

Assembly Bill No. 75—Assemblyman Yeager

CHAPTER.....

AN ACT relating to securities; defining “Nevada certified investor”; authorizing the Administrator of the Securities Division of the Office of the Secretary of State, who is the Deputy of Securities, to adopt certain regulations; providing for an exemption from certain requirements concerning the registration of securities for certain transactions involving an offer to sell or sale of a security by certain issuers who are residents of this State to a Nevada certified investor; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing federal law, with certain exceptions, prohibits a person from engaging in certain activities relating to offering to sell or selling a security unless the security is registered with the Securities and Exchange Commission. (15 U.S.C. § 77e) Existing federal law creates an exemption from this requirement for a security which is part of an issue offered or sold only to persons who are residents of the same state of which the issuer is also a resident and doing business within or, if the issuer is a corporation, incorporated by and doing business within. (15 U.S.C. § 77c(a)(11)) Existing federal regulations set forth: (1) requirements that an issuer must meet to be deemed to be a resident of and doing business within a state where the issuer offers and sells securities; and (2) various other requirements for transactions involving intrastate offers or sales of securities for the transaction to qualify for the exemption from the federal registration requirements. (17 C.F.R. §§ 230.147, 230.147A)

Existing state law prohibits a person from offering to sell or selling any security in this State unless the security meets certain registration requirements or the security transaction is exempt from the registration requirements. (NRS 90.460)

Section 5 of this bill creates an exemption from those state registration requirements for certain transactions involving an offer to sell or sale of a security to a Nevada certified investor. **Section 2** of this bill defines “Nevada certified investor” to mean, in general, a natural person who is, or a married couple who each are, a resident of this State and who meets certain financial qualifications. Under **section 5**, a transaction involving an offer to sell or sale of a security to a Nevada certified investor is exempt from the registration requirements provided under existing state law if: (1) the transaction meets the requirements for the federal exemption for intrastate offers and sales of securities; (2) the transaction meets any other requirements established by regulations adopted by the Administrator of the Securities Division of the Office of the Secretary of State, who is the Deputy of Securities, pursuant to **section 3** of this bill; (3) the transaction involves certain types of Nevada certified investors, the transaction would not result in the Nevada certified investor investing more than 10 percent of the net worth of the investor in securities purchased in transactions exempt pursuant to **section 3**; and (4) the person offering to sell or selling the security first undergoes a criminal background check, submits certain information to the Administrator and makes certain information available to Nevada certified investors.

Section 3 authorizes the Administrator to adopt regulations establishing additional requirements for transactions involving an offer to sell or sale of a



security to a Nevada certified investor to qualify for an exemption from the registration requirements pursuant to **section 5**.

Section 4 of this bill makes a conforming change to indicate the proper placement of **section 2** in the Nevada Revised Statutes.

Existing law authorizes the registration of a security by qualification and requires the registration statement for such a security to contain certain information relating to the issuer and certain other persons. (NRS 90.490) **Section 4.5** of this bill revises the information which is required to be included in the registration statement.

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 90 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

Sec. 2. 1. *“Nevada certified investor” means a natural person who is, or a married couple who each are, a resident of this State and who, at the time an offer to sell or sale of a security is made to the person or couple:*

(a) Holds an ownership interest of more than 50 percent in a business that has reported a gross revenue of more than \$200,000 or 2 1/2 times the median household income, whichever is greater, on each federal income tax return filed for the 2 immediately preceding calendar years; or

(b) Has reported an income on the federal income tax return of the person or couple filed for the immediately preceding calendar year that exceeds the greater of:

(1) One hundred thousand dollars, if the person filed an individual federal income tax return, or \$150,000, if the couple jointly filed a federal income tax return; or

(2) The median household income.

2. As used in this section, “median household income” means the median household income in this State, as identified in the most recent data from the American Community Survey published by the Bureau of the Census of the United States Department of Commerce or as determined by the Administrator based on another source of data specified by the Administrator by regulation.

Sec. 3. *The Administrator may adopt regulations that set forth additional requirements for transactions involving an offer to sell or sale of a security to a Nevada certified investor that must be met for the transaction to qualify for an exemption pursuant to subsection 22 of NRS 90.530. Such regulations may include,*



without limitation, provisions establishing minimum qualifications for an issuer who engages in such a transaction and additional requirements concerning the process by which such an issuer shall submit to the Administrator and make available to a Nevada certified investor the information required by subsection 22 of NRS 90.530.

Sec. 4. NRS 90.211 is hereby amended to read as follows:

90.211 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 90.215 to 90.309, inclusive, *and section 2 of this act* have the meanings ascribed to them in those sections.

Sec. 4.1. (Deleted by amendment.)

Sec. 4.3. (Deleted by amendment.)

Sec. 4.5. NRS 90.490 is hereby amended to read as follows:

90.490 1. A security may be registered by qualification.

2. A registration statement under this section must contain the following information and be accompanied by the following records in addition to the information specified in subsection 4 of NRS 90.500 and the consent to service of process required by NRS 90.770:

(a) With respect to the issuer and any significant subsidiary:

(1) Its name, address and form of organization;

(2) The state or foreign jurisdiction and date of its organization;

(3) The general character and location of its business;

(4) A description of its physical property and equipment; and

(5) A statement of the general competitive conditions in the industry or business in which it is or will be engaged;

(b) With respect to every director and officer of the issuer or person occupying a similar status or performing similar functions:

(1) Name, address and principal occupation for the last 5 years;

(2) The amount of securities of the issuer held by the person as of a specified date within 30 days before the filing of the registration statement;

(3) The amount of the securities covered by the registration statement to which the person has indicated an intention to subscribe; and

(4) A description of any material interest in any material transaction with the issuer or any significant subsidiary effected within the past 3 years or proposed to be effected;

(c) With respect to persons covered by paragraph (b), the compensation paid or given, directly or indirectly, during the last 12



months and estimated to be paid during the next 12 months by the issuer together with all predecessors, parents, subsidiaries and affiliates, to all those persons in the aggregate;

(d) With respect to any person owning of record, or beneficially if known, 10 percent or more of the outstanding shares of a class of equity security of the issuer, the information specified in paragraph (b); ~~other than occupation;~~

(e) With respect to a promoter, *if such a promoter exists, and* if the issuer was organized within the last 3 years:

(1) The information specified in paragraph (b);

(2) The amount paid to the person within that period or intended to be paid; and

(3) The consideration for the payment;

(f) With respect to a person on whose behalf a part of the offering is to be made in a nonissuer distribution:

(1) Name and address;

(2) The amount of securities of the issuer held by the person as of the date of the filing of the registration statement;

(3) A description of any material interest in any material transaction with the issuer or any significant subsidiary effected within the past 3 years or proposed to be effected; and

(4) A statement of the reasons for making the offering;

(g) The capitalization and long-term debt, on both a current and a pro forma basis, of the issuer and any significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and, *if applicable*, a statement of the amount and kind of consideration, whether in the form of cash, physical assets, services, patents, goodwill or anything else, for which the issuer or a subsidiary has issued its securities within the last 2 years or is obligated to issue its securities;

(h) The kind and amount of securities to be offered, the proposed offering price or the method by which it is to be computed, any variation therefrom at which a proportion of the offering is to be made to a person or class of persons other than the underwriters, with a specification of the person or class, the basis upon which the offering is to be made if otherwise than for cash, the estimated aggregate underwriting and selling discounts or commissions and finder's fees, including separately cash, securities, contracts or anything else of value to accrue to the underwriters or finders in connection with the offering or, if the selling discounts or commissions are variable, the basis of determining them and their maximum and minimum amounts, the estimated amounts of other selling expenses, including legal, engineering and accounting



charges, the name and address of every underwriter and every recipient of a finder's fee, a copy of any underwriting or selling-group agreement pursuant to which the distribution is to be made, or the proposed form of the agreement whose terms have not yet been determined, and a description of the plan of distribution of securities that are to be offered otherwise than through an underwriter;

(i) The estimated cash proceeds to be received by the issuer from the offering, the purposes for which the proceeds are to be used by the issuer, the amount to be used for each purpose, the order of priority in which the proceeds will be used for the purposes stated, the amounts of funds to be raised from other sources to achieve the purposes stated, the sources of the funds, and, if part of the proceeds is to be used to acquire property, including goodwill, otherwise than in the ordinary course of business, the names and addresses of the vendors, the purchase price, the names of the persons who have received commissions in connection with the acquisition and the amounts of commissions and any other expense in connection with the acquisition, including the cost of borrowing money to finance the acquisition;

(j) A description of the stock options or other security options outstanding or to be created in connection with the offering and the amount of the options held or to be held by every person required to be named in paragraph (b), (d), (e), (f) or (h) and by a person who holds or will hold 10 percent or more in the aggregate of the options;

(k) The dates of, parties to and general effect, concisely stated, of every management or other material contract made or to be made otherwise than in the ordinary course of business if it is to be performed in whole or in part at or after the filing of the registration statement or was made within the last 2 years, and a copy of the contract;

(l) A description of any pending litigation or proceedings to which the issuer is a party and that materially affect its business or assets, including any litigation or proceeding known to be contemplated by a governmental authority;

(m) A copy of any prospectus, pamphlet, circular, form letter, advertisement or other sales literature intended as of the effective date to be used in connection with the offering **;**

~~(n)~~ **, if such materials exist;**

(n) A copy, specimen or description of the security being registered, a copy of the issuer's articles of incorporation and bylaws or their substantial equivalents, as currently in effect, and a



copy of any indenture or other instrument covering the security to be registered;

(o) A signed or conformed copy of an opinion of counsel as to the legality of the security being registered, with an English translation if it is in a foreign language, which states whether the security when sold will be legally issued, fully paid and nonassessable and, if a debt security, a binding obligation of the issuer;

(p) The written consent of an accountant, engineer, appraiser or other person whose profession gives authority to a statement made by the person, if the person is named as having prepared or certified a report or valuation, other than a public and official record or statement, which is used in connection with the registration statement;

(q) A statement of financial condition of the issuer as of a date within 4 months before the filing of the registration statement, a statement of results of operations and analysis of surplus for each of the 3 fiscal years preceding the date of the statement of financial condition and for any period between the close of the last fiscal year and the date of the statement of financial condition, or for the period of the issuer's and any predecessors' existence if less than 3 years, and, if part of the proceeds of the offering is to be applied to the purchase of a business, the same financial statements which would be required if that business were the registrant; and

(r) Any additional information the Administrator by regulation or order specifies.

3. A statement under this section becomes effective 30 calendar days, or any shorter period as the Administrator by regulation or order specifies, after the date the registration statement or the last amendment other than a price amendment is filed, if:

(a) No order is in effect and no proceeding is pending under NRS 90.510;

(b) The Administrator has not, under subsection 4, ordered that effectiveness be delayed; and

(c) The registrant has not requested that effectiveness be delayed.

4. The Administrator may delay effectiveness for a single period of not more than 90 days if the Administrator determines the registration statement is not complete in all material respects and promptly notifies the registrant of that determination. The Administrator may delay effectiveness for a single period of not more than 30 days if the Administrator determines that the delay is



necessary, whether or not the Administrator previously delayed effectiveness under this subsection.

Sec. 4.7. (Deleted by amendment.)

Sec. 4.9. (Deleted by amendment.)

Sec. 5. NRS 90.530 is hereby amended to read as follows:

90.530 The following transactions are exempt from NRS 90.460 and 90.560:

1. An isolated nonissuer transaction, whether or not effected through a broker-dealer.

2. A nonissuer transaction in an outstanding security if the issuer of the security has a class of securities subject to registration under section 12 of the Securities Exchange Act of 1934, 15 U.S.C. § 78l, and has been subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. §§ 78m and 78o(d), for not less than 90 days next preceding the transaction, or has filed and maintained with the Administrator for not less than 90 days preceding the transaction information, in such form as the Administrator, by regulation, specifies, substantially comparable to the information the issuer would be required to file under section 12(b) or 12(g) of the Securities Exchange Act of 1934, 15 U.S.C. §§ 78l(b) and 78l(g), were the issuer to have a class of its securities registered under section 12 of the Securities Exchange Act of 1934, 15 U.S.C. § 78l, and paid a fee of \$300 with the filing.

3. A nonissuer transaction by a sales representative licensed in this State, in an outstanding security if:

(a) The security is sold at a price reasonably related to the current market price of the security at the time of the transaction;

(b) The security does not constitute all or part of an unsold allotment to, or subscription or participation by, a broker-dealer as an underwriter of the security;

(c) At the time of the transaction, a recognized securities manual designated by the Administrator by regulation or order contains the names of the issuer's officers and directors, a statement of the financial condition of the issuer as of a date within the preceding 18 months, and a statement of income or operations for each of the last 2 years next preceding the date of the statement of financial condition, or for the period as of the date of the statement of financial condition if the period of existence is less than 2 years;

(d) The issuer of the security has not undergone a major reorganization, merger or acquisition within the preceding 30 days which is not reflected in the information contained in the manual; and



(e) At the time of the transaction, the issuer of the security has a class of equity security listed on the New York Stock Exchange, American Stock Exchange or other exchange designated by the Administrator, or on the National Market System of the National Association of Securities Dealers Automated Quotation System. The requirements of this paragraph do not apply if:

- (1) The security has been outstanding for at least 180 days;
- (2) The issuer of the security is actually engaged in business and is not developing the issuer's business, in bankruptcy or in receivership; and
- (3) The issuer of the security has been in continuous operation for at least 5 years.

4. A nonissuer transaction in a security that has a fixed maturity or a fixed interest or dividend provision if there has been no default during the current fiscal year or within the 3 preceding years, or during the existence of the issuer, and any predecessors if less than 3 years, in the payment of principal, interest or dividends on the security.

5. A nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to purchase.

6. A transaction between the issuer or other person on whose behalf the offering of a security is made and an underwriter, or a transaction among underwriters.

7. A transaction in a bond or other evidence of indebtedness secured by a real estate mortgage, deed of trust, personal property security agreement, or by an agreement for the sale of real estate or personal property, if the entire mortgage, deed of trust or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a unit.

8. A transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian or conservator.

9. A transaction executed by a bona fide secured party without the purpose of evading this chapter.

10. An offer to sell or the sale of a security to a financial or institutional investor or to a broker-dealer.

11. Except as otherwise provided in this subsection, a sale or an offer to sell securities of an issuer if:

(a) The transaction is part of an issue in which there are not more than 35 purchasers in this State, other than those designated in subsection 10, during any 12 consecutive months;

(b) No general solicitation or general advertising is used in connection with the offer to sell or sale of the securities;



(c) No commission or other similar compensation is paid or given, directly or indirectly, to a person, other than a broker-dealer licensed or not required to be licensed under this chapter, for soliciting a prospective purchaser in this State; and

(d) One of the following conditions is satisfied:

(1) The seller reasonably believes that all the purchasers in this State, other than those designated in subsection 10, are purchasing for investment; or

(2) Immediately before and immediately after the transaction, the issuer reasonably believes that the securities of the issuer are held by 50 or fewer beneficial owners, other than those designated in subsection 10, and the transaction is part of an aggregate offering that does not exceed \$500,000 during any 12 consecutive months.

➔ The Administrator by rule or order as to a security or transaction or a type of security or transaction may withdraw or further condition the exemption set forth in this subsection or waive one or more of the conditions of the exemption.

12. An offer to sell or sale of a preorganization certificate or subscription if:

(a) No commission or other similar compensation is paid or given, directly or indirectly, for soliciting a prospective subscriber;

(b) No public advertising or general solicitation is used in connection with the offer to sell or sale;

(c) The number of offers does not exceed 50;

(d) The number of subscribers does not exceed 10; and

(e) No payment is made by a subscriber.

13. An offer to sell or sale of a preorganization certificate or subscription issued in connection with the organization of a depository institution if that organization is under the supervision of an official or agency of a state or of the United States which has and exercises the authority to regulate and supervise the organization of the depository institution. For the purpose of this subsection, "under the supervision of an official or agency" means that the official or agency by law has authority to require disclosures to prospective investors similar to those required under NRS 90.490, impound proceeds from the sale of a preorganization certificate or subscription until organization of the depository institution is completed, and require refund to investors if the depository institution does not obtain a grant of authority from the appropriate official or agency.

14. A transaction pursuant to an offer to sell to existing security holders of the issuer, including persons who at the time of



the transaction are holders of transferable warrants exercisable within not more than 90 days after their issuance, convertible securities or nontransferable warrants, if:

(a) No commission or other similar compensation, other than a standby commission, is paid or given, directly or indirectly, for soliciting a security holder in this State; or

(b) The issuer first files a notice specifying the terms of the offer to sell, together with a nonrefundable fee of \$300, and the Administrator does not by order disallow the exemption within the next 5 full business days.

15. A transaction involving an offer to sell, but not a sale, of a security not exempt from registration under the Securities Act of 1933, 15 U.S.C. §§ 77a et seq., if:

(a) A registration or offering statement or similar record as required under the Securities Act of 1933, 15 U.S.C. §§ 77a et seq., has been filed, but is not effective;

(b) A registration statement, if required, has been filed under this chapter, but is not effective; and

(c) No order denying, suspending or revoking the effectiveness of registration, of which the offeror is aware, has been entered by the Administrator or the Securities and Exchange Commission, and no examination or public proceeding that may culminate in that kind of order is known by the offeror to be pending.

16. A transaction involving an offer to sell, but not a sale, of a security exempt from registration under the Securities Act of 1933, 15 U.S.C. §§ 77a et seq., if:

(a) A registration statement has been filed under this chapter, but is not effective; and

(b) No order denying, suspending or revoking the effectiveness of registration, of which the offeror is aware, has been entered by the Administrator and no examination or public proceeding that may culminate in that kind of order is known by the offeror to be pending.

17. A transaction involving the distribution of the securities of an issuer to the security holders of another person in connection with a merger, consolidation, exchange of securities, sale of assets or other reorganization to which the issuer, or its parent or subsidiary, and the other person, or its parent or subsidiary, are parties, if:

(a) The securities to be distributed are registered under the Securities Act of 1933, 15 U.S.C. §§ 77a et seq., before the consummation of the transaction; or



(b) The securities to be distributed are not required to be registered under the Securities Act of 1933, 15 U.S.C. §§ 77a et seq., written notice of the transaction and a copy of the materials, if any, by which approval of the transaction will be solicited, together with a nonrefundable fee of \$300, are given to the Administrator at least 10 days before the consummation of the transaction and the Administrator does not, by order, disallow the exemption within the next 10 days.

18. A transaction involving the offer to sell or sale of one or more promissory notes each of which is directly secured by a first lien on a single parcel of real estate, or a transaction involving the offer to sell or sale of participation interests in the notes if the notes and participation interests are originated by a depository institution and are offered and sold subject to the following conditions:

(a) The minimum aggregate sales price paid by each purchaser may not be less than \$250,000;

(b) Each purchaser must pay cash either at the time of the sale or within 60 days after the sale; and

(c) Each purchaser may buy for the purchaser's own account only.

19. A transaction involving the offer to sell or sale of one or more promissory notes directly secured by a first lien on a single parcel of real estate or participating interests in the notes, if the notes and interests are originated by a mortgagee approved by the Secretary of Housing and Urban Development under sections 203 and 211 of the National Housing Act, 12 U.S.C. §§ 1709 and 1715b, and are offered or sold, subject to the conditions specified in subsection 18, to a depository institution or insurance company, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association or the Government National Mortgage Association.

20. A transaction between any of the persons described in subsection 19 involving a nonassignable contract to buy or sell the securities described in subsection 18 if the contract is to be completed within 2 years and if:

(a) The seller of the securities pursuant to the contract is one of the parties described in subsection 18 or 19 who may originate securities;

(b) The purchaser of securities pursuant to a contract is any other person described in subsection 19; and

(c) The conditions described in subsection 18 are fulfilled.

21. A transaction involving one or more promissory notes secured by a lien on real estate, or participating interests in those



notes, by a mortgage company licensed pursuant to chapter 645B of NRS to engage in those transactions.

22. A transaction involving an offer to sell or sale of a security to a Nevada certified investor if all of the following conditions are satisfied:

(a) The transaction satisfies the requirements for exemption under section 3(a)(11) of the Securities Act of 1933, 15 U.S.C. § 77c(a)(11) and Rule 147 or 147A of the Securities and Exchange Commission, 17 C.F.R. § 230.147 or 230.147A.

(b) The transaction satisfies any requirements established by the Administrator by regulation pursuant to section 3 of this act.

(c) For a transaction involving the sale of a security to a Nevada certified investor described in paragraph (b) of subsection 1 of section 2 of this act, the transaction would not result in the Nevada certified investor investing more than 10 percent of the net worth of the investor in securities that were purchased by the Nevada certified investor in transactions exempt from NRS 90.460 and 90.560 pursuant to this subsection. For the purposes of meeting the requirements of this paragraph, the equity the Nevada certified investor holds in a primary residence must not account for more than 50 percent of the net worth of the Nevada certified investor.

(d) The person offering to sell or selling the security has submitted to the Administrator:

(1) A complete set of his or her fingerprints and written permission authorizing the Administrator to submit the fingerprints to the Central Repository for Nevada Records of Criminal History for its report on the criminal history of the person and for forwarding to the Federal Bureau of Investigation for its report on the criminal history of the person;

(2) The latest available balance sheet of the issuer; and

(3) A description of any compensation paid by the person offering to sell or selling the security to any person authorized to make decisions on behalf of or exert control over the management or operation of the person offering to sell or selling the security.

(e) The person offering to sell or selling the security has made available to any Nevada certified investor wishing to purchase the security:

(1) A full disclosure of any and all previous criminal convictions; and

(2) The information submitted to the Administrator pursuant to subparagraphs (2) and (3) of paragraph (d).

Sec. 5.5. (Deleted by amendment.)



Sec. 6. 1. This section becomes effective upon passage and approval.

2. Sections 1 to 5.5, inclusive, of this act become effective:

- (a) Upon passage and approval for the purpose of adopting any regulations and performing any other preparatory administrative tasks that are necessary to carry out the provisions of this act; and
- (b) On October 1, 2023, for all other purposes.

