

2017 DRAFTING REQUEST

Bill

For: **David Craig (608) 266-5400** Drafter: **agary**
 By: **Bill Neville** Secondary Drafters:
 Date: **1/24/2017** May Contact:
 Same as LRB: **-4599**

Submit via email: **YES**
 Requester's email: **Sen.Craig@legis.wisconsin.gov**
 Carbon copy (CC) to: **aaron.gary@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Securities law changes related to transaction exemptions for crowdfunding and creating new exemption for solicitations of interest (test the waters)

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	agary 3/10/2017				
/P1	agary 4/20/2017	wjackson 4/24/2017	lparisi 3/15/2017		State
/P2	agary 9/13/2017	jdyer 9/13/2017	mbarman 4/24/2017		State
/1			dwalker 9/13/2017	dwalker 11/15/2017	State

FE Sent For:

AT
INTRO

<END>

Gary, Aaron

From: Kohn, Hanna
Sent: Tuesday, January 24, 2017 2:20 PM
To: Gary, Aaron
Subject: FW: Bill Draft Request - 2:17 PM 1/24

From: Ignatowski, Alex - DFI
Sent: Tuesday, January 24, 2017 2:17 PM
To: LRB.Legal <lrblegal@legis.wisconsin.gov>
Cc: MacKinnon, Heather A - DFI <Heather.MacKinnon@dfi.wisconsin.gov>
Subject: Bill Draft Request

To whom it may concern,

The Department of Financial Institutions is requesting that the below statutory changes be drafted into a bill. Please contact me with any questions.

-Alex

- 1) No need to send the issuer's quarterly reports to DFI;
- 2) That the issuer need not be organized under WI law;
- 3) That we want the option of adopting future Rule 147 amendments;
- 4) That the escrow agent need not be chartered under WI law; also consider change to where deposits can be held;
- 5) That internet site operators can receive commissions without registering as a broker dealer (per a change made by the SEC); and
- 6) Create "test the waters" on Internet for crowdfunding.

Regarding item (1): Remove the below highlighted language. Create new language as underlined below.

551.205 Additional provisions related to crowdfunding exemption for intrastate offerings through Internet sites.

(2) 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 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. The report shall contain all of the following:

(a) Compensation received by each director and executive officer, including cash compensation earned since the previous report and on an annual basis and any bonuses, stock options, other rights to receive securities of the issuer or any affiliate of the issuer, or other compensation received.

(b) An analysis by management of the issuer of the business operations and financial condition of the issuer.

Create: (2a) The issuer shall provide a copy of a quarterly report within 10 business days following a written request from the division.

Regarding item (2) and (3): Remove the highlighted language from (26)(a) so that the issuer only need be a business entity authorized to do business in WI. Create new language as underlined below.

551.202 Exempt transactions. The following transactions are exempt from the requirements of ss. 551.301 to 551.306 and 551.504:

(26) An offer or sale of a security by an issuer if the offer or sale is conducted in accordance with all of the following requirements:

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

(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 147A adopted under the Securities Act of 1933 (17 CFR 203.147A).

Regarding item (4): Remove the highlighted language and create the underlined language to allow that the escrow agency need not be chartered under WI law but must be authorized to do business in WI.

551.202 Exempt Transactions.

Under 551.202(26)(f)(3) that refers to the qualifications of the escrow agent:

(f) Not less than 10 days prior to the commencement of an offering of securities in reliance on the exemption under this subsection, the issuer files a notice with the administrator, in writing or in electronic form as prescribed by the administrator, which the administrator shall make available as an electronic document on the department of financial institutions Internet site, containing all of the following: [1 and 2 omitted]

3. An escrow agreement with a bank, savings bank, savings and loan association, or credit union chartered under the laws of this state 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.

Like want to consider whether to make similar change to 551.202(27)(g) that refers to where deposits are to be held:

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

Regarding item (5): Remove the highlighted language and create the underlined language to address the receipt of commissions

551.205 Additional provisions related to crowdfunding exemption for intrastate offerings through Internet sites.

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

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

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

(3) If the Securities and Exchange Commission adopts rules under authority of section 3 (h) of the Securities Exchange Act of 1934 (15 USC 78c (h)) and P.L. 112-106, section 304, that authorize funding portals to receive commissions without registering as broker-dealers under the Securities Exchange Act of 1934, the division shall promulgate rules authorizing Internet site operators registered with the division under sub. (1) (b) that are not registered as broker-dealers under s. 551.401 to receive commissions. The division shall ensure that its rules authorizing commissions for Internet site operators are consistent with rules adopted by the Securities and Exchange Commission. The division's rules shall also ensure that Internet site operators that do not satisfy rules adopted by the Securities and Exchange Commission have the opportunity to operate in compliance with the requirements of this section.

Regarding items (6): See the attached for specific language idea.

Currently under DFI-SEC rules (DFI-SEC 2.027) someone who is thinking about launching an investment opportunity can first “test the waters” to see whether there is actually any public interest in such an investment offer.

Example: You are investor of the newest Widget. You believe investing in a company that makes and sells your new Widget would be a great investment opportunity - but you first want to see whether there is actually any interest is such investment. You decide to post on the radio an ad briefly mentioning the widget and asking that if anyone were interested in learning more about the Widget and investing in the company to contact you. You also print a similar item within the local newspaper. You are not actually offering an investment – but trying to “test the waters” to determine whether there is enough interest in such an offer to then determine to actually launch an offer to the public for the public to invest in your Widget company under DFI’s Securities rules/statutes.

Staff believes it would be helpful in the Crowdfunding setting to allow for a “test the waters” scenario when the inquiry of interest is posted on the Internet. That the Internet can be used like the radio and newspaper have in the past by those seeking to “test the waters” of an investment opportunity. Staff has taken DFI-SEC rule 2.027 (current “test the waters” rule) and modified it to work in the Internet setting. The idea is attached.

We would recommend the attached be including as a new section within the crowdfunding statute, would be a new section (o) to 551.202(26) rather than make the change to the DFI-SEC rule 2.027 in the essence of time. Staff can certainly look to modify rule 2.027 and others that they think need a general update as part of another effort.

Alex Ignatowski

Assistant Deputy Secretary

Department of Financial Institutions

Phone: 608-267-1718

alex.ignatowski@wisconsin.gov

To whom it may concern,

The Department of Financial Institutions is requesting that the below statutory changes be drafted into a bill. Please contact me with any questions.

-Alex

- 1) No need to send the issuer's quarterly reports to DFI;
- 2) That the issuer need not be organized under WI law;
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- 4) That the escrow agent need not be chartered under WI law; also consider change to where deposits can be held;
- 5) That internet site operators can receive commissions without registering as a broker dealer (per a change made by the SEC); and
- 6) Create "test the waters" on Internet for crowdfunding.

Regarding item (1): Remove the below stricken language. Create new language as underlined below.

551.205 Additional provisions related to crowdfunding exemption for intrastate offerings through Internet sites.

(2) 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 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. The report shall contain all of the following:

(a) Compensation received by each director and executive officer, including cash compensation earned since the previous report and on an annual basis and any bonuses, stock options, other rights to receive securities of the issuer or any affiliate of the issuer, or other compensation received.

(b) An analysis by management of the issuer of the business operations and financial condition of the issuer.

Create: (2a) The issuer shall provide a copy of a quarterly report within 10 business days following a written request from the division.

Regarding item (2) and (3): Remove the stricken language from (26)(a) so that the issuer only need be a business entity authorized to do business in WI. Create new language as underlined below.

551.202 Exempt transactions. The following transactions are exempt from the requirements of ss. 551.301 to 551.306 and 551.504:

(26) An offer or sale of a security by an issuer if the offer or sale is conducted in accordance with all of the following requirements:

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

(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 147A adopted under the Securities Act of 1933 (17 CFR 203.147A).

Make similar change to 551.202(27)(a) and (b) and (j)

(27) An offer or sale of a security by an issuer if the offer or sale is conducted in accordance with all of the following requirements:

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

(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 147A adopted under the Securities Act of 1933 (17 CFR 230.147A).

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

Regarding item (4): Remove the stricken language and create the underlined language to allow that the escrow agency need not be chartered under WI law but must be authorized to do business in WI.

551.202 Exempt Transactions.

Under 551.202(26)(f)(3) that refers to the qualifications of the escrow agent:

(f) Not less than 10 days prior to the commencement of an offering of securities in reliance on the exemption under this subsection, the issuer files a notice with the administrator, in writing or in electronic form as prescribed by the administrator, which the administrator shall make available as an electronic document on the department of financial institutions Internet site, containing all of the following: [1 and 2 omitted]

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.

Make similar change to 551.202(27)(g) that refers to where deposits are to be held and transaction requirements:

(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.

Regarding item (5): Remove the stricken language and create the underlined language to address the receipt of commissions

551.205 Additional provisions related to crowdfunding exemption for intrastate offerings through Internet sites.

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

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

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

~~(3) If the Securities and Exchange Commission adopts rules under authority of section 3 (h) of the Securities Exchange Act of 1934 (15 USC 78c (h)) and P.L. 112-106, section 304, that authorize funding portals to receive commissions without registering as broker-dealers under the Securities Exchange Act of 1934, the division shall promulgate rules authorizing Internet site operators registered with the division under sub. (1) (b) that are not registered as broker-dealers under s. 551.401 to receive commissions. The division shall ensure that its rules authorizing commissions for Internet site operators are consistent with rules adopted by the Securities and Exchange Commission. The division's rules shall also ensure that Internet site operators that do not satisfy rules adopted by the Securities and Exchange Commission have the opportunity to operate in compliance with the requirements of this section.~~

Regarding items (6): See the attached for specific language idea.

Currently under DFI-SEC rules (DFI-SEC 2.027) someone who is thinking about launching an investment opportunity can first “test the waters” to see whether there is actually any public interest in such an investment offer.

Example: You are inventor of the newest Widget. You believe investing in a company that makes and sells your new Widget would be a great investment opportunity - but you first want to see whether there is actually any interest in such investment. You decide to post on the radio an ad briefly mentioning the widget and asking that if anyone were interested in learning more about the Widget and investing in the company to contact you. You also print a similar item within the local newspaper. You are not actually offering an investment – but trying to “test the waters” to determine whether there is enough interest in such an offer to then determine to actually launch an offer to the public for the public to invest in your Widget company under DFI’s Securities rules/statutes.

Staff believes it would be helpful in the Crowdfunding setting to allow for a “test the waters” scenario when the inquiry of interest is posted on the Internet. That the Internet can be used like the radio and newspaper have in the past by those seeking to “test the waters” of an investment opportunity. Staff has taken DFI-SEC rule 2.027 (current “test the waters” rule) and modified it to work in the Internet setting. The idea is attached.

We would recommend the attached be including as a new section within the crowdfunding statute, would be a new section (o) to 551.202(26) rather than make the change to the DFI-SEC rule 2.027 in the essence of time. Staff can certainly look to modify rule 2.027 and others that they think need a general update as part of another effort.

Create a new section to 551.202(26)

(o) 1. A transaction exemption is available for an offer, but not a sale, of a security made by or on behalf of an issuer pursuant to delivery of a document or use of a newspaper publication, scripted media broadcast, any information posted on the Internet, or copies of any notices to be published containing the information required in the form prescribed in Wis. Admin. Code DFI-Sec 9.01(1)(c), 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, if the following conditions are satisfied, except to the extent that sub. 2 applies.

a. The issuer intends that sales of the security be exempt from registration under this section.

b. Prior to the initial solicitation of interest made under this section, the offeror shall file with the division a completed solicitation of interest form as prescribed in Wis. Admin. Code DFI-Sec 9.01(1)(c), together with any other materials to be used to conduct solicitations of interest, including, but not limited to, 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 subsection may include a coupon, or digital form, returnable to the issuer indicating interest in a potential offering, revealing the name, address and telephone number of the prospective purchaser.

c. 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 section, shall begin with the disclosures and information required in, and in the format of, the solicitation of interest form specified in Wis. Admin. Code DFI-Sec 9.01(1)(c).

d. 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 thereof are or would be disqualified from use of the registration exemption in this section.

e. Solicitations of interest pursuant to this section shall not be made after the filing of materials required for the registration exemption under this section.

f. Sales of the securities that are the subject of solicitations of interest under this section shall not be made until 20 calendar days after the last delivery of a solicitation of interest document, radio or television broadcast, Internet post, or other media publication. The last delivery date for solicitations of interest over the Internet shall be considered the last day on which a digital form is available for a prospective purchaser's response indicating interest.

g. During the solicitation of interest period, neither the issuer nor any person acting on its behalf may accept or solicit money, subscription, or commitments to purchase securities.

2.a. A failure to comply with any of the conditions of sub. 1 will not result in the loss of the securities registration exemption under this section for any offer to a particular individual or entity if the offeror demonstrates each of the following are met:

1. The failure to comply did not pertain to a condition directly intended to protect that particular individual or entity.

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 conditions in sub. 1.

b. Where an exemption is established only through reliance upon this subsection, the failure to comply with the conditions in sub. 1 shall constitute a basis for action that may be taken by the division under Wis. Stats. s. 551.603, and shall constitute a basis for action by the division under Wis. Stats. s. 551.204, to deny or revoke the exemption as to a specific security or transaction.



State of Wisconsin
2017 - 2018 LEGISLATURE

wanted
Wed.
3/15

in
3/10

LRB-1785/P1

ARG:...

Wij

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 AN ACT ^{gc} relating to securities registration exemptions related to
2 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 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 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 that becomes effective on April 20, 2017.

√ 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 History: 2007 a. 196; 2013 a. 52; 2013 a. 151 s. 28.

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 History: 2007 a. 196; 2013 a. 52; 2013 a. 151 s. 28.

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

11 551.202 (26) (e) The Except as provided in sub. (26m), the offering under this
12 subsection is made exclusively through one or more Internet sites and each Internet
13 site is registered with the division under s. 551.205 (1) (b).

14 History: 2007 a. 196; 2013 a. 52; 2013 a. 151 s. 28.

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

1 551.202 (26) (f) 3. An escrow agreement with a bank, savings bank, savings and
2 loan association, or credit union chartered under the laws of authorized to do
3 business in this state in which the investor funds will be deposited, providing that
4 all offering proceeds will be released to the issuer only when the aggregate capital
5 raised from all investors is equal to or greater than the minimum target offering
6 amount specified in the business plan as necessary to implement the business plan
7 and that all investors may cancel their commitments to invest if that target offering
8 amount is not raised by the time stated in the disclosure document.

9 History: 2007 a. 196; 2013 a. 52; 2013 a. 151 s. 28.

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

10 551.202 (26) (h) The issuer informs all prospective purchasers of securities
11 offered under this subsection that the securities have not been registered under
12 federal or state securities law and that the securities are subject to limitations on
13 resale. The issuer shall display the following legend conspicuously on the cover page
14 of the disclosure document:

15 IN MAKING AN INVESTMENT DECISION, INVESTORS MUST RELY ON
16 THEIR OWN EXAMINATION OF THE ISSUER AND THE TERMS OF THE
17 OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THESE
18 SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR
19 STATE SECURITIES COMMISSION OR DIVISION OR OTHER REGULATORY
20 AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT
21 CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS
22 DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL
23 OFFENSE. THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON
24 TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR

1 RESOLD EXCEPT AS PERMITTED BY SUBSECTION (e) OF SEC RULE 147 [✓]147A
2 (17 CFR ~~230.147~~ [✓]230.147A (e)) AS PROMULGATED UNDER THE SECURITIES
3 ACT OF 1933, AS AMENDED, AND THE APPLICABLE STATE SECURITIES
4 LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM.
5 INVESTORS SHOULD BE AWARE THAT THEY WILL BE REQUIRED TO BEAR
6 THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD
7 OF TIME.

8 **History:** 2007 a. 196; 2013 a. 52; 2013 a. 151 s. 28.

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

9 551.202 (26m) (a) An offer to sell, but not a sale, of a security by an issuer if,
10 subject to par. (b), the offer is conducted in accordance with all of the following
11 requirements:

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

18 2. The issuer intends that sales of the security be made pursuant to the
19 exemption under sub. (26).[✓]

20 3. Prior to the initial solicitation of interest made under this subsection, the
21 offeror files with the division a completed solicitation of interest form, as prescribed
22 by the division, together with any other materials to be used to conduct solicitations
23 of interest, including the script of any broadcast to be made, any information to be
24 posted on the Internet, and a copy of any notice to be published. Any amendments

1 to the solicitation of interest form or to any related materials used to conduct
2 solicitations shall be filed with the division not later than the date of their first use.
3 Any written or posted document under this subdivision may include a coupon, or
4 digital form, returnable to the issuer indicating interest in a potential offering and
5 revealing the name, address, and telephone number of the prospective purchaser.

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

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

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

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

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

- 1 (b) A failure to comply with any of the requirements for exemption under par.
 2 (a) does not result in the loss of the exemption under this subsection for any offer to
 3 a particular person if the offeror demonstrates that all of the following apply: ✓
 4 1. The failure to comply did not pertain to a requirement directly intended to
 5 protect that particular person.
 6 2. The failure to comply was insignificant with respect to the offering as a
 7 whole.
 8 3. A good faith and reasonable attempt was made to comply with all
 9 requirements under par. (a).

****NOTE: As you can see, I made various changes to the proposed "test the waters" provision in this draft. First, I do not believe that the provision can be inserted as a new paragraph within s. 551.202 (26). The relevant introductory clauses of s. 551.202 and sub. (26) of this provision read as follows: "**Exempt transactions.** The following transactions are exempt from the requirements of ss. 551.301 to 551.306 and 551.504: ... (26) (intro.) An offer or sale of a security by an issuer if the offer or sale is conducted in accordance with all of the following requirements: ..." The new provisions being created for the "test the waters" exemption are not additional requirements for the exemption under sub. (26) and therefore cannot be created as par. (o) under s. 551.202 (26). Instead, I created "test the waters" as a separate exemption under new s. 551.202 (26m) and tied it by cross-reference to subsequent sales under s. 551.202 (26). I have also not included the proposed provision numbered as par. (o) 2. b. in the instructions. As drafted, the new sub. (26m) requires certain conditions to be met in order for the exemption to apply, so if the conditions are not met, the exemption does not apply. Finally, because the definition of "person" in s. 551.102 (20) is expansive and covers individuals and entities, I used the term "person" instead of "individual or entity."

****NOTE: Do you want to specify by statute, in s. 551. 614 (1m), a filing fee for the filing of the solicitation of interest form under s. 551.202 (26m) (a) 3. of this draft?

****NOTE: Should any of the information submitted to the division under s. 551.202 (26m) in this draft be exempt from public disclosure under s. 551.607 (2)? ✓

- 10 **SECTION 7.** 551.202 (27) (a) of the statutes is amended to read:
 11 551.202 (27) (a) The issuer of the security is a business entity ~~organized under~~
 12 ~~the laws of this state and authorized to do~~ with a principal place of business in this
 13 state and that is doing business in this state. ✓

History: 2007 a. 196; 2013 a. 52; 2013 a. 151 s. 28.

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

1 551.202 (27) (b) The transaction meets the requirements of the federal
2 exemption for intrastate offerings in section 3 (a) (11) of the Securities Act of 1933
3 (15 USC 77c (a) (11)) and Rule 147 147A adopted under the Securities Act of 1933 (17
4 CFR ~~230.147~~ 230.147A).

History: 2007 a. 196; 2013 a. 52; 2013 a. 151 s. 28.

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

6 551.202 (27) (g) All funds received from investors are deposited into a bank,
7 savings bank, savings and loan association, or credit union ~~chartered under the laws~~
8 ~~of~~ authorized to do business in this state, and all the funds are used in accordance
9 with representations made to investors.

History: 2007 a. 196; 2013 a. 52; 2013 a. 151 s. 28.

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

11 551.202 (27) (j) The issuer informs all purchasers that the securities have not
12 been registered under this chapter and makes the disclosures required under
13 subsection (f) of Rule 147 147A adopted under the Securities Act of 1933 (17 CFR
14 ~~230.147~~ 230.147A (f)).

History: 2007 a. 196; 2013 a. 52; 2013 a. 151 s. 28.

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

16 551.205 (1) (a) Prior to any offer or sale of securities, the issuer shall provide
17 to the Internet site operator evidence that the issuer is ~~organized under the laws of~~
18 ~~this state and is authorized to do~~ has a principal place of business in this state and
19 is doing business in this state.

History: 2013 a. 52.

****NOTE: The amendment of s. 551.205 (1) (a) was not included in the instructions
but is necessary to retain consistency with the amendment in s. 551.202 (26) (a). Do you
also want to amend s. 551.205 (1) (b) 1. a. so that the Internet site operator is not required
to be a domestic business entity?

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

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

4 **History:** 2013 a. 52.

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

5 551.205 (1) (b) 2. d. ~~Except as provided in sub. (3), it~~ It is not compensated based
6 on the amount of securities sold, and it does not hold, manage, possess, or otherwise
7 handle investor funds or securities.

History: 2013 a. 52.

****NOTE: Could the commission referenced in s. 551.205 (1) (b) 2. e., below, ever be based on the amount of the securities sold? If so, then the striking (of the "Except as provided" language) in subd. 2. d., above, should be removed and the cross-reference changed to subd. 2. e. (But also see the ****Note immediately below.)

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

9 551.205 (1) (b) 2. e. ~~Except as provided in sub. (3), the~~ The fee it charges an
10 issuer for an offering of securities on the Internet site is a commission, a fixed amount
11 for each offering, a variable amount based on the length of time that the securities
12 are offered on the Internet site, or a combination of such fixed and variable amounts.

History: 2013 a. 52.

****NOTE: It seems to me that the purpose of s. 551.205 (1) (b) 2. e. was originally to preclude commissions. If "commission" is added to the language, is there any purpose to the provision anymore? Would it be better to simply repeal all of s. 551.205 (1) (b) 2. e.?

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

14 551.205 (2) (intro.) An issuer of a security, the offer and sale of which is exempt
15 under s. 551.202 (26), shall provide, free of charge, a quarterly report to the issuer's
16 investors until no securities issued under s. 551.202 (26) are outstanding. An issuer
17 may satisfy the reporting requirement of this subsection by making the information
18 available on an Internet site if the information is made available within 45 days after
19 the end of each fiscal quarter and remains available until the succeeding quarterly
20 report is issued. ~~An issuer shall file each quarterly report under this subsection with~~

1 ~~the division and, if~~ If the quarterly report is made available on an Internet site, the
2 issuer shall ~~also~~ provide a written copy of the report to any investor upon request.
3 Upon written request from the division, the issuer shall provide a copy of the
4 quarterly report to the division within 10 business days following the division's
5 request. The report shall contain all of the following:

6 History: 2013 a. 52.

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

7 **SECTION 17. Initial applicability.**

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

10 (END)

Gary, Aaron

From: MacKinnon, Heather A - DFI
Sent: Tuesday, April 11, 2017 11:36 AM
To: Gary, Aaron
Subject: RE: Draft review: LRB -1785/P1

Hello Aaron,

Sorry for delay in response to your Note questions, staff have been traveling for examinations.

We have the following responses to your questions and one new suggestion.

- ✓ (1) To allow to be returnable to an issuer regarding a potential offer the email address of the prospective purchase on Page 6, line seven after "address," add the words email address: The line 7 would then read: "revealing the name, address, e-mail address, and telephone number of the prospective purchaser."
- ✓ (2) Second note on page 7, staff does not want to collect a fee. A filing fee does not need to be specified within s. 551.614(1m).
- ✓ (3) Last note on page 7, nothing would need be exempt from public disclosure. Information under 551.202(26m) does not need be exempt from disclosure under s. 551.607(2).
- ✓ (4) Note which begins bottom of page 8 and carries to top of page 9, staff wishes to retain the fact that the Internet site operator is required to be a domestic business entity. Staff recommends s. 551.205(1)(b)1.a. remain as it currently is.
- ✓ (5) To reconcile your questions on page 9, going to your last question on that page first, staff recommends keeping section 551.205(1)(b)2.e. as you have drafted. However, change line 6 and 7 on page 9 to remove "It is not compensated based on the amount of securities sold, and" Line 6 and 7 would then read as: "551.205(1)(b)2.d. It does not hold, manage, possess, or otherwise handle investor funds or securities." We believe this change will then better reconcile sections (1)(b)2.e and (1)(b)2.d.

Thanks for your help with the matter.

Heather A. MacKinnon
Chief Legal Counsel
Wisconsin Department of Financial Institutions
201 W. Washington Ave Ste. 500
P.O. Box 8861
Madison, WI 53708-8861
heather.mackinnon@wisconsin.gov
Office: (608) 266-7968
Fax: (608) 261-4334
www.wdfi.org

From: Gary, Aaron [mailto:Aaron.Gary@legis.wisconsin.gov]
Sent: Wednesday, March 15, 2017 4:48 PM
To: MacKinnon, Heather A - DFI <Heather.MacKinnon@dfi.wisconsin.gov>
Subject: FW: Draft review: LRB -1785/P1

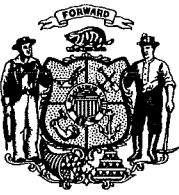
I apologize for the delay on this draft.
Please let me know if you have any changes.
Aaron

Aaron R. Gary
Senior Attorney, Legislative Reference Bureau
608.261.6926 (voice)
608.264.6948 (fax)
aaron.gary@legis.state.wi.us

From: LRB.Legal
Sent: Wednesday, March 15, 2017 4:37 PM
To: Gary, Aaron <Aaron.Gary@legis.wisconsin.gov>
Subject: Draft review: LRB -1785/P1

Draft Requester: Financial Institutions

Following is the PDF version of draft LRB -1785/P1.



State of Wisconsin
2017 - 2018 LEGISLATURE

Wanted
Mon,
4/24

in
4/20

LRB-1785/17 RZ
ARG:wlj

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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

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 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 that becomes effective on April 20, 2017.

which may be based on the amount of securities sold,

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:

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

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

SECTION 6

electronic mail address

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, and telephone number of the prospective purchaser.

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

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

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

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

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).

****NOTE: As you can see, I made various changes to the proposed "test the waters" provision in this draft. First, I do not believe that the provision can be inserted as a new paragraph within s. 551.202 (26). The relevant introductory clauses of s. 551.202 and sub. (26) of this provision read as follows: "**Exempt transactions.** The following transactions are exempt from the requirements of ss. 551.301 to 551.306 and 551.504: ... (26) (intro.) An offer or sale of a security by an issuer if the offer or sale is conducted in accordance with all of the following requirements: ..." The new provisions being created for the "test the waters" exemption are not additional requirements for the exemption under sub. (26) and therefore cannot be created as par. (o) under s. 551.202 (26). Instead, I created "test the waters" as a separate exemption under new s. 551.202 (26m) and tied it by cross-reference to subsequent sales under s. 551.202 (26). I have also not included the proposed provision numbered as par. (o) 2. b. in the instructions. As drafted, the new sub. (26m) requires certain conditions to be met in order for the exemption to apply, so if the conditions are not met, the exemption does not apply. Finally, because the definition of "person" in s. 551.102 (20) is expansive and covers individuals and entities, I used the term "person" instead of "individual or entity."

****NOTE: Do you want to specify by statute, in s. 551.614 (1m), a filing fee for the filing of the solicitation of interest form under s. 551.202 (26m) (a) 3. of this draft?

****NOTE: Should any of the information submitted to the division under s. 551.202 (26m) in this draft be exempt from public disclosure under s. 551.607 (2)?

1 551.202 (27) (a) The issuer of the security is a business entity ~~organized under~~
2 ~~the laws of this state and authorized to do with a principal place of business in this~~
3 ~~state and that is doing~~ business in this state.

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

5 551.202 (27) (b) The transaction meets the requirements of the federal
6 exemption for intrastate offerings in section 3 (a) (11) of the Securities Act of 1933
7 (15 USC 77c (a) (11)) and Rule 147 147A adopted under the Securities Act of 1933 (17
8 CFR ~~230.147~~ 230.147A).

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

10 551.202 (27) (g) All funds received from investors are deposited into a bank,
11 savings bank, savings and loan association, or credit union ~~chartered under the laws~~
12 ~~of~~ authorized to do business in this state, and all the funds are used in accordance
13 with representations made to investors.

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

15 551.202 (27) (j) The issuer informs all purchasers that the securities have not
16 been registered under this chapter and makes the disclosures required under
17 subsection (f) of Rule 147 147A adopted under the Securities Act of 1933 (17 CFR
18 ~~230.147~~ 230.147A (f)).

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

20 551.205 (1) (a) Prior to any offer or sale of securities, the issuer shall provide
21 to the Internet site operator evidence that the issuer is ~~organized under the laws of~~
22 ~~this state and is authorized to do~~ has a principal place of business in this state and
23 is doing business in this state.

****NOTE: The amendment of s. 551.205 (1) (a) was not included in the instructions
but is necessary to retain consistency with the amendment in s. 551.202 (26) (a). Do you

also want to amend s. 551.205 (1) (b) 1. a. so that the Internet site operator is not required to be a domestic business entity?

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

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

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

6 551.205 (1) (b) 2. d. ~~Except as provided in sub. (3), it~~ is not compensated based
7 ~~on the amount of securities sold, and it~~ It does not hold, manage, possess, or otherwise
8 handle investor funds or securities.

****NOTE: Could the commission referenced in s. 551.205 (1) (b) 2. e., below, ever be based on the amount of the securities sold? If so, then the striking (of the "Except as provided" language) in subd. 2. d., above, should be removed and the cross-reference changed to subd. 2. e. (But also see the ****Note immediately below.)

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

10 551.205 (1) (b) 2. e. ~~Except as provided in sub. (3), the~~ The fee it charges an
11 issuer for an offering of securities on the Internet site is a commission, a fixed amount
12 for each offering, a variable amount based on the length of time that the securities
13 are offered on the Internet site, or a combination of such fixed and variable amounts.

****NOTE: It seems to me that the purpose of s. 551.205 (1) (b) 2. e. was originally to preclude commissions. If "commission" is added to the language, is there any purpose to the provision anymore? Would it be better to simply repeal all of s. 551.205 (1) (b) 2. e.?

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

15 551.205 (2) (intro.) An issuer of a security, the offer and sale of which is exempt
16 under s. 551.202 (26), shall provide, free of charge, a quarterly report to the issuer's
17 investors until no securities issued under s. 551.202 (26) are outstanding. An issuer
18 may satisfy the reporting requirement of this subsection by making the information
19 available on an Internet site if the information is made available within 45 days after

1 the end of each fiscal quarter and remains available until the succeeding quarterly
2 report is issued. ~~An issuer shall file each quarterly report under this subsection with~~
3 ~~the division and, if~~ If the quarterly report is made available on an Internet site, the
4 issuer shall also provide a written copy of the report to any investor upon request.
5 Upon written request from the division, the issuer shall provide a copy of the
6 quarterly report to the division within 10 business days following the division's
7 request. The report shall contain all of the following:

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

9 **SECTION 17. Initial applicability.**

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

12 (END)

LRB-1785

9/11/17

Telephone call from Greg Reiman at DFI, asst. deputy sec., 7-1718

Instructed to turn LRB-1785 file over to Sen. Craig; change requester from DFI to Sen. Craig

Working with William Neville

9/13/17

Telephone call to Bill Neville in Sen. Craig's ofc., 6-5400

Confirmed that Sen. Craig will take over the file and I should change requester from DFI to Sen. Craig

Ready for a /1 of the draft with no changes

ARG



State of Wisconsin
2017 - 2018 LEGISLATURE

TODAY
if
possible

LRB-1785/02 /
ARG:wlj

in
9/13

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

No changes

✓

Regen

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

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.

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:

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

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

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.

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~~

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~~ It does not hold, manage, possess, or
19 ~~on the amount of securities sold, and it~~ otherwise handle investor funds or securities.
20

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.

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

2 551.205 (2) (intro.) An issuer of a security, the offer and sale of which is exempt
3 under s. 551.202 (26), shall provide, free of charge, a quarterly report to the issuer's
4 investors until no securities issued under s. 551.202 (26) are outstanding. An issuer
5 may satisfy the reporting requirement of this subsection by making the information
6 available on an Internet site if the information is made available within 45 days after
7 the end of each fiscal quarter and remains available until the succeeding quarterly
8 report is issued. ~~An issuer shall file each quarterly report under this subsection with~~
9 ~~the division and, if~~ If the quarterly report is made available on an Internet site, the
10 issuer shall also provide a written copy of the report to any investor upon request.
11 Upon written request from the division, the issuer shall provide a copy of the
12 quarterly report to the division within 10 business days following the division's
13 request. The report shall contain all of the following:

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

15 **SECTION 17. Initial applicability.**

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

18

(END)

Barman, Mike

From: Neville, William
Sent: Wednesday, November 15, 2017 9:31 AM
To: LRB.Legal
Subject: Draft Review: LRB -1785/1

Please Jacket LRB -1785/1 for the SENATE.