ARIZONA STATE SENATE

Fifty-Second Legislature, First Regular Session

AMENDED

FACT SHEET FOR S.B. 1450

securities registration; exemption; website operators

Purpose

Exempts issuers that meet certain criteria from current law pertaining to the offering and sale of securities.

Background

The registration, offering, and sale of securities in the state of Arizona is regulated under the Arizona Securities Act, which protects state residents from the fraudulent offering of securities in accordance with rules set forth by the Securities and Exchange Commission (SEC). The SEC was commissioned to carry out the rules for the Securities Act of 1933, which requires the registration of securities offerings.

In 2012, the Jumpstart Our Business Startups Act (JOBS Act) was signed into law by President Obama. The JOBS Act, among other things, allowed exemptions for crowdfunded securities offerings, provided certain conditions are met. Pursuant to the JOBS Act, the SEC was required to write, within 270 days, the rules implementing the law. On October 23, 2013, the SEC voted unanimously to propose rules under the JOBS ACT to permit companies to offer and sell securities through crowdfunding. However, to date, no formal rules have been adopted.

Crowdfunding has become a popular way to raise funds outside the realm of securities offerings. There are several popular websites that currently operate outside of this context that do not rely or participate in the offering of securities. These sites and forms of crowdfunding are not affected by the JOBS Act or this legislation.

Currently, 15 states have enacted legislation regarding the exemption of crowdfunded security offerings while 17 states, including Arizona, are currently considering such legislation.

There is no anticipated fiscal impact to the state General Fund associated with this legislation.

Provisions

1. Exempts issuers that meet the following criteria from current law pertaining to the registration, offering and sale of securities:
   a) the issuer is a business entity that is organized under the laws of this state, is authorized to do business in this state, and does business pursuant to the federal Securities Act of 1933 (Securities Act);

b) the transaction meets the requirement of the federal exemption for intrastate offerings in the Securities Act;
c) the aggregate offering price of the securities complies with the following:
   i. the sum of all cash and other consideration received from the sale of securities does not exceed $1,000,000 over a 12-month period without a financial audit; or
   ii. the sum of all cash and other consideration received from the sale of securities does not exceed $2,500,000 over a 12-month with a financial audit;
d) all sales that are part of the same offering, made in reliance on the exemption, meet all of the terms and conditions of the exemption;
e) the issuer does not accept more than $10,000 from any single purchaser unless that purchaser is an accredited investor as defined by the Securities Act;
f) unless waived by written consent of the Director of the Arizona Corporation Commission (Commission) Securities Division, the issuer submits all of the following to the Commission at least 10 days before the commencement of an offering of securities:
   i. a notice filing on a form prescribed by the Commission;
   ii. a copy of the disclosure document to be provided to prospective purchasers;
   iii. a copy of the escrow agreement; and
   iv. any other documents or information the Commission may require to administer and enforce the exemption.
g) all cash and other consideration paid for by securities sold as part of an offering made under the exemption are directed to and deposited in a single escrow account maintained by a bank, credit union or other depository financial institution that:
   i. is authorized to do business in this state; and
   ii. maintains deposit or share insurance.
h) offers made under the exemption state a target offering amount and an offering deadline that may not be less than 21 days; and not more than one year from the date the offer is made.
i) the sum of all cash and other consideration received and held in escrow does not equal or exceed 80 percent of the target offering amount on the expiration of the offering deadline or the early closing of the offering;
j) a purchaser is permitted to cancel the purchaser's commitment to invest:
   i. at least 48 hours before the expiration of the offering deadline, provided that the notice of cancellation is delivered electronically or physically in writing; or
   ii. within 72 hours of notice delivery in case of an early closing;
k) at least five days before an early closing, an issuer:
   i. closes an offering before the offering deadline after delivering notice of closing to each purchaser; and
   ii. posts it conspicuously on each internet website where the offer was posted.
l) before or as a result of the offering, the issuer is not:
   i. an investment company as defined in the federal Investment Company Act of 1940 (Investment Act);
   ii. an entity that would be an investment company but for the exclusions provided in the Investment Act;
   iii. subject to the reporting requirements of the federal Securities Exchange Act of 1934; or

iv. a company that has not yet defined its business operations, does not have a business plan or a state investment goal for the funds being raised or that plans to engage in a merger or acquisition with an unspecified business entity.

m) the issuer informs all prospective purchasers of securities that the securities:
   i. have not been registered under federal or state securities law; and
   ii. are subject to limitations on resale.

n) the issuer requires each purchaser to certify in writing or electronically that they:
   i. are investing in a high-risk speculative business venture;
   ii. may lose all of their investment or, under some circumstances, more than their investment; and
   iii. can afford the loss.

o) the issuer obtains from each prospective purchaser evidence that the prospective purchaser is a resident of this state and, if applicable, is an accredited investor;

p) the issuer provides a disclosure document to each prospective purchaser at the time the offering of securities is made containing certain required information, including:
   i. a description of the company;
   ii. the identity of all persons owning more than 10 percent of the ownership interest of any class of securities of the company;
   iii. the identity of the company's executive officers, directors, managing members or similar persons; and
   iv. the terms and conditions of the securities being offered and of any outstanding securities of the company.

q) the exemption is not used if an issuer or person affiliated with the issuer or offering is subject to disqualification pursuant to state or federal law;

r) the Commission sets aside disqualification based on showing of good cause;

s) the sale of securities is made exclusively through one or more internet websites operated by:
   i. a registered dealer; or
   ii. a person who does not receive a commission or remuneration for the offer or sale of securities and makes a notice filing with the Commission.

t) the issuer makes and keeps all accounts, correspondence, memoranda, papers, books and other records prescribed by Commission rule or order; and

u) the issuer provides a free quarterly report to the issuer's purchasers until no securities under the exemption are outstanding.

2. Requires the issuer to provide the website operator with evidence that the issuer is:
   a) organized under the laws of this state; and
   b) authorized to do business in this state.

3. Authorizes the issuer to distribute a limited notice stating:
   a) that the issuer is conducting an offering under the exemption;
   b) the name of the website operator through which the offering is being conducted; and
   c) a link directing potential purchasers to the website of the website operator.

4. Requires the website operator to limit website access only to state residents.

5. Prohibits the website operator from:

a) being a purchaser in any offering made under the exemption; and
b) holding an interest or being affiliated with any issuer making an offer or sale under the exemption.

6. Requires the website operator to provide the Commission with access to the internet website, on which any offering is made under the exemption, before and during the term of the offering.

7. Makes technical and conforming changes.

8. Becomes effective on the general effective date.

Amendments Adopted by Committee

- Makes a technical change.

Senate Action

FI 2/11/15 DPA 6-0-1

Prepared by Senate Research
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