
Business & Financial Services Committee

HB 2023

Brief Description: Allowing crowdfunding for certain small securities offerings.

Sponsors: Representatives Habib, Ryu, Zeiger and Maxwell.

Brief Summary of Bill

- Exempts certain small securities offerings through a registered portal from registration under the Securities Act of Washington.
- Grants rulemaking authority to the Department of Financial Institutions to govern the exempted offerings.

Hearing Date: 1/17/14

Staff: David Rubenstein (786-7153).

Background:

The Securities Act of Washington, operating as a supplement to federal law, requires registration of securities offerings and certain persons and businesses engaged in securities transactions, and creates penalties for false or misleading filings. Certain offerings are defined as "securities" requiring registration.

Certain securities offerings, transactions, and persons are exempt from registration. Examples include:

- offerings not made to the general public but to sophisticated investors in compliance with the "private placement" provision of federal securities law;
- sales by non-issuers of the securities pursuant to unsolicited orders by the purchaser;
- sales of whole loans secured by real estate.

Under the Securities Act of Washington, the Department of Financial Institutions (DFI) is responsible for the regulation of the purchase and sale of securities in Washington. Under the Securities Act of Washington, DFI is tasked with protecting Washington residents from dishonest

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or fraudulent practices by people selling investments. To accomplish these goals, DFI uses registration of securities offerings, licensing of broker-dealers and investment advisers, and investigations of complaints. Additionally, DFI manages securities registration and investigation and enforcement of violations of the Securities Act of Washington.

Securities Act of 1933

The federal Securities Act of 1933 also requires registration of securities offerings. However, the federal act exempts transactions between issuers and purchasers who are residents of the same state (known as the “intrastate offering exemption”). The exemption is clarified by Rule 147, a “safe harbor” rule issued by the Securities and Exchange Commission (SEC). Under another rule, known as Regulation D, securities offerings are exempt if, among other things, the issuer files SEC Form D, which requires basic information about the company and the offering.

JOBS Act

Title III of the federal Jumpstart Our Business Startups Act of 2012 (JOBS Act) created an exemption from the Securities Act of 1933 for certain small securities offerings. Offerings are exempt if they meet various criteria, including a cap on the aggregate amount of securities offered by any issuer, a cap on the amount a given purchaser may invest, and a requirement that the offering be made through a broker or funding portal.

Under the JOBS Act, the SEC is tasked with promulgating rules to carry out Title III. As of January 15, 2014, the SEC had issued a notice of proposed rulemaking, but formal rules had not been adopted.

Summary of Bill:

An exemption is created for certain small securities offerings from registration under the Securities Act of Washington. An offering is exempt if:

- the offering is made through a crowdfunding portal that requires evidence of Washington residency as a condition for entry;
- the offering is conducted in accordance with the intrastate offering exemption of the federal Securities Act of 1933;
- the issuer is a Washington entity and each investor provides evidence or certification of Washington residency;
- the issuer files an escrow agreement with DFI providing that proceeds will be released only when the minimum target offering, as defined by DFI, is met;
- the aggregate purchase price of securities sold under the exemption does not exceed \$1 million during any 12-month period;
- the aggregate amount sold to any investor by an issuer during the 12-month period preceding the date of sale does not exceed: (1) the greater of \$2,000 or 5 percent of the investor's annual income or net worth if the investor's income or net worth is less than \$100,000; or (2) 10 percent of the annual income or net worth of the investor up to \$100,000, if the investor's annual income or net worth is \$100,000 or more;
- the investor acknowledges a statement regarding the risk of the investment;
- the issuer reasonably believes that purchasers are purchasing for investment and not for sale in connection with a distribution;

- the issuer files SEC Form D or another form required by DFI and a fee of \$300 within 15 days after the first sale; and
- the issuer and investor provide any other information reasonably required by DFI.

A 5% excise tax is imposed on each investment, to be paid by the buyer and collected by the seller. The collected tax must be paid to the Department of Revenue.

The issuer must also provide a quarterly report to shareholders and make the report publicly available.

Shareholders are prohibited from transferring their shares for a period of one year, unless the shares are transferred back to the issuer, they are transferred to an accredited investor, the transfer is part of a registered offering, or to a family member in connection with death, divorce, or other similar circumstances.

Issuers of securities exempt from registration under this act may also claim other exemptions.

DFI may adopt rules to protect investors purchasing securities issued under this exemption.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.