

State of Wisconsin



2017 Senate Bill 583

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2017 WISCONSIN ACT 213

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

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

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

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

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

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

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

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

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

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

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

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

IN MAKING AN INVESTMENT DECISION,
INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE ISSUER AND THE TERMS OF THE

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES COMMISSION OR DIVISION OR OTHER REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE. THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED BY SUBSECTION (e) OF SEC RULE 147 147A (17 CFR 230.147 230.147A (e)) AS PROMULGATED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. INVESTORS SHOULD BE AWARE THAT THEY WILL BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.

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

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

1. The offer contains information required in the solicitation of interest form prescribed by the division and is made by or on behalf of the issuer by means of a newspaper publication, scripted media broadcast, Internet posting, or delivery of notices to be published or other documents, 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 pursuant to the exemption under sub. (26).

3. Prior to the initial solicitation of interest made under this subsection, the offeror files with the division a completed solicitation of interest form, as prescribed by the division, together with any other materials to be used to conduct solicitations of interest, including the script of any broadcast to be made, any information to be posted on the Internet, and a copy of any notice to be published. Any amendments to the solicitation of interest form or to any related materials used to conduct solicitations shall be filed with the division not later than the date of their first use. Any written or posted document under this subdivision may include a coupon, or digital form, returnable to the issuer indicating interest in a potential offering and revealing the name, address, electronic mail address, and telephone number of the prospective purchaser.

4. The text of any published notice or script for broadcast, any information to be posted on the Internet, and any

printed material delivered in any solicitation of interest under this subsection begins with the disclosures and information required in, and in the format of, the solicitation of interest form prescribed by the division.

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

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

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

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

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

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

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

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

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

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

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

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

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

551.202 (27) (g) All funds received from investors are deposited into a bank, savings bank, savings and loan association, or credit union ~~chartered under the laws of~~ authorized to do business in this state, and all the funds

are used in accordance with representations made to investors.

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

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

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

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

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

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

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

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

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

551.205 (1) (b) 2. e. ~~Except as provided in sub. (3), the~~ The fee it charges an issuer for an offering of securities on the Internet site is a commission, 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 such fixed and variable amounts.

SECTION 15. 551.205 (2) (intro.) of the statutes is amended to read:

551.205 (2) (intro.) An issuer of a security, the offer and sale of which is exempt under s. 551.202 (26), shall provide, free of charge, a quarterly report to the issuer's investors until no securities issued under s. 551.202 (26) are outstanding. An issuer may satisfy the reporting requirement of this subsection 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. ~~An issuer shall file each quarterly report under this subsection with the division and, if~~ If the quarterly report is made available on an Internet site, the issuer shall ~~also~~ provide a written copy of the report to any investor upon request. Upon written request from the division, the issuer shall provide a copy of the quarterly report to the division within 10 business days following the division's request. The report shall contain all of the following:

SECTION 16. 551.205 (3) of the statutes is repealed.

SECTION 17. Initial applicability.

(1) This act first applies to securities offered or sold on the effective date of this subsection.