

HOUSE BILL REPORT

HB 1593

As Passed House:
February 20, 2017

Title: An act relating to simplifying small securities offerings.

Brief Description: Simplifying small securities offerings.

Sponsors: Representatives Vick and Kirby.

Brief History:

Committee Activity:

Business & Financial Services: 1/31/17, 2/1/17 [DP].

Floor Activity:

Passed House: 2/20/17, 95-2.

Brief Summary of Bill

- Makes changes to the registration exemption available for certain small securities offerings under the Securities Act of Washington.

HOUSE COMMITTEE ON BUSINESS & FINANCIAL SERVICES

Majority Report: Do pass. Signed by 11 members: Representatives Kirby, Chair; Reeves, Vice Chair; Vick, Ranking Minority Member; J. Walsh, Assistant Ranking Minority Member; Barkis, Bergquist, Blake, Jenkin, McCabe, Santos and Stanford.

Staff: Robbi Kesler (786-7153).

Background:

The Securities Act of Washington (Act), operating as a supplement to federal law, requires registration of securities offerings and certain persons and businesses engaged in securities transactions. The Act also creates penalties for false or misleading filings. Certain securities offerings, transactions, and persons are exempt from registration.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Under the Act, the Department of Financial Institutions (DFI) is responsible for the regulation of the purchase and sale of securities in Washington. Additionally, the DFI manages securities registration, investigation, and enforcement of violations of the Act.

The Act includes a small securities registration exemption if the following qualifications are met:

- the offering is first declared exempt by the DFI after the filing by the issuer or a portal working in collaboration with the DFI on behalf of the issuer;
- the issuer is a Washington entity and each investor is a Washington resident;
- the issuer files an escrow agreement with the DFI and the investments will only be released when the minimum target offering has been met;
- the maximum for securities sold by any issuer does not exceed \$1 million during any 12-month period;
- the aggregate amount sold to any investor by an issuer during the 12-month period preceding the date of sale does not exceed: (1) the greater of \$2,000 or 5 percent of the investor's annual income or net worth if the investor's income or net worth is less than \$100,000; or (2) 10 percent of the annual income or net worth of the investor up to \$100,000, if the investor's annual income or net worth is \$100,000 or more;
- the investor acknowledges the investment is high risk;
- the issuer reasonably believes the investors are purchasing for investment, not for sale in connection with a distribution; and
- the issuer and investor provide any other information reasonably required by the DFI.

The issuer must prepare a quarterly report and make it available on the issuer's public website. This report must include a summary of the compensation paid to the issuer's officers and directors and a brief analysis of the business operations and financial condition.

Shareholders are prohibited from transferring their shares for a period of one year, unless the shares are transferred back to the issuer, transferred to an accredited investor, the transfer is part of a registered offering, or to a family member in connection with death, divorce, or other similar circumstances.

A portal may work with the issuer, in collaboration with the DFI, to assist with the application. A qualified portal may be an Associate Development Organizations (ADO) or a port district. An ADO, defined as "a local economic development nonprofit corporation that is broadly representative of community interests," often called an "economic development council," is designated by a county and contracts with the Department of Commerce. Port districts are municipal entities authorized by the Washington Constitution to foster industrial development and trade promotion.

The federal Securities Act of 1933 (federal Securities Act), which has limited exemption categories, also requires registration of most securities offerings.

Summary of Bill:

Small securities offerings may include any type of equity or convertible debt security and may be conducted under any applicable exemption from registration under the federal Securities Act.

The portal assistance process is removed.

The issuer's company may be organized in any state, and investors are not required to be residents of Washington.

Public, quarterly reports are no longer required. The issuer is required to send its shareholders an annual report. The issuer may post the report on its website, but is not required to do so.

Accredited investors, as defined by the federal Securities Act, are not included in the annual sales limitation.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill is a result of ideas shared at the interim work session and stakeholder feedback. The current crowdfunding law is complex and expensive for businesses to use. This bill creates more options and should help start-up businesses get access to capital and ultimately increase employment in the state. The improvements offered in this bill will make it easier for businesses to register for the exemption. This type of offering can be a good option for start-up businesses to raise capital. Under current law, the biggest impediment is the requirement to report executive salary to the public, and this bill offers a good fix to that. Removing accredited investors from the investment limitations is a good first step; it would be helpful to make that exclusion more clear. The bill conforms to new federal Securities Exchange Commission requirements. This bill strikes a proper balance between preserving important investor protections while also making it more accessible to businesses.

(Opposed) None.

Persons Testifying: Representative Vick, prime sponsor; Joe Wallen and Daniel Newman, Carney Badley Spellman, P.S.; Bill Beatty and Faith Anderson, Department of Financial Institutions; Sheri Nelson, Association of Washington Business; and Patrick Connor, National Federation of Independent Business.

Persons Signed In To Testify But Not Testifying: None.