



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-4599/1
ARG:wlj

2017 ASSEMBLY BILL 692

November 29, 2017 - Introduced by Representatives JARCHOW, SANFELIPPO, KOOYENGA, HUTTON, TUSLER and GOYKE, cosponsored by Senators CRAIG, VUKMIR and STROEBEL. Referred to Committee on Financial Institutions.

1 **AN ACT** *to repeal* 551.205 (3); *to amend* 551.202 (26) (a), 551.202 (26) (b),
2 551.202 (26) (e), 551.202 (26) (f) 3., 551.202 (26) (h), 551.202 (27) (a), 551.202
3 (27) (b), 551.202 (27) (g), 551.202 (27) (j), 551.205 (1) (a), 551.205 (1) (b) 2. c.,
4 551.205 (1) (b) 2. d., 551.205 (1) (b) 2. e. and 551.205 (2) (intro.); and *to create*
5 551.202 (26m) of the statutes; **relating to:** securities registration exemptions
6 related to crowdfunding.

Analysis by the Legislative Reference Bureau

This bill modifies requirements for certain securities transactions to be exempt from registration with the Division of Securities in the Department of Financial Institutions and creates a new exemption for certain offers, but not sales, of securities associated with an existing exemption.

Under current law, a person may not offer or sell any security in this state unless the security is registered with the division, the security or transaction is exempt from registration, or the security is a federal covered security. There are two similar transaction exemptions related to crowdfunding that exempt securities offerings from registration with the division if specified requirements are met. Among these requirements, there is a limit on the amount of money that may be raised through the offering and on the amount of money that may be received from any single purchaser. Funds received from the offering must be deposited in a financial institution chartered under the laws of this state. The issuer of the security

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must be a business entity organized under the laws of this state and authorized to do business in this state. The transaction must meet exemption requirements for intrastate offerings under federal law and Rule 147 adopted by the federal Securities and Exchange Commission. The issuer must also make certain disclosures to purchasers, including that the securities have not been registered and are subject to limitations on resale.

Under one of these crowdfunding exemptions, the offering must be made exclusively through an Internet site registered with the division. The Internet site operator must be a business entity organized under the laws of this state and authorized to do business in this state. The Internet site operator may register with the division without also being registered as a broker-dealer if it satisfies certain conditions, including that, with an exception, it is not compensated based on the amount of securities sold and the fee it charges is a fixed amount for each offering, a variable amount based on the length of time that the securities are offered on the Internet site, or a combination of these fixed and variable amounts. If the SEC adopts rules that authorize funding portals registered with the SEC to receive commissions without also registering with the SEC as broker-dealers, the division must promulgate rules, consistent with the SEC rules, authorizing Internet site operators to receive commissions without also registering with the division as broker-dealers.

The crowdfunding exemption under which the offering is not required to be made through an Internet site prohibits general solicitation or general advertising in connection with the offering unless permitted by the division.

This bill makes the following changes related to these two crowdfunding exemptions from securities registration:

1. Under the bill, an issuer claiming either of these exemptions must have a principal place of business in this state, but is not required to be organized under the laws of this state.

2. Under the bill, any financial institution may hold funds in connection with an offering under these exemptions, as the bill removes the limitation that the financial institution be chartered under the laws of this state.

3. For an offering required to be made through an Internet site, the bill allows the fee received by an Internet site operator to include a commission, which may be based on the amount of securities sold, without the Internet site operator registering as a broker-dealer. The bill also repeals the requirement that the division promulgate rules allowing Internet site operators not registered as broker-dealers to receive commissions if the SEC adopts rules to allow it on a federal level.

4. For an offering required to be made through an Internet site, the bill eliminates the requirement that the issuer's quarterly report to investors be filed with the division, but requires the issuer to provide a copy of the quarterly report to the division upon request.

5. The bill removes references to SEC Rule 147 and replaces them with references to SEC Rule 147A, which is a new intrastate sales exemption rule adopted by the SEC.

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The bill also creates a new exemption for offers, but not sales, of securities intended to be subsequently sold under a crowdfunding exemption. This new exemption allows an issuer to make an initial solicitation of interest in the offering. Under this exemption, an offer to sell a security is exempt from registration if certain requirements are met, including all of the following: 1) the offer is made in a newspaper, by media broadcast, by Internet, or by certain other means for the sole purpose of soliciting an indication of interest from prospective purchasers in receiving a prospectus, private placement memorandum, or equivalent disclosure document for the security; 2) the issuer intends that sales of the security be made under the Internet crowdfunding exemption; 3) prior to the initial solicitation of interest, the offeror files with the division a completed solicitation of interest form, together with any other materials to be used to conduct solicitations of interest; 4) the material used in the solicitation of interest contains certain disclosures; 5) no sales of the security are made until 20 calendar days after the last solicitation of interest; and 6) during the solicitation of interest period, neither the issuer nor any person acting on its behalf accepts or solicits money or other commitments to purchase securities. Under certain circumstances, this exemption may apply even if all of these requirements are not met.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 551.202 (26) (a) of the statutes is amended to read:

2 551.202 **(26)** (a) The issuer of the security is a business entity ~~organized under~~
3 the laws of this state and authorized to do with a principal place of business in this
4 state and that is doing business in this state.

5 **SECTION 2.** 551.202 (26) (b) of the statutes is amended to read:

6 551.202 **(26)** (b) The transaction meets the requirements of the federal
7 exemption for intrastate offerings in section 3 (a) (11) of the Securities Act of 1933
8 (15 USC 77c (a) (11)) and Rule ~~147~~ 147A adopted under the Securities Act of 1933 (17
9 CFR ~~230.147~~ 230.147A).

10 **SECTION 3.** 551.202 (26) (e) of the statutes is amended to read:

ASSEMBLY BILL 692**SECTION 3**

1 551.202 (26) (e) The Except as provided in sub. (26m), the offering under this
2 subsection is made exclusively through one or more Internet sites and each Internet
3 site is registered with the division under s. 551.205 (1) (b).

4 **SECTION 4.** 551.202 (26) (f) 3. of the statutes is amended to read:

5 551.202 (26) (f) 3. An escrow agreement with a bank, savings bank, savings and
6 loan association, or credit union ~~chartered under the laws of~~ authorized to do
7 business in this state in which the investor funds will be deposited, providing that
8 all offering proceeds will be released to the issuer only when the aggregate capital
9 raised from all investors is equal to or greater than the minimum target offering
10 amount specified in the business plan as necessary to implement the business plan
11 and that all investors may cancel their commitments to invest if that target offering
12 amount is not raised by the time stated in the disclosure document.

13 **SECTION 5.** 551.202 (26) (h) of the statutes is amended to read:

14 551.202 (26) (h) The issuer informs all prospective purchasers of securities
15 offered under this subsection that the securities have not been registered under
16 federal or state securities law and that the securities are subject to limitations on
17 resale. The issuer shall display the following legend conspicuously on the cover page
18 of the disclosure document:

19 IN MAKING AN INVESTMENT DECISION, INVESTORS MUST RELY ON
20 THEIR OWN EXAMINATION OF THE ISSUER AND THE TERMS OF THE
21 OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THESE
22 SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR
23 STATE SECURITIES COMMISSION OR DIVISION OR OTHER REGULATORY
24 AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT
25 CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS

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1 DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL
2 OFFENSE. THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON
3 TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR
4 RESOLD EXCEPT AS PERMITTED BY SUBSECTION (e) OF SEC RULE ~~147~~ 147A
5 (17 CFR ~~230.147~~ 230.147A (e)) AS PROMULGATED UNDER THE SECURITIES
6 ACT OF 1933, AS AMENDED, AND THE APPLICABLE STATE SECURITIES
7 LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM.
8 INVESTORS SHOULD BE AWARE THAT THEY WILL BE REQUIRED TO BEAR
9 THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD
10 OF TIME.

11 **SECTION 6.** 551.202 (26m) of the statutes is created to read:

12 551.202 (**26m**) (a) An offer to sell, but not a sale, of a security by an issuer if,
13 subject to par. (b), the offer is conducted in accordance with all of the following
14 requirements:

15 1. The offer contains information required in the solicitation of interest form
16 prescribed by the division and is made by or on behalf of the issuer by means of a
17 newspaper publication, scripted media broadcast, Internet posting, or delivery of
18 notices to be published or other documents, for the sole purpose of soliciting an
19 indication of interest from prospective purchasers in receiving a prospectus, private
20 placement memorandum, or equivalent disclosure document for the security.

21 2. The issuer intends that sales of the security be made pursuant to the
22 exemption under sub. (26).

23 3. Prior to the initial solicitation of interest made under this subsection, the
24 offeror files with the division a completed solicitation of interest form, as prescribed
25 by the division, together with any other materials to be used to conduct solicitations

ASSEMBLY BILL 692**SECTION 6**

1 of interest, including the script of any broadcast to be made, any information to be
2 posted on the Internet, and a copy of any notice to be published. Any amendments
3 to the solicitation of interest form or to any related materials used to conduct
4 solicitations shall be filed with the division not later than the date of their first use.
5 Any written or posted document under this subdivision may include a coupon, or
6 digital form, returnable to the issuer indicating interest in a potential offering and
7 revealing the name, address, electronic mail address, and telephone number of the
8 prospective purchaser.

9 4. The text of any published notice or script for broadcast, any information to
10 be posted on the Internet, and any printed material delivered in any solicitation of
11 interest under this subsection begins with the disclosures and information required
12 in, and in the format of, the solicitation of interest form prescribed by the division.

13 5. The offeror does not know, and in the exercise of reasonable care could not
14 know, that any of the issuer's officers, directors, general partners, controlling
15 persons, or affiliates are or would be disqualified from use of the registration
16 exemption under this subsection.

17 6. No solicitation of interest pursuant to this subsection is made after the filing
18 of materials required for the exemption under sub. (26).

19 7. No sales of the securities that are the subject of solicitations of interest under
20 this subsection are made until 20 calendar days after the last delivery of a solicitation
21 of interest document, scripted media broadcast, Internet post, or other media
22 publication. For purposes of this subdivision, the last delivery date for solicitations
23 of interest by means of the Internet is the last day on which a digital form is available
24 for a prospective purchaser's response indicating interest.

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1 8. During the solicitation of interest period, neither the issuer nor any person
2 acting on its behalf accepts or solicits money, subscriptions, or commitments to
3 purchase securities.

4 (b) A failure to comply with any of the requirements for exemption under par.
5 (a) does not result in the loss of the exemption under this subsection for any offer to
6 a particular person if the offeror demonstrates that all of the following apply:

7 1. The failure to comply did not pertain to a requirement directly intended to
8 protect that particular person.

9 2. The failure to comply was insignificant with respect to the offering as a
10 whole.

11 3. A good faith and reasonable attempt was made to comply with all
12 requirements under par. (a).

13 **SECTION 7.** 551.202 (27) (a) of the statutes is amended to read:

14 551.202 (27) (a) The issuer of the security is a business entity ~~organized under~~
15 ~~the laws of this state and authorized to do~~ with a principal place of business in this
16 state and that is doing business in this state.

17 **SECTION 8.** 551.202 (27) (b) of the statutes is amended to read:

18 551.202 (27) (b) The transaction meets the requirements of the federal
19 exemption for intrastate offerings in section 3 (a) (11) of the Securities Act of 1933
20 (15 USC 77c (a) (11)) and Rule ~~147~~ 147A adopted under the Securities Act of 1933 (17
21 CFR ~~230.147~~ 230.147A).

22 **SECTION 9.** 551.202 (27) (g) of the statutes is amended to read:

23 551.202 (27) (g) All funds received from investors are deposited into a bank,
24 savings bank, savings and loan association, or credit union ~~chartered under the laws~~

ASSEMBLY BILL 692**SECTION 9**

1 of authorized to do business in this state, and all the funds are used in accordance
2 with representations made to investors.

3 **SECTION 10.** 551.202 (27) (j) of the statutes is amended to read:

4 551.202 (27) (j) The issuer informs all purchasers that the securities have not
5 been registered under this chapter and makes the disclosures required under
6 subsection (f) of Rule ~~147~~ 147A adopted under the Securities Act of 1933 (17 CFR
7 ~~230.147~~ 230.147A (f)).

8 **SECTION 11.** 551.205 (1) (a) of the statutes is amended to read:

9 551.205 (1) (a) Prior to any offer or sale of securities, the issuer shall provide
10 to the Internet site operator evidence that the issuer ~~is organized under the laws of~~
11 ~~this state and is authorized to do~~ has a principal place of business in this state and
12 is doing business in this state.

13 **SECTION 12.** 551.205 (1) (b) 2. c. of the statutes is amended to read:

14 551.205 (1) (b) 2. c. ~~Except as provided in sub. (3), it~~ It does not compensate
15 employees, agents, or other persons for the solicitation or based on the sale of
16 securities displayed or referenced on the Internet site.

17 **SECTION 13.** 551.205 (1) (b) 2. d. of the statutes is amended to read:

18 551.205 (1) (b) 2. d. ~~Except as provided in sub. (3), it is not compensated based~~
19 ~~on the amount of securities sold, and it~~ It does not hold, manage, possess, or
20 otherwise handle investor funds or securities.

21 **SECTION 14.** 551.205 (1) (b) 2. e. of the statutes is amended to read:

22 551.205 (1) (b) 2. e. ~~Except as provided in sub. (3), the~~ The fee it charges an
23 issuer for an offering of securities on the Internet site is a commission, a fixed amount
24 for each offering, a variable amount based on the length of time that the securities
25 are offered on the Internet site, or a combination of such fixed and variable amounts.

