

State of Arizona
Senate
Fifty-second Legislature
Second Regular Session
2016

CHAPTER 329
SENATE BILL 1425

AN ACT

AMENDING SECTION 44-1844, ARIZONA REVISED STATUTES; RELATING TO SECURITIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 44-1844, Arizona Revised Statutes, is amended to
3 read:

4 44-1844. Exempt transactions

5 A. Except as provided in subsections B and C of this section, sections
6 44-1841 and 44-1842, section 44-1843.02, subsections B and C and sections
7 44-3321 and 44-3325 do not apply to any of the following classes of
8 transactions:

9 1. Transactions by an issuer not involving any public offering.

10 2. The sale of securities by an executor, administrator, guardian or
11 conservator or by a bank the business of which is supervised and regulated by
12 an agency of this state or of the United States, as trustee under a will or
13 trust agreement, or by a receiver or trustee in insolvency or bankruptcy
14 approved by a court of competent jurisdiction of this state or the United
15 States.

16 3. The sale in good faith and not for the purpose of avoiding the
17 provisions of this chapter by a pledgee of securities pledged for a bona fide
18 debt.

19 4. The sale in good faith and not for the purpose of avoiding the
20 provisions of this chapter of securities by the bona fide owner of such
21 securities, other than an issuer or underwriter, in an isolated transaction,
22 in which the securities are sold either directly or through a dealer as agent
23 for the owner but where the sales are not made in the course of repeated or
24 successive transactions of similar character by the owner and are not made
25 directly or indirectly for the benefit of the issuer or an underwriter of the
26 securities.

27 5. The distribution by a corporation of capital stock or other
28 securities to its stockholders or other security holders as a stock dividend
29 or other distribution out of retained earnings.

30 6. Any transaction or series of transactions incident to a statutory
31 or judicially approved reorganization, merger, triangular merger,
32 consolidation, or sale of assets, incident to a vote by securities holders
33 pursuant to the articles of incorporation, the applicable corporate statute
34 or other controlling statute, a partnership agreement or the controlling
35 agreement among securities holders.

36 7. The exchange of securities by an issuer with its existing security
37 holders exclusively, where no commission or remuneration is paid or given,
38 directly or indirectly, for soliciting the exchange, if such exchange has
39 been duly authorized and has been approved by the holders of not less than a
40 majority of the outstanding securities of each class affected by the
41 exchange.

42 8. An offer or sale of securities to a bank, a savings institution, a
43 trust company, an insurance company, an investment company as defined in the
44 investment company act of 1940, a pension or profit sharing trust or other
45 financial institution or institutional buyer or a dealer whether the
46 purchaser is acting for itself or in a fiduciary capacity.

1 9. The issuance and delivery of securities in exchange for other
2 securities of the same issuer pursuant to a right of conversion entitling the
3 holder of the securities surrendered in exchange to make such conversion.

4 10. The issuance and delivery of securities of a corporation to the
5 original incorporators, not exceeding ten in number, where the securities are
6 not acquired by the incorporators for the purpose of sale to others and are
7 not directly or indirectly sold to a third party within twenty-four months
8 unless an incorporator experiences a bona fide change of financial
9 circumstances within such time period, providing original incorporators are
10 notified of their right pursuant to title 10 to review the financial books
11 and records of the corporation at reasonable times.

12 11. A nonissuer transaction in an outstanding security, including the
13 sale by a dealer, including an underwriter no longer acting as an underwriter
14 in respect to the securities involved, of securities sold and distributed to
15 the public, but not including securities constituting an unsold allotment to
16 or subscription by the dealer as a participant in the distribution of the
17 securities by the issuer or by or through an underwriter, if the class of
18 security has been outstanding in the hands of the public for not less than
19 ninety days preceding the date of the transaction and a recognized manual of
20 securities designated by the commission by rule or order at the time of sale
21 contains the names of the issuer's officers and directors, a statement of
22 financial condition of the issuer as of a date within eighteen months of the
23 date of the sale and a statement of income or operations for each of the two
24 fiscal years next before the date of the statement of financial condition or
25 for the period from the commencement of the issuer's existence to the date of
26 the statement of financial condition if the period is less than two years.

27 12. The sale by a dealer, including an underwriter no longer acting as
28 an underwriter in respect to the securities involved, of securities of an
29 issue sold and distributed to the public, but not including securities
30 constituting an unsold allotment to or subscription by the dealer as a
31 participant in the distribution of the securities by the issuer or by or
32 through an underwriter, if securities of such issue have been registered by
33 description under sections 44-1871 through 44-1875 or registered by
34 qualification under sections 44-1891 through 44-1902.

35 13. The sale of commodity investment contracts traded on a commodities
36 exchange recognized by the commission at the time of sale.

37 14. The sale or issuance of any investment contract or other security
38 in connection with an employee's pension, profit sharing, stock purchase,
39 stock bonus, savings, thrift, stock option or other similar employee benefit
40 plan that meets the requirements for qualification under the United States
41 internal revenue code.

42 15. Transactions within the exclusive jurisdiction of the commodity
43 futures trading commission as granted under the commodity exchange act.

44 16. Transactions involving the purchase of one or more precious metals
45 **THAT** require, and under which the purchaser receives, within seven calendar
46 days after the payment in good funds of any portion of the purchase price,

1 physical delivery of the quantity of the precious metals purchased by such
2 payment. For the purposes of this paragraph, physical delivery is deemed to
3 have occurred if, within such seven day period, the quantity of precious
4 metals purchased by such payment is delivered, whether in specifically
5 segregated or fungible bulk form, into the possession of a depository other
6 than the seller which is a financial institution, a depository the warehouse
7 receipts of which are recognized for delivery purposes for any commodity on a
8 contract market designated by the commodity futures trading commission or a
9 storage facility licensed or regulated by the United States or any agency of
10 the United States and such depository or other person that qualifies as a
11 depository issues and the purchaser receives a certificate, document of
12 title, confirmation or other instrument evidencing that such quantity of
13 precious metals has been delivered to the depository and is being and will
14 continue to be held by the depository on the purchaser's behalf, free and
15 clear of all liens and encumbrances, other than liens of the purchaser, tax
16 liens, liens agreed to by the purchaser, or liens of the depository for fees
17 and expenses, that have previously been disclosed to the purchaser. For the
18 purposes of this paragraph, "financial institution" means a bank, savings
19 institution or trust company organized under, or supervised pursuant to, the
20 laws of the United States or of this state.

21 17. Transactions involving a commodity investment contract solely
22 between persons engaged in producing, processing, using commercially or
23 handling as merchants each commodity subject to the contract or any
24 by-product.

25 18. A nonissuer transaction in an outstanding security, including the
26 sale by a dealer, including an underwriter no longer acting as an underwriter
27 in respect to the securities involved, of securities sold and distributed to
28 the public, but not including securities constituting an unsold allotment to
29 or subscription by the dealer as a participant in the distribution of the
30 securities by the issuer or by or through an underwriter if both of the
31 following apply:

32 (a) The class of security has been outstanding in the hands of the
33 public for not less than ninety days preceding the date of the transaction.

34 (b) The securities are listed on an automated quotation system of a
35 national securities association registered under the securities exchange act
36 of 1934.

37 19. Transactions involving the sale of securities to persons who are
38 not residents of this state and are not present in this state if all of the
39 following conditions are met:

40 (a) The securities being offered are not blind pool offerings.

1 (b) At least ten days before the offering date:

2 (i) The issuer certifies that the securities being offered will be
3 offered and sold in compliance with the securities act of 1933 and the laws
4 and regulations of those states in which the offers and sales will be made.

5 (ii) The issuer files as a notice filing one copy of any offering
6 materials that may be required by the SEC or the laws and rules of those
7 states in which the offers and sales will be made.

8 (iii) The issuer submits a filing fee of two hundred dollars.

9 (c) Within ten working days of completion of the offering the issuer
10 files a description of the actions taken as to compliance with the securities
11 act of 1933 and the laws and rules of those states in which the offers and
12 sales were made.

13 (d) The transaction complies with any rule adopted by the commission
14 further restricting the exemption created by this paragraph to prevent any
15 fraudulent practices.

16 20. Transactions involving offers or sales of one or more promissory
17 notes directly secured by a first lien on a single parcel of real estate on
18 which is located a dwelling or other residential or commercial structure and
19 participation interest in those notes that are exempt under section 4(5) of
20 the securities act of 1933.

21 21. OFFERINGS OF SECURITIES OF NOT MORE THAN ONE MILLION DOLLARS OR
22 THE LIMIT ESTABLISHED UNDER 17 CODE OF FEDERAL REGULATIONS SECTION 230.504 AS
23 FOLLOWS:

24 (a) AN UNLIMITED NUMBER OF SOPHISTICATED PURCHASERS MAY BE INVOLVED.

25 (b) WRITTEN OFFERING DOCUMENTS PROVIDING FULL AND ADEQUATE DISCLOSURE
26 OF MATERIAL FACTS MUST BE PROVIDED TO EACH PURCHASER.

27 (c) ADVERTISING IS NOT ALLOWED WITHOUT A WAIVER FROM THE DIRECTOR.

28 (d) THE SUM OF THE FOLLOWING AMOUNTS MAY NOT EXCEED THE GREATER OF ONE
29 MILLION DOLLARS OR THE LIMIT ESTABLISHED UNDER 17 CODE OF FEDERAL REGULATIONS
30 SECTION 230.504:

31 (i) THE DOLLAR VALUE FOR THE AMOUNT OF SECURITIES BEING OFFERED.

32 (ii) THE AGGREGATE OFFERING PRICE OF ALL SECURITIES OF THE ISSUER SOLD
33 WITHIN THE TWELVE MONTHS BEFORE THE DATE OF THE OFFERING.

34 (iii) THE AGGREGATE OFFERING PRICE OF ALL SECURITIES OF THE ISSUER
35 SOLD DURING THE COURSE OF THE OFFERING IF THE SECURITIES WERE SOLD IN
36 RELIANCE ON 15 UNITED STATES CODE SECTION 77c(b) OR IN VIOLATION OF 15 UNITED
37 STATES CODE SECTION 77e(a).

38 (e) PROVISIONS ON OFFERINGS TO SOPHISTICATED PURCHASERS ARE AS
39 FOLLOWS:

40 (i) AN OFFERING TO SOPHISTICATED PURCHASERS UNDER THIS SECTION ALLOWS
41 SALES TO EITHER AN ACCREDITED INVESTOR AS DEFINED IN 17 CODE OF FEDERAL
42 REGULATIONS SECTION 230.501 OR A PERSON, ACTING ALONE OR WITH A PURCHASER
43 REPRESENTATIVE, WHO THE DEALER REASONABLY BELIEVES HAS THE KNOWLEDGE AND
44 EXPERIENCE IN FINANCIAL AND BUSINESS MATTERS TO BE CAPABLE OF EVALUATING THE
45 MERITS AND RISKS OF THE PROPOSED INVESTMENT. THE DEALER MUST REASONABLY

1 BELIEVE THAT THE PERSON HAS KNOWLEDGE AND EXPERIENCE BEFORE A PERSON BECOMES
2 A PURCHASER.

3 (ii) THE ISSUER SHALL DISPLAY THE FOLLOWING NOTICE ON THE COVER PAGE
4 OF THE DISCLOSURE DOCUMENT IN A CONSPICUOUS MANNER IN AT LEAST TWELVE-POINT
5 BOLDFACE TYPE:

6 IN MAKING AN INVESTMENT DECISION, INVESTORS SHALL RELY ON
7 THEIR OWN EXAMINATION OF THE ISSUER AND THE TERMS OF THE
8 OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THESE
9 SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE
10 SECURITIES COMMISSION OR DIVISION OR REGULATORY AUTHORITY.
11 FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT CONFIRMED THE
12 ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY
13 REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE. THESE
14 SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND
15 RESALE AND MAY NOT BE TRANSFERRED OR RESOLD, EXCEPT AS ALLOWED
16 BY 17 CODE OF FEDERAL REGULATIONS AND APPLICABLE STATE
17 SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION FROM
18 REGISTRATION. INVESTORS MUST BE AWARE THAT THEY ARE REQUIRED TO
19 BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE
20 PERIOD OF TIME.

21 (f) ONE COPY OF THE NOTICE ON FORM D FILED WITH THE SEC IS FILED WITH
22 THE COMMISSION NOT LATER THAN FIFTEEN CALENDAR DAYS AFTER THE FIRST SALE OF
23 SECURITIES IN OR FROM THIS STATE.

24 (g) AN OFFERING TO PURCHASERS UNDER THIS SECTION ALLOWS ALL OF THE
25 FOLLOWING:

26 (i) SALES TO BE MADE ONLY BY A DEALER WHO IS NOT THE ISSUER AND WHO IS
27 REGISTERED IN THIS STATE.

28 (ii) THE DEALER TO CONDUCT THE SALES IF THE DEALER REASONABLY BELIEVES
29 THAT ADEQUATE DILIGENCE AND REVIEW HAVE BEEN APPLIED IN CONNECTION WITH THE
30 OFFERING AND THE DEALER ADEQUATELY DETERMINES THE SUITABILITY OF THE OFFERING
31 TO A PURCHASER.

32 (iii) SALES IF THE DEALER REASONABLY BELIEVES THAT THE SECURITY IS
33 SUITABLE FOR THE PURCHASER AFTER REASONABLE INQUIRY CONCERNING THE
34 PURCHASER'S INVESTMENT OBJECTIVES, FINANCIAL SITUATION AND NEEDS AND AFTER
35 CONSIDERATION OF ANY OTHER INFORMATION KNOWN BY THE DEALER.

36 (h) THE EXEMPTION MAY NOT BE USED IF AN ISSUER OR PERSON AFFILIATED
37 WITH THE ISSUER OR OFFERING IS SUBJECT TO DISQUALIFICATION PURSUANT TO ANY OF
38 THE FOLLOWING:

39 (i) THIS CHAPTER.

40 (ii) A RULE OR ORDER OF THE COMMISSION.

41 (iii) THE SECURITIES ACT OF 1933, 15 UNITED STATES CODE SECTION
42 77c(a)(11).

43 (iv) THE SECURITIES ACT OF 1933, 17 CODE OF FEDERAL REGULATIONS
44 SECTION 230.262.

45 (i) THE COMMISSION MAY SET ASIDE DISQUALIFICATION IF:

1 (i) ON A SHOWING OF GOOD CAUSE AND WITHOUT PREJUDICE TO ANY OTHER
2 ACTION BY THE COMMISSION, THE COMMISSION DETERMINES THAT IT IS NOT NECESSARY
3 THAT AN EXEMPTION BE DENIED UNDER THE CIRCUMSTANCES.

4 (ii) THE ISSUER ESTABLISHES THAT IT MADE A FACTUAL INQUIRY INTO
5 WHETHER ANY DISQUALIFICATION EXISTED UNDER SUBDIVISION (h) OF THIS PARAGRAPH
6 BUT DID NOT KNOW AND COULD NOT HAVE KNOWN WITH THE EXERCISE OF REASONABLE
7 CARE THAT A DISQUALIFICATION EXISTED. THE NATURE AND SCOPE OF THE REQUISITE
8 INQUIRY WILL VARY BASED ON THE CIRCUMSTANCES OF THE SUBJECT ISSUER AND THE
9 OTHER OFFERING PARTICIPANTS.

10 B. Subsection A, paragraph 11 of this section does not apply to either
11 of the following:

12 1. Sales by a dealer or salesman who is not registered in this state.

13 2. Solicited sales to or purchases from a resident of this state by a
14 dealer who does not have, before the initial solicitation, a written new
15 account form signed by the resident or a customer agreement signed by the
16 resident and a previous sale or purchase of a security with the resident.

17 C. The commission may by order revoke or suspend the exemption under
18 subsection A, paragraph 11 or 18 of this section with respect to any
19 securities or the use of the exemption under subsection A, paragraph 11 of
20 this section by any dealer if it finds that the further sale in this state of
21 the securities or by the dealer would work, or tend to work, a fraud or
22 deceit on the purchaser.

23 D. Sections 44-1841 and 44-1842, section 44-1843.02, subsections B and
24 C and sections 44-3321 and 44-3325 do not apply to the offer or sale of a
25 security by the issuer of the security if all of the following apply:

26 1. The issuer of the security is:

27 (a) A business entity organized under the laws of this state.

28 (b) Authorized to do business in this state.

29 (c) Doing business in this state pursuant to the securities act of
30 1933, 17 Code of Federal Regulations section 230.147(c).

31 2. The transaction meets the requirement of the federal exemption for
32 intrastate offerings in the securities act of 1933 (15 United States Code
33 section 77c(a)(11)) and 17 Code of Federal Regulations section 230.147.

34 3. The aggregate offering price of the securities complies with the
35 following:

36 (a) If the issuer has not undergone and made available to each
37 prospective purchaser and the commission the opinion letter and applicable
38 documentation resulting from a financial audit of its most recently completed
39 fiscal year that complies with generally accepted accounting principles, the
40 sum of all cash and other consideration to be received for all sales of
41 securities in reliance on this exemption may not exceed one million dollars
42 in a twelve-month period.

43 (b) If the issuer has undergone and made available to each prospective
44 purchaser and the commission the opinion letter and applicable documentation
45 resulting from a financial audit of its most recently completed fiscal year
46 that complies with generally accepted accounting principles, the sum of all

1 cash and other consideration to be received for all sales of securities in
2 reliance on this exemption may not exceed two million five hundred thousand
3 dollars in a twelve-month period.

4 (c) An offer or sale to an officer, director, partner, trustee or
5 individual occupying similar status or performing similar functions with
6 respect to the issuer or to a person owning ten percent or more of the
7 outstanding shares of any class or classes of securities of the issuer ~~may~~
8 **DOES** not count toward the monetary limitations prescribed in this paragraph.

9 4. All sales that are part of the same offering, made in reliance on
10 this exemption, meet all of the terms and conditions of this exemption.
11 Offers and sales that are made more than six months before the start of an
12 offering or are made more than six months after completion of an offering may
13 not be considered part of the offering if during those six-month periods
14 there are no offers or sales of securities by or for the issuer that are of
15 the same or a similar class as those offered or sold under this exemption,
16 other than offers and sales to individuals identified in the disclosure
17 document.

18 5. The issuer does not accept more than ten thousand dollars from any
19 single purchaser unless the purchaser is an accredited investor as defined by
20 the securities act of 1933, 17 Code of Federal Regulations section 230.501.

21 6. Unless waived by written consent of the director, not less than ten
22 days before the commencement of an offering of securities, pursuant to this
23 exemption, the issuer submits all of the following to the commission:

24 (a) A notice filing on a form prescribed by the commission.

25 (b) A copy of the disclosure document to be provided to prospective
26 purchasers pursuant to paragraph 16 of this subsection.

27 (c) A copy of the escrow agreement entered into pursuant to paragraph
28 7 of this subsection.

29 (d) Any other documents or information the commission may require to
30 administer and enforce this exemption.

31 7. All cash and other consideration paid for securities sold pursuant
32 to an offering pursuant to this exemption are directed to and deposited into
33 a single escrow account maintained by a bank, credit union or other
34 depository financial institution in this state that is authorized to do
35 business in this state and that maintains deposit or share insurance on its
36 deposits or shares. The escrow agent for the escrow account shall maintain
37 the records necessary to obtain pass-through insurance for the escrowed
38 funds. The commission may request information from the financial institution
39 necessary to ensure compliance with this paragraph. Any information received
40 by the commission is confidential and not subject to disclosure, unless the
41 director authorizes the disclosure of the information as not contrary to the
42 public interest. The bank, regulated trust company or corporate fiduciary,
43 savings bank, savings and loan association or credit union in which the
44 investor monies are deposited is only responsible to act at the direction of
45 the party establishing the escrow agreement and does not have any duty or
46 liability, contractual or otherwise, to any investor or other person.

1 8. Offers made pursuant to this exemption state a target offering
2 amount and an offering deadline. The offering deadline may not be less than
3 twenty-one days and not more than one year from the date the offer is made.

4 9. The sum of all cash and other consideration received and held in
5 escrow, as required by paragraph 7 of this subsection, may not be less than
6 eighty percent of the target offering amount on expiration of the offering
7 deadline or the early closing of the offering, pursuant to paragraph 11 of
8 this subsection, and if this requirement is not met the transaction is void
9 and the escrow agent shall return all funds deposited into the escrow account
10 to the purchasers.

11 10. A purchaser is permitted to cancel the purchaser's commitment to
12 invest at any time before forty-eight hours before expiration of the offering
13 deadline if notice of cancellation is delivered electronically or physically
14 in writing to the individual or addresses identified in the disclosure
15 document. If a purchaser is given notice of an early closing, pursuant to
16 paragraph 11 of this subsection, the purchaser may cancel the commitment
17 within seventy-two hours of delivery of the notice.

18 11. If an issuer closes an offering before the offering deadline, the
19 issuer delivers notice of the closing to each purchaser pursuant to the
20 notice provisions set forth in the disclosure document prescribed by
21 paragraph 16 of this subsection and posts the notice conspicuously on each
22 internet website on which the offer was posted, at least five days before the
23 early closing.

24 12. Before or as a result of the offering, the issuer is not any of
25 the following:

26 (a) An investment company, as defined by the investment company act of
27 1940 (15 United States Code section ~~80a-3(e)~~ 80a-3(a)).

28 (b) An entity that would be an investment company but for the
29 exclusions provided in the investment company act of 1940 (15 United States
30 Code section 80a-3(c)).

31 (c) Subject to the reporting requirements of the securities exchange
32 act of 1934 (15 United States Code section 78o(d)).

33 (d) A company that has not yet defined its business operations, that
34 does not have a business plan or a stated investment goal for the funds being
35 raised or that plans to engage in a merger or acquisition with an unspecified
36 business entity.

37 13. The issuer informs all prospective purchasers of securities that
38 the securities have not been registered under federal or state securities
39 laws and that the securities are subject to limitations on resale. The
40 issuer shall display the following notice on the cover page of the disclosure
41 document in a conspicuous manner in at least twelve-point boldface type:

42 In making an investment decision, investors shall rely on their
43 own examination of the issuer and the terms of the offering,
44 including the merits and risks involved. These securities have
45 not been recommended by any federal or state securities
46 commission or division or regulatory authority. Furthermore,

1 the foregoing authorities have not confirmed the accuracy or
2 determined the adequacy of this document. Any representation to
3 the contrary is a criminal offense. These securities are
4 subject to restrictions on transferability and resale and may
5 not be transferred or resold, except as permitted by 17 Code of
6 Federal Regulations section 230.147(e) and the applicable state
7 securities laws, pursuant to registration or exemption
8 therefrom. Investors shall be aware that they will be required
9 to bear the financial risks of this investment for an indefinite
10 period of time.

11 14. The issuer requires each purchaser to certify in writing or
12 electronically as follows:

13 I understand and acknowledge that I am investing in a high-risk,
14 speculative business venture. I may lose all of my investment,
15 or under some circumstances more than my investment, and I can
16 afford this loss. This offering has not been reviewed or
17 approved by any state or federal securities commission or
18 division or other regulatory authority and no such person or
19 authority has confirmed the accuracy or determined the adequacy
20 of any disclosure made to me relating to this offering. The
21 securities I am acquiring in this offering are illiquid, there
22 is no ready market for the sale of such securities, it may be
23 difficult or impossible for me to sell or otherwise dispose of
24 this investment, and, accordingly, I may be required to hold
25 this investment indefinitely. I may be subject to tax on my
26 share of the taxable income and losses of the company, whether
27 or not I have sold or otherwise disposed of my investment or
28 received any dividends or other distributions from the company.

29 15. The issuer obtains from each prospective purchaser evidence that
30 the prospective purchaser is a resident of this state and, if applicable, is
31 an accredited investor. A prospective purchaser's residence shall be
32 determined in accordance with the securities act of 1933, 17 Code of Federal
33 Regulations section 230.147(d). An affirmative representation made by an
34 individual that the individual is a resident of this state and proof of at
35 least one of the following is sufficient evidence that the individual is a
36 resident of this state:

37 (a) A valid driver license or nonoperating identification license
38 issued pursuant to title 28.

39 (b) A current voter registration for this state.

40 (c) General property tax records showing that the individual owns and
41 occupies property in this state as the individual's principal residence.

42 16. The issuer shall provide a disclosure document to each prospective
43 purchaser at the time the offer of securities is made that contains all of
44 the following:

45 (a) A description of the company, its type of entity, the address and
46 telephone number of its principal office, its history, its business plan and

1 the intended use of the offering proceeds, including any amounts to be paid
2 as compensation or otherwise to any owner, executive officer, director,
3 managing member or other person occupying a similar status with the company
4 or performing similar functions on behalf of the issuer.

5 (b) The identity of all persons owning more than ten percent of the
6 ownership interests of any class of securities of the company.

7 (c) The identity of the executive officers, directors, managing
8 members and other persons occupying a similar status or performing similar
9 functions in the name of and on behalf of the issuer, including their titles
10 and prior experience.

11 (d) The terms and conditions of the securities being offered and of
12 any outstanding securities of the company.

13 (e) The offering deadline and the target offering amount.

14 (f) Any conditions on which the issuer may exercise its right to close
15 an offering before the offering deadline, including the notice that will be
16 provided to both purchasers and potential purchasers if the offering is
17 closed before the offering deadline and the method in which the notice will
18 be delivered.

19 (g) Either the percentage ownership of the company represented by the
20 offered securities or the valuation of the company implied by the price of
21 the offered securities.

22 (h) The price per share, unit or interest of the securities being
23 offered.

24 (i) Any restrictions on transfer of the securities being offered.

25 (j) A disclosure of any anticipated future issuance of securities that
26 might dilute the value of securities being offered.

27 (k) The identity of any person who has been or will be retained by the
28 issuer to assist the issuer in conducting the offering and sale of the
29 securities, including any internet website operator. This subdivision does
30 not apply to persons acting solely as accountants, attorneys or employees
31 whose primary job responsibilities involve operating the business of the
32 issuer except that the identity of any person assisting the issuer in raising
33 capital must be disclosed.

34 (l) A description of the consideration being paid to any person
35 identified in subdivision (k) of this paragraph, for such assistance to the
36 issuer.

37 (m) A description of any litigation, legal proceedings or pending
38 regulatory action involving the company or its management.

39 (n) The names and addresses, including the uniform resource locator,
40 of each internet website that the issuer will use to offer or sell securities
41 pursuant to this exemption.

42 (o) The name of the individual and addresses to which purchasers may
43 deliver cancellations pursuant to paragraph 10 of this subsection. Issuers
44 shall provide the name of at least one individual with both an electronic and
45 a physical address to which cancellations may be delivered.

1 (p) Current financial statements certified by the principal executive
2 officer shall be true and complete in all material respects. If applicable,
3 the documentation required by paragraph 3, subdivision (b) of this subsection
4 shall also be provided.

5 (q) Any additional information material to the offering including, if
6 appropriate, a written statement of significant factors that make the
7 offering speculative or risky. This statement shall be concise and organized
8 logically and shall not be limited to risks that could apply to any issuer or
9 any offering.

10 17. The exemption is not used if an issuer or person affiliated with
11 the issuer or offering is subject to disqualification pursuant to:

12 (a) This chapter.

13 (b) A rule or order of the commission.

14 (c) The securities act of 1933 (15 United States Code section
15 77c(a)(11)).

16 (d) The securities act of 1933, 17 Code of Federal Regulations section
17 230.262.

18 18. The commission may set aside disqualification if:

19 (a) On a showing of good cause and without prejudice to any other
20 action by the commission, the commission determines that it is not necessary
21 that an exemption be denied under the circumstances.

22 (b) The issuer establishes that it made a factual inquiry into whether
23 any disqualification existed under this subsection but did not know and could
24 not have known in the exercise of reasonable care that a disqualification
25 existed. The nature and scope of the requisite inquiry will vary based on
26 the circumstances of the subject issuer and the other offering participants.

27 19. The sale is made exclusively through one or more internet websites
28 that are operated by a dealer who is registered pursuant to article 9 of this
29 chapter or by a person who does not receive a commission or remuneration,
30 directly or indirectly, for the offer or sale of the security and who makes a
31 notice filing pursuant to paragraph 6 of this subsection. Each issuer and
32 website operator shall comply with the following:

33 (a) Before any offer or sale of securities, the issuer shall provide
34 to the website operator evidence that the issuer is organized under the laws
35 of this state and is authorized to do business in this state.

36 (b) The website operator shall limit website access to the offer or
37 sale of securities only to residents of this state.

38 (c) The website operator may not be a purchaser in any offering made
39 pursuant to this exemption.

40 (d) The website operator may not hold an interest in or be affiliated
41 with or under common control with any issuer making an offer or sale pursuant
42 to this exemption.

43 (e) Before and throughout the term of any offering, the website
44 operator shall give the commission access to the internet website on which
45 any offering is made pursuant to this exemption.

1 (f) The issuer may distribute a limited notice stating that the issuer
2 is conducting an offering pursuant to this exemption, the name of the website
3 operator through which the offer is being conducted and a link directing
4 potential purchasers to the internet website of the website operator. The
5 notice shall contain a disclaimer that states that the offering is limited to
6 residents of this state.

7 20. The issuer makes and keeps all accounts, correspondence,
8 memoranda, papers, books and other records that the commission prescribes by
9 rule or order. All required records shall be:

10 (a) Preserved for three years unless the commission prescribes
11 otherwise for particular types of ~~record~~ RECORDS, by administrative rule or
12 order.

13 (b) Maintained within this state, or at the request of the commission
14 be made available at any time for examination by the commission in the
15 issuer's principal office or by production of exact copies in this state.

16 21. The issuer provides, free of charge, a quarterly report to the
17 issuer's purchasers until no securities issued under this exemption are
18 outstanding. The issuer may satisfy this reporting requirement by making the
19 information available on an internet website if the information is made
20 available within forty-five days after the end of each fiscal quarter and
21 remains available until the succeeding quarterly report is issued. The
22 issuer shall also provide a written copy of the report to any purchaser on
23 request. The report shall contain all of the following:

24 (a) Any compensation received by each director or executive officer,
25 including cash compensation earned since the previous report and on an annual
26 basis, any bonuses, stock options or other rights to receive securities of
27 the issuer or any affiliate of the issuer and payments that reduce personal
28 living expenses such as A company vehicle, free housing, meals or club dues.

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

31 E. THE DIRECTOR MAY ADOPT RULES BASED ON 17 CODE OF FEDERAL
32 REGULATIONS SECTION 230.504 AND REVISE THE RULES AS NECESSARY TO KEEP THEM
33 CURRENT WITH THE FEDERAL LAW.

APPROVED BY THE GOVERNOR MAY 18, 2016.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 18, 2016.