

AMENDMENTS TO LB 76

Introduced by Banking, Commerce and Insurance

1 1. Insert the following new section:

2 Sec. 2 Section 8-1110, Revised Statutes Cumulative
3 Supplement, 2010, is amended to read:

4 8-1110 Sections 8-1104 to 8-1109 shall not apply to any
5 of the following securities:

6 (1) Any security, including a revenue obligation, issued
7 or guaranteed by the State of Nebraska, any political subdivision,
8 or any agency or corporate or other instrumentality thereof or any
9 certificate of deposit for any of the foregoing;

10 (2) Any security issued or guaranteed by Canada, any
11 Canadian province, any political subdivision of any such province,
12 any agency or corporate or other instrumentality of one or more
13 of the foregoing, or any other foreign government with which the
14 United States currently maintains diplomatic relations, if the
15 security is recognized as a valid obligation by the issuer or
16 guarantor;

17 (3) Any security issued or guaranteed by any federal
18 credit union or any credit union or similar association organized
19 and supervised under the laws of this state;

20 (4) Any security issued or guaranteed by any railroad,
21 other common carrier, public utility, or holding company which is:

22 (a) ~~A registered holding company under the Public Utility Holding~~
23 ~~Company Act of 1935 or a subsidiary of such a company within the~~

1 ~~meaning of that act, (b)~~ regulated in respect of its rates and
2 charges by a governmental authority of the United States or any
3 state or municipality; or ~~(e)~~ (b) regulated in respect of the
4 issuance or guarantee of the security by a governmental authority
5 of the United States, any state, Canada, or any Canadian province;

6 (5) (a) Any security listed on the Chicago Stock Exchange,
7 the Chicago Board Options Exchange, Tier I of the Pacific Stock
8 Exchange, Tier I of the Philadelphia Stock Exchange, or any other
9 stock exchange or market system approved by the director, if, in
10 each case, quotations have been available and public trading has
11 taken place for such class of security prior to the offer or sale
12 of that security in reliance on the exemption; any other security
13 of the same issuer which is of senior or substantially equal
14 rank; any security called for by subscription rights or warrants
15 so listed or approved; or any warrant or right to purchase or
16 subscribe to any of the foregoing or to any security listed on the
17 New York Stock Exchange, the American Stock Exchange, or the NASDAQ
18 Global Market.

19 (b) The issuer of any security which has been approved
20 for listing or designation on notice of issuance on such exchanges
21 or market systems, and for which no quotations have been available
22 and no public trading has taken place for any of such issuer's
23 securities, may rely upon the exemption stated in subdivision
24 (5) (a) of this section, if a notice is filed with the director,
25 together with a filing fee of two hundred dollars, prior to first
26 use of a disclosure document covering such securities in this
27 state, except that failure to file such notice in a timely manner

1 may be cured by the director in his or her discretion.

2 (c) The director may adopt and promulgate rules and
3 regulations which, after notice to such exchange or market system
4 and an opportunity to be heard, remove any such exchange or market
5 system from the exemption stated in subdivision (5)(a) of this
6 section if the director finds that the listing requirements or
7 market surveillance of such exchange or market system is such that
8 the continued availability of such exemption for such exchange or
9 market system is not in the public interest and that removal is
10 necessary for the protection of investors;

11 (6) Any security which meets all of the following
12 conditions:

13 (a) The issuer is organized under the laws of the United
14 States or a state or has appointed a duly authorized agent in the
15 United States for service of process and has set forth the name and
16 address of such agent in its prospectus;

17 (b) A class of the issuer's securities is required to be
18 and is registered under section 12 of the Securities Exchange Act
19 of 1934 and has been so registered for the three years immediately
20 preceding the offering date;

21 (c) Neither the issuer nor a significant subsidiary has
22 had a material default during the last seven years, or during the
23 issuer's existence if such existence is less than seven years, in
24 the payment of (i) principal, interest, dividends, or sinking-fund
25 installments on preferred stock or indebtedness for borrowed money
26 or (ii) rentals under leases with terms of three or more years;

27 (d) The issuer has had consolidated net income, without

1 taking into account extraordinary items and the cumulative effect
2 of accounting changes, of at least one million dollars in four of
3 its last five fiscal years, including its last fiscal year, and if
4 the offering is of interest-bearing securities the issuer has had
5 for its last fiscal year net income before deduction for income
6 taxes and depreciation of at least one and one-half times the
7 issuer's annual interest expense, taking into account the proposed
8 offering and the intended use of the proceeds. However, if the
9 issuer of the securities is a finance company which has liquid
10 assets of at least one hundred five percent of its liabilities,
11 other than deferred income taxes, deferred investment tax credit,
12 capital stock, and surplus, at the end of its last five fiscal
13 years, the net income requirement before deduction for interest
14 expense shall be one and one-fourth times its annual interest
15 expense. For purposes of this subdivision: (i) Last fiscal year
16 means the most recent year for which audited financial statements
17 are available, if such statements cover a fiscal period ending not
18 more than fifteen months from the commencement of the offering;
19 (ii) finance company means a company engaged primarily in the
20 business of wholesale, retail, installment, mortgage, commercial,
21 industrial, or consumer financing, banking, or factoring; and (iii)
22 liquid assets means (A) cash, (B) receivables payable on demand or
23 not more than twelve months following the close of the company's
24 last fiscal year less applicable reserves and unearned income,
25 and (C) readily marketable securities less applicable reserves and
26 unearned income;

27 (e) If the offering is of stock or shares other than

1 preferred stock or shares, such securities have voting rights which
2 include (i) the right to have at least as many votes per share
3 and (ii) the right to vote on at least as many general corporate
4 decisions as each of the issuer's outstanding classes of stock or
5 shares, except as otherwise required by law; and

6 (f) If the offering is of stock or shares other than
7 preferred stock or shares, such securities are owned beneficially
8 or of record on any date within six months prior to the
9 commencement of the offering by at least one thousand two hundred
10 persons, and on such date there are at least seven hundred fifty
11 thousand such shares outstanding with an aggregate market value
12 of at least three million seven hundred fifty thousand dollars
13 based on the average bid price for such day. When determining
14 the number of persons who are beneficial owners of the stock or
15 shares of an issuer, for purposes of this subdivision, the issuer
16 or broker-dealer may rely in good faith upon written information
17 furnished by the record owners;

18 (7) Any security issued or guaranteed as to both
19 principal and interest by an international bank of which the
20 United States is a member; or

21 (8) Any security issued by any person organized and
22 operated not for private profit but exclusively for religious,
23 educational, benevolent, charitable, fraternal, social, athletic,
24 or reformatory purposes, as a chamber of commerce, or as a trade or
25 professional association.

26 2. On page 7, line 23, strike "Public Utility Holding
27 Company Act of 1935," and show as stricken.

- 1 3. Renumber the remaining sections and correct the
- 2 repealer section accordingly.