

SENATE BILL REPORT

SB 5683

As of February 9, 2015

Title: An act relating to a short-form registration statement for small securities offerings.

Brief Description: Creating a short-form registration statement for small securities offerings.

Sponsors: Senators Litzow, Fain, Hill, Rivers, Brown and Angel.

Brief History:

Committee Activity: Financial Institutions & Insurance: 2/11/15.

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

Staff: Shani Bauer (786-7468)

Background: In 2014 the Legislature adopted an exemption from registration under the Securities Act of Washington for certain small securities offerings. Under this legislation – also referred to as crowdfunding legislation, an offering is exempt if:

- the offering is filed with the Department of Financial Institutions (DFI) and declared exempt by DFI;
- the offering is conducted in accordance with Section 3(a)(11) of the Securities Act of 1933, SEC Rule 147;
- the issuer and each investor are residents of Washington State;
- funds are placed in escrow and only released when the minimum target offering 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 certain dollar limitations based on the net worth of the investor;
- the investor acknowledges the high-risk nature of the investment;
- the issuer reasonably believes that purchasers are purchasing for investment and not for sale in connection with a distribution; and
- the issuer and investor provide any other information reasonably required by DFI.

Federal securities law contains two ways in which an offer and sale of securities may be exempt from registration with the Securities and Exchange Commission (SEC).

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

SEC Rule 147. Rule 147 allows for offers and sales of securities in any amount to be exempt from federal registration if all securities are offered and sold to residents of a single state where the issuer of the security is also a resident. Advertising of the issuance is restricted to ensure the advertising is directed to persons resident in the state of which the issuer is a resident. To this end, the SEC has issued guidance authorizing a third-party Internet portal that may be used to promote a securities offering so long as the portal implements measures to ensure the offer is only made to authorized persons. The SEC notes that an issuer's use of its own website or social media to offer securities would likely involve offers to residents outside the state and are therefore likely prohibited.

SEC Rule 504. Rule 504 allows for offers and sales of securities by non-publicly held companies to be exempt from federal registration to raise up to \$1 million during a period of up to 12 months. The rule permits a company to sell its securities by advertising or other means of general solicitation and does not impose resale restrictions on the securities if the offering is registered at the state level. Rule 504 does not contain a limitation that the offering only be offered to residents of the issuer's state.

The Small Company Offering Registration (SCOR) is available through DFI. SCOR offerings are designed to be exempt from registration under SEC Rule 504. DFI regulates the type of companies that may use SCOR, the types of securities that may be offered, the offering size and price, and information that must be provided to DFI in connection with the offering.

Summary of Bill: DFI must adopt, by rule, a short-form registration form to be used for a crowdfunding offer of securities, substantially similar to that already established in law. The form must provide an alternative path to registration from SEC Rule 147, ensuring that the offering meets the requirements for federal exemption under SEC Rule 504.

DFI must adopt rules by December 1, 2015.

Appropriation: None.

Fiscal Note: Requested on February 7, 2015.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.