

CHAPTER 301
FORMERLY
HOUSE BILL NO. 327
AS AMENDED BY
SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 6, CHAPTER 73 OF THE DELAWARE CODE TO PERMIT DELAWARE BUSINESSES TO RAISE CAPITAL THROUGH INTRASTATE CROWDFUNDING ACTIVITIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Section 73-207(b), Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 73-207. Exemptions.

(b) The following transactions are exempted from §§ 73-202, 73-208 and 73-211 of this title:

(15) Any offer or sale of securities conducted solely in this state to residents of this state in which each of the following conditions is met:

a. The issuer of the security shall be a for-profit entity organized under the laws of the State of Delaware and registered with the Secretary of State with its principal place of business in the State of Delaware.

b. The transaction shall meet the requirements of the federal exemption for intrastate offerings in section 3(a)(11) of the Securities Act of 1933, 15 U.S.C. § 77c(a)(11), and SEC rule 147, 17 CFR 230.147. Among other things, these laws and regulations require that such securities must be offered to and sold only to persons who are residents of the State of Delaware at the time of purchase. Prior to any offer or sale pursuant to this exemption, the seller shall obtain documentary evidence from each prospective purchaser that provides the seller with a reasonable basis to believe that such investor is a resident of the State of Delaware.

c. The sum of all cash and other consideration to be received for all sales of the security in reliance upon this exemption shall not exceed one million dollars (\$1,000,000), less the aggregate amount received for all sales of securities by the issuer pursuant to this exemption within the twelve months before the first offer or sale made in reliance upon this exemption.

d. The issuer shall not accept more than five thousand dollars (\$5,000) from any single purchaser unless the purchaser is an accredited investor as defined by SEC rule 501, 17 CFR 230.501.

e. The issuer must reasonably believe that all purchasers of securities are purchasing for investment and not for sale in connection with a distribution of the security.

f. A commission or other form of remuneration shall not be paid or given, directly or indirectly, for any person's participation in the offer or sale of securities for the issuer unless the person is registered as a broker-dealer or agent under this chapter.

g. All funds received from investors shall be deposited into a bank or depository institution authorized to do business in the State of Delaware, and all the funds shall be used in accordance with representations made to investors.

h. Not less than ten days prior to the commencement of an offering pursuant to this exemption the issuer shall provide the Investor Protection Unit of the Delaware Department of Justice a notice in a form required by the Director by rule or order. The notice shall specify that the issuer is conducting an offering in reliance upon this exemption and shall contain, among any other requirements set forth by the Director, a copy of the disclosure document to be provided to prospective investors pursuant to paragraph j of § 73-207(b)(15) and the names and addresses of all of the following persons:

1. The issuer.

2. Officers, directors and any control person of the issuer.

3. All persons who will be involved in the offer or sale of securities on behalf of the issuer.

4. The bank or other depository institution in which investor funds will be deposited.

i. The issuer shall not be, either before or as a result of the offering:

1. An investment company as defined in section 3 of the Investment Company Act of 1940, 15 U.S.C. § 80a-3, or subject to the reporting requirements of sections 13 or 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. §§ 78m and 78o(d); or

2. An investment advisor as defined at 6 Del. C. § 73-103, nor a person who otherwise provides investment advice as a service or as a fee.

j. The issuer shall provide the following information to each prospective investor at the time the offer of securities is made:

1. A disclosure document that, at a minimum, contains the following information:

A. Evidence that the issuer is a business organization organized under the laws of this State and is authorized to do business in this State;

B. A description of the company, its form and date of business organization, the address and telephone number of its principal office, its history, its business plan, a description of material agreements and the intended use of the offering proceeds, at least 65 percent of which shall be specifically disclosed in dollar amount and percentage terms in a use of proceeds section and which shall also include any amounts to be paid, as compensation or otherwise, to any owner, executive officer, director, managing member, or other person occupying a similar status or performing similar functions on behalf of the issuer;

C. The identity of all persons owning more than 10 percent of the ownership interests of any class of securities of the company, with a description of options or other contingent securities outstanding and a description of the amount of those options or other contingent securities that those persons own;

D. The identity of the executive officers, directors, managing members, and other persons occupying a similar status or performing similar functions in the name of and on behalf of the issuer, including their titles and their prior experience, with a description of options or other contingent securities outstanding and a description of the amount of those options or other contingent securities that those persons own;

E. The terms and conditions of the securities being offered and of any outstanding securities of the company, the minimum and maximum amount of securities being offered, if any, and the percentage ownership of the company represented by the offered securities and the valuation of the company implied by the price of the offered securities;

F. The minimum offering amount that is necessary to implement the business plan, and a notice that the funds will only be released to the issuer if the minimum offering amount is reached;

G. The time and date, which may be no more than 12 months from the date of the offering, by which the minimum offering amount must be reached before the funds will be returned to investors;

H. A description of any litigation or legal proceedings involving the company or its management;

I. A discussion of significant factors that make the offering speculative or risky;

J. A description of any conflicts of interest;

K. Financial statements, including a balance sheet, income statement, cash flow statement, and capitalization of issuer;

L. Any additional information material to the offering.

2. A notice informing all purchasers that the securities have not been registered under this chapter and, therefore, cannot be resold unless the purchaser registers the securities or they qualify for an exemption from registration under 6 Del C. § 73-207 at the time of the subsequent sale by the purchaser. In addition, the notice shall make the disclosures required by subsection (f) of SEC Rule 147, 17 C.F.R. 230.147(f).

3. The issuer shall be responsible for timely updating this disclosure document in the event that there is a material change to any of the information required by paragraph j.1 of § 73-207(b)(15) before the offering closes. The issuer shall distribute any such update to investors in the offering and provide an opportunity for those investors to review the updated disclosure and consent to maintaining their investment or request a refund of their investment. The issuer shall provide the Investor Protection Unit with a copy of all updated disclosure documents at or before the time they are distributed to investors.

k. An offer or sale pursuant to this exemption may be made through one or more internet sites subject to the following requirements:

1. Each internet site operator shall register with the Investor Protection Unit by filing an application for registration in a form required by the Director by rule or order. In addition to any other information required by the Director, such registration shall include the following:

A. That the Internet site operator is a business entity organized under the laws of this State and authorized to do business in this State;

B. That the Internet site is being utilized to offer and sell securities pursuant to this exemption; and

C. The identity and location of, and contact information for, the Internet site operator;

2. Each internet site operator will be required to register with the Investor Protection Unit as a broker dealer unless:

A. The internet site operator is registered as a broker-dealer under the securities exchange act of 1934;

B. Is a funding portal registered under the securities act of 1933 and provides copies of all documents submitted to the SEC in connection with such registration to the Director; or

C. All of the following apply:

I. It does not offer investment advice or recommendations;

II. It does not solicit purchases, sales, or offers to buy the securities offered or displayed on the Internet site;

III. It does not compensate employees, agents, or other persons for the solicitation or based on the sale of securities displayed or referenced on the Internet site;

IV. 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;

V. 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, or a combination of such fixed and variable amounts;

VI. It does not identify, promote, or otherwise refer to any individual security offered on the Internet site in any advertising for the Internet site; and

VII. It does not engage in other activities the Director determines to be prohibited.

3. The issuer and the Internet site operator shall maintain records of all offers and sales of securities effected through the Internet site and shall provide ready access to the records to representatives of the Director, upon request. Representatives of the Director may access, inspect, and review any Internet site registered under this section as well as its records.

1. This exemption shall not be used in conjunction with any other exemption under this chapter except the exemption to institutional investors at 6 Del. C. § 73-207(b)(8) and for offers and sales to controlling persons of the issuer. Sales to controlling persons shall not count toward the limitation in subparagraph (b)(15)(c).

m. This exemption shall not be available if the issuer, or any director, executive officer, general partner, managing member, or other person with management authority over the issuer, or any internet site operator, or any director, executive officer, general partner, managing member, or other person with management authority over the Internet site operator, has been subject to any conviction, order, judgment, decree, or other action specified in Rule 506 (d) (1) adopted under the "Securities Act of 1933" (17 C.F.R. s.230.506(d)(1)) that would disqualify an issuer under Rule 506 (d) adopted under the "Securities Act of 1933" (17 C.F.R. s.230.506(d)) from claiming an exemption specified in Rule 506 (a) to (c) adopted under the "Securities Act of 1933" (17 C.F.R. ss.230.506(a) to (c)).

n. Nothing in this exemption shall be construed to alleviate any person from the anti-fraud provisions at 6 Del C. § 73-201, nor shall such exemption be construed to provide relief from any other provisions of this chapter other than as expressly stated.

o. Every notice of exemption provided for in subparagraph (b)(15)h. of this section shall be accompanied by a nonrefundable filing fee as required by rule or order of the Director.

Section 2. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application; and, to that end, the provisions of this Act are declared to be severable.

Section 3. This Act shall be effective 120 days after its enactment into law.

Approved July 11, 2016