

Senate Engrossed

securities; exempt transactions.

State of Arizona
Senate
Fifty-fifth Legislature
First Regular Session
2021

CHAPTER 125

SENATE BILL 1217

AN ACT

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

(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,
6 sections 44-1841 and 44-1842, section 44-1843.02, subsections B and C and
7 sections 44-3321 and 44-3325 do not apply to any of the following classes
8 of transactions:

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

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

19 4. The sale in good faith and not for the purpose of avoiding the
20 provisions of this chapter of securities, including securities that when
21 originally issued were exempt pursuant to ~~subsection A~~, paragraph 22 of
22 this ~~section~~ SUBSECTION, by the bona fide owner of such securities, other
23 than an issuer or underwriter, in an isolated transaction, in which the
24 securities are sold either directly or through a dealer as agent for the
25 owner but where the sales are not made in the course of repeated or
26 successive transactions of similar character by the owner and are not made
27 directly or indirectly for the benefit of the issuer or an underwriter of
28 the securities. For the purposes of this paragraph, the sale is not
29 considered to be made in the course of repeated or successive transactions
30 of similar character by the owner if both of the following apply:

31 (a) The sale is of a security that when originally issued was
32 exempt pursuant to ~~subsection A~~, paragraph 22 of this ~~section~~ SUBSECTION.

33 (b) At least six months have passed after the date of the last sale
34 of the security by the issuer to a resident of this state.

35 5. The distribution by a corporation of capital stock or other
36 securities to its stockholders or other security holders as a stock
37 dividend or other distribution out of retained earnings.

38 6. Any transaction or series of transactions incident to a
39 statutory or judicially approved reorganization, merger, triangular
40 merger, consolidation, or sale of assets, incident to a vote by securities
41 holders pursuant to the articles of incorporation, the applicable
42 corporate statute or other controlling statute, a partnership agreement or
43 the controlling agreement among securities holders.

44 7. The exchange of securities by an issuer with its existing
45 security holders exclusively, where no commission or remuneration is paid

1 or given, directly or indirectly, for soliciting the exchange, if such
2 exchange has been duly authorized and has been approved by the holders of
3 not less than a majority of the outstanding securities of each class
4 affected by the exchange.

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

10 9. The issuance and delivery of securities in exchange for other
11 securities of the same issuer pursuant to a right of conversion entitling
12 the holder of the securities surrendered in exchange to make such
13 conversion.

14 10. The issuance and delivery of securities of a corporation,
15 limited liability company or limited partnership to the original
16 incorporators, organizers or general partners, not exceeding ten in
17 number, where the securities are not acquired by the incorporators,
18 organizers or general partners for the purpose of sale to others and are
19 not directly or indirectly sold to a third party within twenty-four months
20 unless an incorporator, organizer or general partner experiences a bona
21 fide change of financial circumstances within such time period, providing
22 original incorporators, organizers or general partners are notified of
23 their right pursuant to title 10 or 29 to review the financial books and
24 records of the corporation, limited liability company or limited
25 partnership at reasonable times.

26 11. A nonissuer transaction in an outstanding security, including
27 the sale by a dealer, including an underwriter no longer acting as an
28 underwriter in respect to the securities involved, of securities sold and
29 distributed to the public, but not including securities constituting an
30 unsold allotment to or subscription by the dealer as a participant in the
31 distribution of the securities by the issuer or by or through an
32 underwriter, if the class of security has been outstanding in the hands of
33 the public for not less than ninety days preceding the date of the
34 transaction and a recognized manual of securities designated by the
35 commission by rule or order at the time of sale contains the names of the
36 issuer's officers and directors, a statement of financial condition of the
37 issuer as of a date within eighteen months of the date of the sale and a
38 statement of income or operations for each of the two fiscal years next
39 before the date of the statement of financial condition or for the period
40 from the commencement of the issuer's existence to the date of the
41 statement of financial condition if the period is less than two years.

42 12. The sale by a dealer, including an underwriter no longer acting
43 as an underwriter in respect to the securities involved, of securities of
44 an issue sold and distributed to the public, but not including securities
45 constituting an unsold allotment to or subscription by the dealer as a

1 participant in the distribution of the securities by the issuer or by or
2 through an underwriter, if securities of such issue have been registered
3 by description under sections 44-1871 through 44-1875 or registered by
4 qualification under sections 44-1891 through 44-1902.

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

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

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

14 16. Transactions involving the purchase of one or more precious
15 metals that require, and under which the purchaser receives, within seven
16 calendar days after the payment in good funds of any portion of the
17 purchase price, physical delivery of the quantity of the precious metals
18 purchased by such payment. For the purposes of this paragraph, physical
19 delivery is deemed to have occurred if, within such seven day period, the
20 quantity of precious metals purchased by such payment is delivered,
21 whether in specifically segregated or fungible bulk form, into the
22 possession of a depository other than the seller which is a financial
23 institution, a depository the warehouse receipts of which are recognized
24 for delivery purposes for any commodity on a contract market designated by
25 the commodity futures trading commission or a storage facility licensed or
26 regulated by the United States or any agency of the United States and such
27 depository or other person that qualifies as a depository issues and the
28 purchaser receives a certificate, document of title, confirmation or other
29 instrument evidencing that such quantity of precious metals has been
30 delivered to the depository and is being and will continue to be held by
31 the depository on the purchaser's behalf, free and clear of all liens and
32 encumbrances, other than liens of the purchaser, tax liens, liens agreed
33 to by the purchaser, or liens of the depository for fees and expenses,
34 that have previously been disclosed to the purchaser. For the purposes of
35 this paragraph, "financial institution" means a bank, savings institution
36 or trust company organized under, or supervised pursuant to, the laws of
37 the United States or of this state.

38 17. Transactions involving a commodity investment contract solely
39 between persons engaged in producing, processing, using commercially or
40 handling as merchants each commodity subject to the contract or any
41 by-product.

42 18. A nonissuer transaction in an outstanding security, including
43 the sale by a dealer, including an underwriter no longer acting as an
44 underwriter in respect to the securities involved, of securities sold and
45 distributed to the public, but not including securities constituting an

1 unsold allotment to or subscription by the dealer as a participant in the
2 distribution of the securities by the issuer or by or through an
3 underwriter if both of the following apply:

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

7 (b) The securities are listed on an automated quotation system of a
8 national securities association registered under the securities exchange
9 act of 1934.

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

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

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

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

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

22 (iii) The issuer submits a filing fee of ~~two hundred dollars~~ \$200.

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

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

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

35 21. Offerings of securities of not more than ~~one million dollars~~
36 \$1,000,000 or the limit established under 17 Code of Federal Regulations
37 section 230.504 as follows:

38 (a) An unlimited number of sophisticated purchasers may be
39 involved.

40 (b) Written offering documents providing full and adequate
41 disclosure of material facts must be provided to each purchaser.

42 (c) Advertising is not allowed without a waiver from the director.

43 (d) The sum of the following amounts may not exceed the greater of
44 ~~one million dollars~~ \$1,000,000 or the limit established under 17 Code of
45 Federal Regulations section 230.504:

1 (i) The dollar value for the amount of securities being offered.

2 (ii) The aggregate offering price of all securities of the issuer
3 sold within the twelve months before the date of the offering.

4 (iii) The aggregate offering price of all securities of the issuer
5 sold during the course of the offering if the securities were sold in
6 reliance on 15 United States Code section 77c(b) or in violation of 15
7 United States Code section 77e(a).

8 (e) Provisions on offerings to sophisticated purchasers are as
9 follows:

10 (i) An offering to sophisticated purchasers under this section
11 allows sales to either an accredited investor as defined in 17 Code of
12 Federal Regulations section 230.501 or a person, acting alone or with a
13 purchaser representative, who the dealer reasonably believes has the
14 knowledge and experience in financial and business matters to be capable
15 of evaluating the merits and risks of the proposed investment. The dealer
16 must reasonably believe that the person has knowledge and experience
17 before a person becomes a purchaser.

18 (ii) The issuer shall display the following notice on the cover
19 page of the disclosure document in a conspicuous manner in at least
20 twelve-point boldface type:

21 In making an investment decision, investors shall rely
22 on their own examination of the issuer and the terms of the
23 offering, including the merits and risks involved. These
24 securities have not been recommended by any federal or state
25 securities commission or division or regulatory authority.
26 Furthermore, the foregoing authorities have not confirmed the
27 accuracy or determined the adequacy of this document. Any
28 representation to the contrary is a criminal offense. These
29 securities are subject to restrictions on transferability and
30 resale and may not be transferred or resold, except as allowed
31 by 17 Code of Federal Regulations and applicable state
32 securities laws, pursuant to registration or exemption from
33 registration. Investors must be aware that they are required
34 to bear the financial risks of this investment for an
35 indefinite period of time.

36 (f) One copy of the notice on form D filed with the SEC is filed
37 with the commission not later than fifteen calendar days after the first
38 sale of securities in or from this state.

39 (g) An offering to purchasers under this section allows all of the
40 following:

41 (i) Sales to be made only by a dealer who is not the issuer and who
42 is registered in this state.

43 (ii) The dealer to conduct the sales if the dealer reasonably
44 believes that adequate diligence and review have been applied in

1 connection with the offering and the dealer adequately determines the
2 suitability of the offering to a purchaser.

3 (iii) Sales if the dealer reasonably believes that the security is
4 suitable for the purchaser after reasonable inquiry concerning the
5 purchaser's investment objectives, financial situation and needs and after
6 consideration of any other information known by the dealer.

7 (h) The exemption may not be used if an issuer or person affiliated
8 with the issuer or offering is subject to disqualification pursuant to any
9 of the following:

10 (i) This chapter.

11 (ii) A rule or order of the commission.

12 (iii) The securities act of 1933 (15 United States Code section
13 77c(a)(11)).

14 (iv) The securities act of 1933, 17 Code of Federal Regulations
15 section 230.262.

16 (i) The commission may set aside disqualification if:

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

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

26 22. Transactions involving an intrastate offering, including
27 crowdfunding or virtual coin offerings, if all of the following conditions
28 are met:

29 (a) The issuer is authorized to do business in this state.

30 (b) The transaction meets the requirements of the federal exemption
31 for intrastate offerings under 15 United States Code section 77c(a)(11) or
32 17 Code of Federal Regulations section 230.147 or 230.147A, or any
33 subsequently amended or expanded versions of those sections. For the
34 purposes of this chapter, a corporation, partnership, trust or other form
35 of business organization is not deemed to be organized for the specific
36 purpose of acquiring securities offered under 17 Code of Federal
37 Regulations section 230.147 or 230.147A if the corporation, partnership,
38 trust or other form of business organization either:

39 (i) Was created before January 1, 2018.

40 (ii) Invests ninety-five percent or less of its investable assets
41 in offerings authorized by this chapter.

42 (c) The issuer obtains from each prospective purchaser evidence
43 that the prospective purchaser is a resident of this state and, if
44 applicable, is an accredited investor. A prospective purchaser's
45 residence shall be determined in accordance with 17 Code of Federal

1 Regulations section 230.147(d) or 230.147A(d). If the purchaser is an
2 entity, an affirmative representation made by the entity that the entity
3 is a resident of this state is sufficient evidence that the entity is a
4 resident of this state if the entity also submits proof that the entity is
5 incorporated or organized in this state, is qualified as a resident
6 pursuant to any of the categories identified in 17 Code of Federal
7 Regulations section 230.147(c)(1) or 230.147A(c)(1) or uses an internet
8 protocol address originating from this state to purchase the offering. If
9 the purchaser is an individual, an affirmative representation made by the
10 individual that the individual is a resident of this state is sufficient
11 evidence that the individual is a resident of this state if the individual
12 also submits proof of any of the following:

13 (i) The individual has a valid driver license or nonoperating
14 identification license issued pursuant to title 28.

15 (ii) The individual is registered to vote in this state.

16 (iii) General property tax records show the individual owns and
17 occupies property in this state as the individual's principal residence.

18 (iv) The individual uses an internet protocol address originating
19 from this state to purchase the offering.

20 (d) The issuer informs all purchasers that the securities have not
21 been registered and that the securities are subject to the limitation on
22 resales contained in either:

23 (i) 17 Code of Federal Regulations section 230.147(e), in the
24 manner described in 17 Code of Federal Regulations section 230.147(f).

25 (ii) 17 Code of Federal Regulations section 230.147A(e), in the
26 manner described in 17 Code of Federal Regulations section 230.147A(f).

27 (e) Before an offer is made in reliance on this exemption, the
28 issuer pays a filing fee to be prescribed by the director and files a
29 notice with the director, in writing or in electronic form, that contains
30 all of the following:

31 (i) The name of the issuer, including the issuer's type of entity
32 and the address and telephone number of the issuer's principal office.

33 (ii) The intended use of the offering proceeds, including any
34 amounts to be paid, as compensation or otherwise, to any owner, executive
35 officer, director, managing member or other person occupying a similar
36 status or performing similar functions on behalf of the issuer.

37 (iii) The identity of all persons who will be involved in the offer
38 or sale of securities on behalf of the issuer.

39 (iv) The identity of each person that owns more than ten percent of
40 the ownership interests of any class of securities of the issuer.

41 (v) The identity of the executive officers, directors and managing
42 members of the issuer and any other individuals who occupy similar status
43 or perform similar functions in the name of and on behalf of the issuer.

44 (vi) Notice that the issuer is claiming this exemption for the
45 transaction.

1 (vii) The name and location, whether physical or virtual, of the
2 bank, institution or other repository in which investor monies or
3 proceeds, or both, from the offering will be deposited.

4 (f) If the information contained on the notice required in
5 subdivision (e) of this paragraph becomes inaccurate for any reason, the
6 issuer files an amendment in writing with the director within thirty days.

7 (g) All dollar-denominated monies received from investors are
8 deposited into a bank or depository institution authorized to do business
9 in this state, and all such monies are used in accordance with
10 representations made to investors.

11 (h) The sum of all cash and other consideration to be received as a
12 result of an offering under this exemption does not exceed ~~five million~~
13 ~~dollars~~ \$5,000,000 in a twelve-month period.

14 (i) The issuer and any persons affiliated with the issuer or
15 offering are not subject to disqualification pursuant to this chapter, a
16 rule or order of the director, 15 United States Code section 77c(a)(11) or
17 17 Code of Federal Regulations section 230.262. The director may set
18 aside disqualification if both of the following apply:

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

22 (ii) The issuer establishes that the issuer made a factual inquiry
23 into whether any disqualification existed and did not know and could not
24 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
27 participants.

28 (j) The issuer does not accept more than ~~ten thousand dollars~~
29 \$10,000 from any single purchaser unless the purchaser is an accredited
30 investor under 17 Code of Federal Regulations section 230.501.

31 23. TRANSACTIONS BY AN ISSUER, ITS PARENT OR SUBSIDIARY COMPANIES,
32 AND THEIR RESPECTIVE DIRECTORS, MANAGERS, GENERAL PARTNERS, OFFICERS AND
33 EMPLOYEES ACTING AS SUCH TO OFFER OR SELL SECURITIES OF THE ISSUER
34 PURSUANT TO REGULATION A, 17 CODE OF FEDERAL REGULATIONS SECTION
35 230.251(a)(2), IN WHICH THE SUM OF THE AGGREGATE OFFERING PRICE AND
36 AGGREGATE SALES DOES NOT EXCEED \$75,000,000, INCLUDING NOT MORE THAN
37 \$22,500,000 OFFERED BY ALL SELLING SECURITYHOLDERS THAT ARE AFFILIATES OF
38 THE ISSUER.

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

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

43 2. Solicited sales to or purchases from a resident of this state by
44 a dealer who does not have, before the initial solicitation, a written new

1 account form signed by the resident or a customer agreement signed by the
2 resident and a previous sale or purchase of a security with the resident.

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

9 D. A purchaser engaging in an offering that complies with
10 subsection A, paragraph 22 of this section shall not be considered an
11 underwriter, unless the purchaser purchases more than fifty percent of the
12 securities or virtual coins offered for sale in the offering.

13 E. The issuer and all other parties involved in an offering that
14 complies with subsection A, paragraph 22 of this section may agree that
15 any controversy or claim arising out of or relating to the offering shall
16 be resolved by private arbitration between the parties and the agreement
17 shall be enforceable by the laws of this state.

18 F. Notwithstanding any other provision of this chapter, the
19 director may enter into agreements with federal, state or foreign
20 regulators to allow securities issued or sold in this state to be sold in
21 another jurisdiction and securities issued or sold in another jurisdiction
22 to be issued or sold in this state.

23 G. Except as provided in subsection H of this section, a person who
24 facilitates the exchange of a virtual coin shall not be deemed to be a
25 dealer or a person who otherwise deals in securities under this chapter
26 and is not subject to this chapter or chapter 13 [OF THIS TITLE](#) due to the
27 exchanged virtual coin if both of the following are met:

28 1. The person has a reasonable and good faith belief that the
29 virtual coin subject to exchange does not meet the definition of a virtual
30 coin offering ~~under section 44-1801~~.

31 2. The person takes reasonably prompt action to terminate the
32 person's facilitation of the exchange of the virtual coin after obtaining
33 knowledge that the virtual coin meets the definition of a virtual coin
34 offering ~~under section 44-1801~~.

35 H. Sections 44-1991 and 44-3241 apply to a person described in
36 subsection G of this section.

37 I. The director may adopt rules based on 17 Code of Federal
38 Regulations section 230.504 and revise the rules as necessary to keep them
39 current with the federal law.

APPROVED BY THE GOVERNOR MARCH 24, 2021.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MARCH 24, 2021.