Statutes of Nebraska, 1943, is repealed.