WEST VIRGINIA CODE CHAPTER 32 ARTICLE 5

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§32-5-501. Short title.

This article shall be known as the West Virginia Small Business Capital Act.

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§32-5-502. Offer or sale of Small Business Securities.

Notwithstanding any other provision of law to the contrary, certain offerings are exempt from the securities registration requirements of articles two and three of this chapter if the offer, sale, issuer and purchaser meet the requirements of this article.

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§32-5-503. Qualifications of issuer and purchaser.

(a) In order to qualify for exemption under this article, the issuer must be a for-profit entity organized under the laws of West Virginia with its principal place of business in West Virginia.

(b) In order to qualify for the exemption under this article, the purchaser must be a resident of West Virginia or be an entity organized under the laws of West Virginia with its principal place of business in West Virginia.

(c) The exemption is not available to any of the following:

(1) An investment company, as defined in the Federal Investment Company Act of 1940;

(2) A development stage company that either has no specific business plan or purpose or has indicated that the company's business plan is to engage in a merger or acquisition with an unidentified company or companies, or entity or person or without an allocation of proceeds for sufficiently identifiable properties or objectives; and

(3) Any person who is subject to a disqualifying event described in subsection (d) of this section.

(d) The exemption is not available if the issuer or the executive directors, directors or managers of the issuer or any individual or entity holding more than twenty percent of the outstanding equity of the issuer:

(1) Within the last five years, has filed a registration statement which is the subject of a currently effective registration stop order or cease and desist order entered by any state securities administrator or the United States Securities and Exchange Commission;

(2) Within the last five years, has been convicted of any criminal offense in connection with the offer, purchase or sale of any security, or involved fraud or deceit;

(3) Is currently subject to any state or federal administrative enforcement order or judgment, entered within the last five years, finding fraud or deceit in connection with the purchase or sale of any security; or

(4) Is currently subject to any order, judgment, or decree of any court of competent jurisdiction, entered within the last five years, temporarily, preliminarily, or permanently restraining or enjoining such party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security.

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§32-5-504. Qualifications of offers, sales and transactions.

(a) The transaction must 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. section 77c(a)(11) and SEC rule 147, 17 CFR 230.147.

(b) The sum of all cash and other consideration received from the issue of securities under this exemption may not exceed $1 million per annum unless the issuer prepares and produces audited financial statements on a quarterly basis to the commissioner. If audited financial statements are prepared and produced to the commissioner, the sum of all cash and other consideration received from the issue of securities shall not exceed $2 million per annum.

(c) The issuer may not issue more than $10,000 per annum to any single purchaser unless the purchaser is an accredited investor as defined under rule 501 of SEC Reg D, 17 CFR 230.501.

(d) All funds received by the issuer from purchasers under this article shall be held in escrow by an attorney licensed to practice law in West Virginia who shall deposit the funds in a depository institution authorized to do business in West Virginia until such time as the offering amount sought is attained or the time period for the offering has elapsed: Provided, That upon the escrowed funds attaining a balance of at least ten percent of the offering amount sought, the attorney holding the money in escrow shall, upon written request of the issuer, withdraw a portion of the money in escrow and deliver such portion of money to the issuer.

(e) All funds received by the issuer from purchasers under this article shall be used by the issuer in accordance with the representations by the issuer to purchasers.

(f) The duration of the offering will not exceed twelve months unless the issuer applies to extend the offering for a period not to exceed twelve additional months. An issuer may apply to extend the offering by submitting an amended filing with the commissioner in conformance with these provisions and the rules and orders of the commissioner.

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§32-5-505. West Virginia Crowdfunding Portal Requirements

(a) The offering must be made exclusively through an internet-based crowdfunding portal that is incorporated or organized under the laws of West Virginia and authorized to do business in West Virginia and registered with the commissioner.

(b) The crowdfunding portal must contain a conspicuous disclaimer that reflects that access to securities offerings on the website is limited to West Virginia residents and offers and sales of the securities on the website are limited to persons that are West Virginia residents.

(c) There must be an affirmative representation by a visitor to the crowdfunding portal that the visitor is a resident of West Virginia before the visitor can view securities-related offering materials on the crowdfunding portal website.

(d) The crowdfunding portal must take reasonable steps to verify that all prospective purchasers are West Virginia residents.

(e) At least ten days prior to an offering that qualifies for the exemption described in this article of the code, the crowdfunding portal shall give the commissioner access to its website and the following:

(1) A copy of the disclosure statement required by subsection (f) of this section;

(2) A summary of the offering including:

(A) A description of the entity, its form of business, principal office, history, business plan, and the intended use of the offering proceeds, including compensation paid to any owner, executive officer, director or manager;

(B) The identity of the executive officers, directors and managers, including their titles and their prior experience and identity of all persons owning more than 20 percent of the ownership interests of any class of securities of the company; and

(C) A description of the securities being offered and any outstanding securities of the company, the amount of the offering , and the percentage ownership of the company represented by the offered securities.

(f) A disclosure statement must be made readily available and accessible to each prospective purchaser at the time the offer of securities is made to the prospective purchaser on the crowdfunding portal. The disclosure statement must contain at a minimum all of the following:

(1) A statement that there is no ready market for the sale of the securities acquired from this offering, that it may be difficult or impossible for an investor to sell or otherwise dispose of this investment, and that a purchaser may be required to hold and bear financial risks of this investment indefinitely;

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(2) A statement that the securities that are the subject of the offer have not been registered under federal or state securities law or regulation, and therefore cannot be resold unless the securities are registered or qualify for an exemption from registration under federal or state law;

(3) A statement that in making an investment decisions, purchasers must rely on their own examination of the issuer and the terms of the offering, including the merits and risks involved;

(4) A statement that no federal or state securities commission or regulatory authority has confirmed the accuracy or determined the adequacy of the disclosure statement or any other information on the crowdfunding portal; and

(5) All information material to the offering, including, where appropriate, a discussion of significant factors that make the offering risky or speculative, including, but not limited to:

(A) A description of the issuer's business;

(B) The history of the issuer's operations and organization;

(C) A list of executive directors, directors or managers of the issuer and any individual or entity holding more than twenty percent of the outstanding equity of the issuer;

(D) A description of how the proceeds from the offering will be used;

(E) Financial information about the issuer;

(F) A detailed description of securities offered; and

(G) A complete list of any legal proceedings or litigation affecting the offering.

(g) Prior to the offering of securities to residents of West Virginia under this article, the crowdfunding portal shall conduct a reasonable investigation of the background of each issuer whose securities are offered on the crowdfunding portal's website, and of each of the issuer's executive officers, directors or managers or any individual or entity holding more than twenty percent of the outstanding equity of the issuer. The crowdfunding portal shall deny an issuer access to its internet website if the crowdfunding portal has a reasonable belief that the issuer or its executive officers, directors or managers or any individual or entity holding more than twenty percent of the outstanding equity of the issuer are precluded from the exemption under this article.

(h) The crowdfunding portal shall not:

(1) Offer investment advice or recommendations;

(2) Compensate employees, agents or other persons not registered with the commissioner

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for soliciting offers or sales of securities displayed or referenced on the website;

(3) Hold, manage, possess or otherwise handle investor funds or securities;

(4) Be under common control with an issuer whose securities appear on the crowdfunding portal's internet website;

(5) Sell a financial interest in any issuer offering securities on the crowdfunding portal's internet website; or

(6) Receive more than a five percent financial interest in an issuer as compensation for services provided to or on behalf of an issuer.

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