

SENATE, No. 712

STATE OF NEW JERSEY

216th LEGISLATURE

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Sponsored by:

Senator JOSEPH M. KYRILLOS, JR.

District 13 (Monmouth)

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SYNOPSIS

Provides certain issuers of securities with exemption from registration.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



1 AN ACT concerning exemption from registration for certain issuers
2 of securities and supplementing P.L.1967, c.93 (C.49:3-47 et
3 seq.).
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
7

8 1. As used in this act, "exempt issuer" means an issuer of
9 securities that meets the exemption requirements of section 2 of this
10 act and is not required to register with the Bureau of Securities in
11 the Division of Consumer Affairs in the Department of Law and
12 Public Safety.
13

14 2. Notwithstanding any law or regulation to the contrary, an
15 issuer of securities shall not be required to register with the Bureau
16 of Securities pursuant to P.L.1967, c.93 (C.49:3-47 et seq.) if:

17 a. the issuer is a business entity organized under the laws of
18 this State and authorized to do business in this State;

19 b. the transaction meets the requirements of the federal
20 exemption for intrastate offerings in section 3(a)(11) of the federal
21 Securities Act of 1933 (15 U.S.C. s.77c(a)(11)) and Rule 147
22 adopted under the Securities Act of 1933 (17 C.F.R. 230.147);

23 c. the sum of all cash and other consideration to be received for
24 all sales of the security in reliance on the exemption under this
25 section, excluding sales to any accredited investor or institutional
26 investor, does not exceed \$1,000,000, except that an offer or sale to
27 an officer, director, partner, trustee, or individual occupying similar
28 status or performing similar functions with the issuer or to a person
29 owning 10 percent or more of the outstanding securities of the
30 issuer shall not be counted toward the aggregate monetary
31 limitation of shares to be issued as established herein;

32 d. the offering by the issuer is made exclusively through one or
33 more Internet sites;

34 e. the issuer does not accept an investment of more than \$5,000
35 from any single purchaser unless the purchaser is an accredited
36 investor; and

37 f. the purchaser of the securities is a resident of this State.
38

39 3. Every exempt issuer shall post any offering to prospective
40 investors on an Internet site established for that purpose and provide
41 the following information to the prospective investors in writing on
42 that site:

43 a. a copy of the disclosure statement required pursuant to
44 section 5 of this act;

45 b. a description of the company, its form of business
46 organization, the address and telephone number of its principal
47 office, its history, its business plan, and the intended use of the

- 1 offering proceeds, including any amounts to be paid, as
2 compensation or otherwise, to any owner, executive officer,
3 director, managing member, or other person occupying a similar
4 status or performing similar functions on behalf of the exempt
5 issuer;
- 6 c. the identity of all persons owning more than 10 percent of
7 the ownership interests of any class of securities of the company;
- 8 d. the identity of the executive officers, directors, managing
9 members, and other persons occupying a similar status or
10 performing similar functions in the name of and on behalf of the
11 exempt issuer, including their titles and their prior experience;
- 12 e. the terms and conditions of the securities being offered and
13 of any outstanding securities of the company, the minimum and
14 maximum amount of securities being offered, if any, and either the
15 percentage ownership of the company represented by the offered
16 securities or the valuation of the company implied by the price of
17 the offered securities;
- 18 f. the minimum target offering amount specified in the
19 business plan that is necessary to implement the business plan, and
20 a notice that the funds will only be released to the exempt issuer if
21 the target offering amount is reached;
- 22 g. the time and date by which the target offering amount must
23 be reached before all investors may cancel their commitment to
24 invest;
- 25 h. the identity of any person who has been or will be retained
26 by the exempt issuer to assist the exempt issuer in conducting the
27 offering and sale of the securities, including any Internet site
28 operator, but excluding persons acting solely as accountants or
29 attorneys and employees whose primary job responsibilities involve
30 the operating business of the exempt issuer, rather than assisting the
31 exempt issuer in raising capital;
- 32 i. a description of the consideration being paid for assistance
33 to each person identified under subsection h. of this section;
- 34 j. a description of any litigation or legal proceedings involving
35 the company or its management; and
- 36 k. any additional information material and specific to the
37 offering, including, if appropriate, a discussion of significant factors
38 that make the offering speculative or enhances risk to the
39 prospective investor.
- 40
- 41 4. An exempt issuer shall execute an escrow agreement with a
42 bank, savings bank, savings and loan association or credit union
43 that provides that investor funds obtained pursuant to the provisions
44 of this act will be deposited in that institution, and shall further
45 provide that all offering proceeds will be released to the exempt
46 issuer only when the aggregate capital raised from all investors
47 pursuant to section 3 of this act is equal to or greater than the

1 minimum target offering amount specified in the exempt issuer's
2 business plan as necessary to implement the business plan. The
3 agreement shall also provide that all investors may cancel their
4 commitment to invest if that target offering amount is not raised by
5 the time stated in the disclosures required to be set forth pursuant to
6 section 3 of this act.

7
8 5. a. An exempt issuer shall inform all prospective purchasers
9 of securities offered pursuant to this act that the securities have not
10 been registered with the federal Securities and Exchange
11 Commission or the State Bureau of Securities and that the securities
12 are subject to limitations on resale. The exempt issuer shall display
13 the following statement in 15-point type conspicuously on the
14 exempt issuer's Internet site and on the cover page of the disclosure
15 statement:

16 IN MAKING AN INVESTMENT DECISION REGARDING
17 THE SECURITIES WHICH ARE THE SUBJECT OF THIS
18 OFFER, INVESTORS MUST RELY ON THEIR OWN
19 EXAMINATION OF THE ISSUER AND THE TERMS OF THE
20 OFFERING, INCLUDING THE MERITS AND THE RISKS
21 INVOLVED. THESE SECURITIES HAVE NOT BEEN
22 REGISTERED WITH OR RECOMMENDED BY ANY FEDERAL
23 OR STATE SECURITIES REGULATORY AGENCY, AND NO
24 STATE OR FEDERAL AUTHORITIES HAVE CONFIRMED
25 THE ACCURACY OR DETERMINED THE ADEQUACY OF
26 ANY INFORMATION PROVIDED BY THE ISSUER. ANY
27 REPRESENTATION TO THE CONTRARY SHALL
28 CONSTITUTE A CRIMINAL OFFENSE. THESE SECURITIES
29 ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY
30 AND RESALE AND MAY NOT NECESSARILY BE
31 TRANSFERABLE OR RESOLD. INVESTORS SHOULD BE
32 AWARE THAT THEY WILL BE REQUIRED TO BEAR THE
33 FINANCIAL RISKS OF THIS INVESTMENT FOR AN
34 INDEFINITE PERIOD OF TIME.

35 b. If the business entity's organization is such that individual
36 liability may accrue to those with a share in the entity, this shall
37 also be disclosed in the statement required by subsection a. of this
38 section, as follows:

39 BECAUSE OF THE ORGANIZATIONAL STRUCTURE OF
40 THE BUSINESS ENTITY THAT WOULD BE THE SUBJECT OF
41 THIS INVESTMENT, YOU MAY INCUR SIGNIFICANT
42 INDIVIDUAL PERSONAL LIABILITY FOR PAYMENT OF
43 ANY CLAIM OR JUDGMENT AGAINST THE ENTITY.

44
45 6. Prior to the consummation of a purchase, an exempt issuer
46 shall require the purchaser to certify in writing or electronically as
47 follows:

1 I UNDERSTAND AND ACKNOWLEDGE THAT:

2 I am investing in what may be a high-risk speculative business
3 venture.

4 This offering has not been reviewed or approved by any State or
5 federal securities regulatory authority and no person or authority
6 has confirmed the accuracy or determined the adequacy of any
7 disclosure made to me relating to this offering.

8 The securities I am acquiring in this offering are illiquid, and
9 there is no ready market for the sale of the securities; it may be
10 difficult or impossible for me to sell or otherwise dispose of this
11 investment, and, accordingly, I may be required to hold this
12 investment indefinitely.

13 I may be subject to tax on my share of the taxable income and
14 losses of the company, whether or not I have sold or otherwise
15 disposed of my investment or received any dividends or other
16 distributions from the company.

17

18 7. An exempt issuer shall provide, free of charge, a quarterly
19 report to the exempt issuer's investors. An exempt issuer may
20 satisfy the reporting requirement of this section by making the
21 information available on an Internet site if the information is made
22 available within 45 days after the end of each fiscal quarter and
23 remains available until the succeeding quarterly report is issued. A
24 written copy shall be provided to an investor upon request. The
25 report shall include a statement of the compensation received by
26 each director and executive officer, including cash compensation
27 earned since the previous report, as well as any bonuses, stock
28 options, other rights to receive securities of the exempt issuer or
29 any affiliate of the exempt issuer, or any compensation received.
30 The report shall also include an analysis by management of the
31 exempt issuer of the business operations and financial condition of
32 the exempt issuer.

33

34 8. This act shall take effect immediately, and shall apply to any
35 transaction entered into after the effective date of the act.

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STATEMENT

39

40 This bill provides certain issuers of securities with an exemption
41 from registration with the Bureau of Securities in the Division of
42 Consumer Affairs in the Department of Law and Public Safety. The
43 bill provides this exemption for companies organized in New Jersey
44 that offer intrastate "crowdfunding" investment opportunities.
45 Crowdfunding is the financing of a business venture using the
46 Internet to raise small amounts of money from a large number of
47 investors.

1 Under the bill, an issuer of securities is exempt from registration
2 with the Bureau of Securities if the following conditions apply:

3 (1) the issuer is a business entity organized under the laws of
4 this State and authorized to do business in this State;

5 (2) the transaction meets the requirements of the federal
6 exemption for intrastate offerings;

7 (3) the sum of all cash and other consideration to be received for
8 all sales of the security does not exceed \$1,000,000, with certain
9 exceptions;

10 (4) the offering by the issuer is made exclusively through one or
11 more Internet sites;

12 (5) the issuer does not accept an investment of more than \$5,000
13 from any single purchaser unless the purchaser is an accredited
14 investor; and

15 (6) the purchaser of the securities is a resident of this State.

16 The bill requires exempt issuers to post the offering to
17 prospective investors on an Internet site established for that purpose
18 and provide the following information to the prospective investors
19 in writing:

20 (1) a copy of the disclosures required by the bill;

21 (2) a description of the company, its form of business
22 organization, the address and telephone number of its principal
23 office, its history, its business plan, and the intended use of the
24 offering proceeds;

25 (3) the identity of all persons owning more than 10 percent of
26 the ownership interests of any class of securities of the company;

27 (4) the identity of the executive officers, directors, managing
28 members, and other persons occupying a similar status or
29 performing similar functions;

30 (5) the terms and conditions of the securities being offered and
31 of any outstanding securities of the company, the minimum and
32 maximum amount of securities being offered, if any, and either the
33 percentage ownership of the company represented by the offered
34 securities or the valuation of the company implied by the price of
35 the offered securities;

36 (6) the minimum target offering amount specified in the
37 business plan that is necessary to implement the business plan, and
38 a notice that the funds will only be released to the exempt issuer if
39 the target offering amount is reached;

40 (7) the time and date when the target offering amount must be
41 reached before all investors may cancel their commitment to invest;

42 (8) the identity of any person who has been or will be retained
43 by the exempt issuer to assist the exempt issuer in conducting the
44 offering and sale of the securities and a description of the
45 consideration being paid to the person for that assistance;

46 (9) a description of any litigation or legal proceedings involving
47 the company or its management; and

1 (10) any additional information material and specific to the
2 offering, including, if appropriate, a discussion of significant factors
3 that make the offering speculative or enhances risk to the
4 prospective investor.

5 The bill requires exempt issuers to execute an escrow agreement
6 with a bank, savings bank, savings and loan association or credit
7 union that provides that investor funds obtained pursuant to the
8 provisions of the bill will be deposited in that institution, and shall
9 further provide that all offering proceeds will be released to the
10 exempt issuer only when the aggregate capital raised from all
11 investors is equal to or greater than the minimum target offering
12 amount specified in the exempt issuer's business plan. The
13 agreement shall also provide that all investors may cancel their
14 commitment to invest if that target offering amount is not raised by
15 the time stated in the disclosure statement.

16 The bill requires exempt issuers to inform all prospective
17 purchasers of securities that the securities have not been registered
18 with the federal Securities and Exchange Commission or the State
19 Bureau of Securities and that the securities are subject to limitations
20 on resale. The bill also requires an exempt issuer to require, prior
21 to the consummation of a purchase, that the purchaser certifies in
22 writing or electronically that the purchaser understands that the
23 securities may be a high-risk speculative business venture, have not
24 been registered with the federal Securities and Exchange
25 Commission or the State Bureau of Securities, and are subject to
26 limitations on resale.

27 The bill also requires exempt issuers to provide, free of charge, a
28 quarterly report to the exempt issuer's investors.