

**HB 327 – AS INTRODUCED**

2015 SESSION

15-0178

08/09

**HOUSE BILL 327**

AN ACT relative to investment crowdfunding.

SPONSORS: Rep. Tucker, Rock 23

COMMITTEE: Commerce and Consumer Affairs

## ANALYSIS

This bill allows businesses to crowdfund using equity in their businesses.

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-----Explanation: Matter added to current law appears in ***bold italics***.Matter removed from current law appears [~~in brackets and struck through~~].

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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## STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Fifteen*

AN ACT relative to investment crowdfunding.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

1 New Subdivision; Equity Crowdfunding. Amend RSA 421-B by inserting after section 35 the following new subdivision:

## Equity Crowdfunding

421-B:36 Definitions. In this subdivision:

I. "Accredited investor" means accredited investor as defined in Regulation D, 230.501 of the Securities and Exchange Act of 1933.

II. "Crowdfunding" means the practice of funding a project or venture by raising many small amounts of money from a large number of people, typically via the Internet.

III. "Issuer" means any person who issues or proposes to issue any security and any promoter who acts for an issuer to be formed, except:

(a) With respect to certificates of deposit or trust certificates, "issuer" means the person performing the act and assuming the duties of depositor, manager, or trustee pursuant to the provisions of the trust or other instrument under which the security is issued.

(b) With respect to certificates of interest or participation in oil, gas, or mining rights, titles, or leases, "issuer" means the owner of any such right, title, or lease, who creates a fractional interest therein for the purposes of sale.

IV. "Portal" means a crowdfunding intermediary that does not:

(a) Offer investment advice or recommendations;

(b) Solicit purchases, sales, or offers to buy securities offered or displayed on its website or portal;

(c) Compensate employees, agents, or other persons for such solicitation or based on the sale of securities displayed or referenced on its website or portal;

(d) Hold, manage, possess, or otherwise handle investor funds or securities; or

(e) Engage in such other activities as the Security Exchange Commission, by rule, determines appropriate.

421-B:37 Equity Crowdfunding; Exemptions.

I. Any offer or sale of a security by any form of general solicitation, including Internet offerings, shall be exempt from RSA 421-B:3-a, RSA 421-B:6 through RSA 421-B:15, RSA 421-B:15-a, RSA 421-B:17, RSA 421-B:17-a, RSA 421-B:20, RSA 421-B:21, RSA 421-B:30, and RSA 421-B:31, except as expressly provided, if:

(a) The offering is first declared exempt by the secretary of state after:

(1) The issuer files the offering with the secretary of state; or

(2) A portal files the offering with the secretary of state on behalf of the issuer under this section;

(b) The offering is conducted in accordance with the requirements of section 3(a)(11) of the Securities and Exchange Act of 1933 and Securities and Exchange Commission rule 147, 17 C.F.R. Section 230.147;

(c) The issuer is an entity organized and doing business in the state of New Hampshire;

- (d) Each investor provides evidence or certification of residency in the state of New Hampshire to the portal at the time of purchase;
- (e) The issuer files with the secretary of state an escrow agreement, either directly or through a portal, providing that all offering proceeds will be released to the issuer only when the aggregate capital raised from all investors equals or exceeds the minimum target offering;
- (f) The issuer discloses through a portal the offering price of the securities or the method for determining the price, provided that prior to the sale, each investor is provided in writing the final price and all required disclosures;
- (g) The portal will notify investors when the minimum target offering has been met; and if an issuer reaches the minimum target offering prior to the deadline identified in its offering materials, it may close the offering early if it provides notice about the new offering deadline at least 5 business days prior to that new deadline, absent another material change that would require an extension of the offering and reconfirmation of the investment commitment; and the portal notifies each investor that it may cancel an investment commitment until 48 hours prior to the identified deadline;
- (h) The aggregate purchase price of all securities sold by an issuer pursuant to the exemption provided by this section does not exceed \$1,000,000 during any 12-month period (this amount is to be adjusted for inflation at least every 5 years);
- (i) The aggregate amount sold to an investor by an issuer during the 12-month period preceding the date of the sale does not exceed:
- (1) \$5,000 if either the annual income or the net worth of the investor is less than \$100,000; or
  - (2) Ten percent of the annual income or net worth of the investor, as applicable, up to \$100,000, if either the annual income or net worth of the investor is \$100,000 or more;
- (j) The investor acknowledges by manual or electronic signature the following statement conspicuously presented at the time of sale on a page separate from other information relating to the offering: "I acknowledge that I am investing in a high-risk, speculative business venture, that I may lose all of my investment, and that I can afford the loss of my investment";
- (k) The issuer reasonably believes that all purchasers are purchasing for investment and not for sale in connection with a distribution of the security; and
- (l) The issuer and investor provide any other information reasonably requested by the secretary of state.

II. For as long as securities issued under the exemption provided by this subdivision are outstanding, the issuer shall provide a quarterly report to the issuer's shareholders and the secretary of state by making such report publicly accessible, free of charge, at the

issuer's Internet web site address within 45 days of the end of each fiscal quarter. The report shall contain the following information:

- (a) Executive officer and director compensation, including specifically the cash compensation earned by the executive officers and directors since the previous report and on an annual basis, and any bonuses or other compensation, including stock options or other rights to receive equity securities of the issuer or any affiliate of the issuer, received by them; and
- (b) A brief analysis by management of the issuer of the business operations and financial condition of the issuer.

III. Transactions involving the offer or sale or resale of securities issued under the exemption provided by this section may not be transferred by the purchaser during a one-year period beginning on the date of purchase, unless the securities are transferred:

- (a) To the issuer of the securities;
- (b) To an accredited investor;
- (c) As part of a registered offering; or
- (d) To a member of the family of the purchaser or the equivalent, or in connection with the death or divorce or other similar circumstances of the purchaser, in the discretion of the secretary of state.

IV. The secretary of state shall adopt disqualification provisions under which this exemption shall not be available to any person or its predecessors, affiliates, officers, directors, underwriters, or other related persons. The provisions shall be substantially similar to the disqualification provisions adopted by the Securities and Exchange Commission pursuant to the requirements of 15, U.S.C. Section 401(b)(2)(G)(ii). Notwithstanding this paragraph, this exemption shall become available on the effective date of this section.

421-B:38 Portals.

I. Any for-profit or not-for-profit entity may own and operate a portal pursuant to rules adopted by the secretary of state under RSA 541-A, and may act as a portal under this subdivision.

II. A portal shall require, at a minimum, the following information from an applicant to qualify for exemption under RSA 421-B:37 prior to offering services to the applicant or forwarding the applicant's materials to the secretary of state:

- (a) A description of the issuer, including type of entity, location, and business plan, if any;
- (b) The applicant's intended use of proceeds from an offering under this subdivision;

(c) Identities of officers, directors, managing members, and 20 percent beneficial owners, as applicable;

(d) A description of any outstanding securities; and

(e) A description of any litigation or legal proceedings involving the applicant, its officers, directors, managing members, or 20 percent beneficial owners, as applicable.

III. The applicant shall not be required to disclose proprietary information under this chapter including valuable formulae, designs, drawings, computer source code or object code, research data, proprietary data, trade secrets, or other information that relates to:

(a) A vendor's unique methods of conducting business;

(b) Data unique to the product or services of the vendor; or

(c) Methods of determining prices or rates to be charged for services.

IV. Upon receipt of the information described in paragraph II, the portal may offer services to the applicant that the portal deems appropriate or necessary to meet the criteria for exemption under this subdivision. Such services may include assistance with development of a business plan, referral to legal services, and other technical assistance in preparation for a public securities offering.

V. A portal shall forward the materials necessary for the applicant to qualify for exemption under RSA 421-B:37 to the secretary of state for filing when the portal is satisfied that the applicant has assembled the necessary information and materials to meet the criteria for such exemption.

VI. A portal shall comply with rules adopted by the secretary of state for the purposes of executing the offering upon filing with the secretary of state.

VII. Any portal acting under this chapter and every issuer who proposes to offer a security in this state through any portal or person acting on an agency basis in the common-law sense shall file with the secretary of state, in such form as the secretary of state prescribes by rule, irrevocable consent appointing the secretary of state to receive service of any lawful process in any non-criminal suit, action, or proceeding against the portal or the issuer's successor, executor, or administrator which arises under this chapter or any rule or order under this chapter after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. A person who has filed such a consent in connection with a previous registration or notice filing need not file another. Service may be made by leaving a copy of the process in the office of the secretary of state along with \$5, but it is not effective unless:

(a) The plaintiff, who may be the attorney general in a suit, action, or proceeding instituted by him or her sends notice of the service and a copy of the process by registered mail to the defendant; or

(b) The plaintiff's affidavit of compliance with this paragraph is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

VIII. When any person, including any nonresident of this state, engages in conduct prohibited or made actionable by this chapter or any rule or order under this chapter and such person has not filed a consent to service of process under paragraph VII and personal jurisdiction over such person cannot otherwise be obtained in this state, that conduct shall be considered equivalent to such persons appointment of the secretary of state to receive service of any lawful process in any non-criminal suit, action, or proceeding against him or her or his or her successor, executor, or administrator which grows out of that conduct and which is brought under this chapter or any rule adopted or order issued under this chapter, with the same force and validity as if served on him or her personally. Service may be made by leaving a copy of the process along with \$5 in the office of the secretary of state, and shall not be effective unless:

(a) The plaintiff, who may be the attorney general, in a suit, action, or proceeding instituted by him or her, immediately sends notice of the service and a copy of the process by registered mail to the defendant or respondent at his or her last known address or takes other steps which are reasonably calculated to give actual notice, and

(b) The plaintiff's affidavit of compliance with this paragraph is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

IX. When process is served under this chapter, the court, or the secretary of state in a proceeding before him or her, shall order such continuance as may be necessary to afford the defendant or respondent reasonable opportunity to defend.

421-B:39 Rulemaking. The secretary of state shall adopt rules to implement this subdivision, including but not limited to:

I. Filing with the secretary of state under RSA 421-B:37.

II. Establishing filing and transaction fees sufficient to cover the costs of administering this subdivision.

2 Effective Date. This act shall take effect 60 days after its passage.