

ASSEMBLY, No. 2073
STATE OF NEW JERSEY
216th LEGISLATURE

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SYNOPSIS

Provides certain issuers of securities with exemption from registration.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel

AN ACT concerning exemption from registration for certain issuers of securities and supplementing P.L.1967, c.93 (C.49:3-47 et seq.).

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. As used in this act, "exempt issuer" means an issuer of securities that meets the exemption requirements of section 2 of this act and is not required to register with the Bureau of Securities in the Division of Consumer Affairs in the Department of Law and Public Safety.

2. Notwithstanding any law or regulation to the contrary, an issuer of securities shall not be required to register with the Bureau of Securities pursuant to P.L.1967, c.93 (C.49:3-47 et seq.) if:

a. the issuer is a business entity organized under the laws of this State and authorized to do business in this State;

b. the transaction meets the requirements of the federal exemption for intrastate offerings in section 3(a)(11) of the federal Securities Act of 1933 (15 U.S.C. s.77c(a)(11)) and Rule 147 adopted under the Securities Act of 1933 (17 C.F.R. 230.147);

c. the sum of all cash and other consideration to be received for all sales of the security in reliance on the exemption under this section, excluding sales to any accredited investor or institutional investor, does not exceed \$1,000,000, except that an offer or sale to an officer, director, partner, trustee, or individual occupying similar status or performing similar functions with the issuer or to a person owning 10 percent or more of the outstanding securities of the issuer shall not be counted toward the aggregate monetary limitation of shares to be issued as established herein;

d. the offering by the issuer is made exclusively through one or more Internet sites;

e. the issuer does not accept an investment of more than \$5,000 from any single purchaser unless the purchaser is an accredited investor; and

f. the purchaser of the securities is a resident of this State.

3. Every exempt issuer shall post any offering to prospective investors on an Internet site established for that purpose and provide the following information to the prospective investors in writing on that site:

a. a copy of the disclosure statement required pursuant to section 5 of this act;

b. a description of the company, its form of business organization, the address and telephone number of its principal office, its history, its business plan, and the intended use of the offering proceeds, including any amounts to be paid, as compensation or otherwise, to any owner, executive officer, director, managing member, or other person occupying a similar status or performing similar functions on behalf of the exempt issuer;

c. the identity of all persons owning more than 10 percent of the ownership interests of any class of securities of the company;

d. the identity of the executive officers, directors, managing members, and other persons occupying a similar status or performing similar functions in the name of and on behalf of the exempt issuer, including their titles and their prior experience;

e. the terms and conditions of the securities being offered and of any outstanding securities of the company, the minimum and maximum amount of securities being offered, if any, and either the percentage ownership of the company represented by the offered securities or the valuation of the company implied by the price of the offered securities;

f. the minimum target offering amount specified in the business plan that is necessary to implement the business plan, and a notice that the funds will only be released to the exempt issuer if the target offering amount is reached;

g. the time and date by which the target offering amount must be reached before all investors may cancel their commitment to invest;

h. the identity of any person who has been or will be retained by the exempt issuer to assist the exempt issuer in conducting the offering and sale of the securities, including any Internet site operator, but excluding persons acting solely as accountants or attorneys and employees whose primary job responsibilities involve the operating business of the exempt issuer, rather than assisting the exempt issuer in raising capital;

i. a description of the consideration being paid for assistance to each person identified under subsection h. of this section;

j. a description of any litigation or legal proceedings involving the company or its management; and

k. any additional information material and specific to the offering, including, if appropriate, a discussion of significant factors that make the offering speculative or enhances risk to the prospective investor.

4. An exempt issuer shall execute an escrow agreement with a bank, savings bank, savings and loan association or credit union that provides that investor funds obtained pursuant to the provisions of this act will be deposited in that institution, and shall further provide that all offering proceeds will be released to the exempt issuer only when the aggregate capital raised from all investors pursuant to section 3 of this act is equal to or greater than the minimum target offering amount specified in the exempt issuer's business plan as necessary to implement the business plan. The agreement shall also provide that all investors may cancel their commitment to invest if that target offering amount is not raised by the time stated in the disclosures required to be set forth pursuant to section 3 of this act.

5. a. An exempt issuer shall inform all prospective purchasers of securities offered pursuant to this act that the securities have not been registered with the federal Securities and Exchange Commission or the State Bureau of Securities and that the securities are subject to limitations on resale. The exempt issuer shall display the following statement in 15-point type conspicuously on the exempt issuer's Internet site and on the cover page of the disclosure statement:

IN MAKING AN INVESTMENT DECISION REGARDING THE SECURITIES WHICH ARE THE SUBJECT OF THIS OFFER, INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE ISSUER AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND THE RISKS INVOLVED. THESE SECURITIES HAVE NOT BEEN REGISTERED WITH OR RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES REGULATORY AGENCY, AND NO STATE OR FEDERAL AUTHORITIES HAVE CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF ANY INFORMATION PROVIDED BY THE ISSUER. ANY REPRESENTATION TO THE CONTRARY SHALL CONSTITUTE A CRIMINAL OFFENSE. THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT

NECESSARILY BE TRANSFERABLE OR RESOLD. INVESTORS SHOULD BE AWARE THAT THEY WILL BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.

b. If the business entity's organization is such that individual liability may accrue to those with a share in the entity, this shall also be disclosed in the statement required by subsection a. of this section, as follows:

BECAUSE OF THE ORGANIZATIONAL STRUCTURE OF THE BUSINESS ENTITY THAT WOULD BE THE SUBJECT OF THIS INVESTMENT, YOU MAY INCUR SIGNIFICANT INDIVIDUAL PERSONAL LIABILITY FOR PAYMENT OF ANY CLAIM OR JUDGMENT AGAINST THE ENTITY.

6. Prior to the consummation of a purchase, an exempt issuer shall require the purchaser to certify in writing or electronically as follows:

I UNDERSTAND AND ACKNOWLEDGE THAT:

I am investing in what may be a high-risk speculative business venture.

This offering has not been reviewed or approved by any State or federal securities regulatory authority and no person or authority has confirmed the accuracy or determined the adequacy of any disclosure made to me relating to this offering.

The securities I am acquiring in this offering are illiquid, and there is no ready market for the sale of the securities; it may be difficult or impossible for me to sell or otherwise dispose of this investment, and, accordingly, I may be required to hold this investment indefinitely.

I may be subject to tax on my share of the taxable income and losses of the company, whether or not I have sold or otherwise disposed of my investment or received any dividends or other distributions from the company.

7. An exempt issuer shall provide, free of charge, a quarterly report to the exempt issuer's investors. An exempt issuer may satisfy the reporting requirement of this section by making the information available on an Internet site if the information is made available within 45 days after the end of each fiscal quarter and remains available until the succeeding quarterly report is issued. A written copy shall be provided to an investor upon request. The report shall include a statement of the compensation received by each director and executive officer, including cash compensation earned since the previous report, as well as any bonuses, stock options, other rights to receive securities of the exempt issuer or any affiliate of the exempt issuer, or any compensation received. The report shall also include an analysis by management of the exempt issuer of the business operations and financial condition of the exempt issuer.

8. This act shall take effect immediately, and shall apply to any transaction entered into after the effective date of the act.

STATEMENT

This bill provides certain issuers of securities with an exemption from registration with the Bureau of Securities in the Division of Consumer Affairs in the Department of Law and Public Safety. The bill provides this exemption for companies organized in New Jersey that offer intrastate "crowdfunding" investment opportunities. Crowdfunding is the financing of a business venture using the Internet to raise small amounts of money from a large number of investors.

Under the bill, an issuer of securities is exempt from registration with the Bureau of Securities if the following conditions apply:

- (1) the issuer is a business entity organized under the laws of this State and authorized to do business in this State;
- (2) the transaction meets the requirements of the federal exemption for intrastate offerings;
- (3) the sum of all cash and other consideration to be received for all sales of the security does not exceed \$1,000,000, with certain exceptions;
- (4) the offering by the issuer is made exclusively through one or more Internet sites;
- (5) the issuer does not accept an investment of more than \$5,000 from any single purchaser unless the purchaser is an accredited investor; and
- (6) the purchaser of the securities is a resident of this State.

The bill requires exempt issuers to post the offering to prospective investors on an Internet site established for that purpose and provide the following information to the prospective investors in writing:

- (1) a copy of the disclosures required by the bill;
- (2) a description of the company, its form of business organization, the address and telephone number of its principal office, its history, its business plan, and the intended use of the offering proceeds;
- (3) the identity of all persons owning more than 10 percent of the ownership interests of any class of securities of the company;
- (4) the identity of the executive officers, directors, managing members, and other persons occupying a similar status or performing similar functions;
- (5) the terms and conditions of the securities being offered and of any outstanding securities of the company, the minimum and maximum amount of securities being offered, if any, and either the percentage ownership of the company represented by the offered securities or the valuation of the company implied by the price of the offered securities;
- (6) the minimum target offering amount specified in the business plan that is necessary to implement the business plan, and a notice that the funds will only be released to the exempt issuer if the target offering amount is reached;

(7) the time and date when the target offering amount must be reached before all investors may cancel their commitment to invest;

(8) the identity of any person who has been or will be retained by the exempt issuer to assist the exempt issuer in conducting the offering and sale of the securities and a description of the consideration being paid to the person for that assistance;

(9) a description of any litigation or legal proceedings involving the company or its management; and

(10) any additional information material and specific to the offering, including, if appropriate, a discussion of significant factors that make the offering speculative or enhances risk to the prospective investor.

The bill requires exempt issuers to execute an escrow agreement with a bank, savings bank, savings and loan association or credit union that provides that investor funds obtained pursuant to the provisions of the bill will be deposited in that institution, and shall further provide that all offering proceeds will be released to the exempt issuer only when the aggregate capital raised from all investors is equal to or greater than the minimum target offering amount specified in the exempt issuer's business plan. The agreement shall also provide that all investors may cancel their commitment to invest if that target offering amount is not raised by the time stated in the disclosure statement.

The bill requires exempt issuers to inform all prospective purchasers of securities that the securities have not been registered with the federal Securities and Exchange Commission or the State Bureau of Securities and that the securities are subject to limitations on resale. The bill also requires an exempt issuer to require, prior to the consummation of a purchase, that the purchaser certifies in writing or electronically that the purchaser understands that the securities may be a high-risk speculative business venture, have not been registered with the federal Securities and Exchange Commission or the State Bureau of Securities, and are subject to limitations on resale.

The bill also requires exempt issuers to provide, free of charge, a quarterly report to the exempt issuer's investors.