

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

An Act To Increase Funding for Start-ups

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 32 MRSA §16202, sub-§25, as enacted by PL 2005, c. 65, Pt. A, §2, is amended to read:

25. Investments in viatical or life settlement contracts. Any offer or sale of an investment in a viatical or life settlement contract, if:

A. The underlying viatical or life settlement transaction with the viator was not in violation of the Viatical and Life Settlements Act;

B. Such disclosure documents as the administrator, by rule or order, requires are delivered to each offeree or purchaser; and

C. Prior to any offer in this State, a notice specifying the terms of the offer is filed with the administrator together with a consent to service of process complying with section 16611, signed by the issuer, and a nonrefundable filing fee of \$300 for each type or class of security being offered in this State and the administrator does not by order disallow the exemption within the next 5 full business days; or

Sec. 2. 32 MRSA §16202, sub-§26, as amended by PL 2009, c. 500, §1, is further amended to read:

26. Nonpublic offerings under 4(2). A security offered in a nonpublic offering under Section 4(2) of the federal Securities Act of 1933, 15 United States Code, Section 77d(2) if, no later than 15 days after the first sale in this State, a notice on "Form D," as promulgated by the Securities and Exchange Commission, is filed with the administrator together with a consent to service of process complying with section 16611, signed by the issuer, and the payment of a nonrefundable filing fee of \$300 for each type or class of security sold. If the Form D includes a consent to service of process, a separate document need not be filed for this purpose, and if the consent to service of process on the Form D is executed in a manner accepted by the Securities and Exchange Commission, it is deemed to comply with the requirement in this section and section 16611, subsection 1 that the consent be signed. An additional nonrefundable late filing fee of \$500 must be paid for a filing made between 16 and 30 days after the first sale in this State; or

Sec. 3. 32 MRSA §16202, sub-§27 is enacted to read:

27. Maine seed capital exemption. An issuer transaction or sale if:

A. The issuer of the security is a business entity formed under the laws of the State and registered with the Secretary of State;

B. The transaction meets the requirements of the federal exemption for intrastate offerings in Section 3(a)(11) of the federal Securities Act of 1933, 15 United States Code, Section 77c(a)(11), and 17 Code of Federal Regulations, Section 230.147 (2013);

C. The sum of all cash and other consideration to be received for all sales of the security in reliance upon this exemption does not exceed:

(1) If the issuer has not undergone and provided the documentation resulting from a financial audit that was performed the previous year and that met generally accepted accounting principles, \$1,000,000 less the aggregate amount received for all sales of securities by the issuer within the 12 months before the first offer or sale made in reliance upon the exemption provided by this subsection; or

(2) If the issuer has undergone and provided the documentation resulting from a financial audit that was performed the previous year and that met generally accepted accounting principles, \$2,000,000 less the aggregate amount received for all sales of securities by the issuer within the 12 months before the first offer or sale made in reliance upon the exemption provided by this subsection.

Beginning in 2018, and every 5 years thereafter, the administrator shall adjust the maximum amount of cash and other consideration allowed under this paragraph to reflect the cumulative change in the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index;

D. The issuer has not accepted more than \$2,000 from any single purchaser, unless the purchaser is an accredited investor as defined in 17 Code of Federal Regulations, Section 230.501 (2013). Beginning in 2018, and every 5 years thereafter, the administrator shall adjust the maximum amount the issuer may accept from a single purchaser to reflect the cumulative change in the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index;

E. Before the use of any general solicitation or the 25th sale of the security, whichever occurs first, the issuer files a notice with the administrator in writing or in electronic form prescribed by the administrator that:

(1) Specifies that the issuer is conducting an offering in reliance upon the exemption provided by this subsection; and

(2) Contains the names and addresses, including Internet website addresses, of the issuer and all persons who will be involved in the offer or sale of securities on behalf of the issuer, and the bank or other depository institution in which investor funds will be deposited;

F. The issuer is not, either before the offering or as a result of the offering, an investment company, as defined in Section 3 of the federal Investment Company Act of 1940, 15 United States Code, Section 80a-3, or subject to the reporting requirements of Section 13 or 15(d) of the federal Securities Exchange Act of 1934, 15 United States Code, Section 78m and 78o(d);

G. The issuer informs all purchasers that the securities have not been registered under this chapter and that the securities are subject to the limitation on resales contained in 17 Code of Federal Regulations, Section 230.147(e) (2013);

H. The issuer requires from all purchasers in writing in a separate written document by the time of the sale the following statement: "I acknowledge that I am investing in a high-risk, speculative business venture, that I may lose all of my investment and that I can afford the loss of my investment. I understand that this offering has not been reviewed by the State and that no authority has expressed an opinion on the merits of this offering." An investor who has signed the acknowledgment contained in this paragraph may not bring an action against the company or any director or officer of the company except in the case of fraud or breach of fiduciary duty, as long as the issuer is able to produce the signed acknowledgement;

I. If the sale of securities is by an Internet website, the Internet website requires as a condition of buyer registration on the Internet website evidence or certification that the buyer is a resident of the State. An issuer registering to offer a security on an Internet website under this paragraph must provide evidence or a certification that the issuer is organized under and authorized to do business within the State at the time of registration. The administrator may inspect or review any Internet website under this paragraph. Prior to offering an investment opportunity to residents of this State, an Internet website operator shall inform the administrator of the existence of the Internet website and shall give the administrator access to the Internet website;

J. The issuer provides a quarterly report, free of charge, to the issuer's shareholders until there are no securities issued under this subsection outstanding. An issuer may satisfy the reporting requirement of this paragraph by making the information available on an Internet website if the information is made available within 45 days of the end of each fiscal quarter and remains available for at least 60 days. An issuer must provide a printed copy of the report to any shareholder upon request. The report must contain:

(1) The amount of compensation received by each director and executive officer, including cash compensation earned since the previous report and on an annual basis and any bonuses, stock options, other rights to receive securities of the issuer or an affiliate of the issuer or other compensation received; and

(2) An analysis of the business operations and financial condition of the issuer; and

K. Within 5 years prior to the offering, the issuer or a person affiliated with the issuer or the offering:

(1) Has not filed a registration statement that is the subject of a pending proceeding or examination under 15 United States Code, Section 77h and has not been the subject of a refusal order or stop order under 15 United States Code, Section 77h;

(2) Is not subject to a pending proceeding under 17 Code of Federal Regulations, Section 230.258 (2013) or to an order entered under 17 Code of Federal Regulations, Section 230.258 (2013);

(3) Has not been convicted of a felony or misdemeanor in connection with the purchase or sale of a security or involving the making of a false filing related to the offer or sale of a security;

(4) Is not subject to an order, judgment or decree of a court of competent jurisdiction or regulatory authority, including non-United States regulatory authorities, preliminarily, temporarily or permanently restraining or enjoining that person from engaging in or continuing conduct or a practice in connection with the purchase or sale of a security or involving the making of a false filing related to the offer or sale of a security;

(5) Is not subject to a United States Postal Service false representation order entered under 39 United States Code, Section 3005 and is not subject to a temporary restraining order or preliminary injunction entered under 39 United States Code, Section 3007 with respect to conduct alleged to have violated 39 United States Code, Section 3005.

The provisions of this paragraph do not apply if, upon a showing of good cause and without prejudice to any other action by the administrator, the administrator determines that it is not necessary under the circumstances that an exemption be denied, and the issuer establishes that it made factual inquiry into whether any disqualification existed under this paragraph but did not know, and in the exercise of reasonable care could not have known, that a disqualification existed under this paragraph. The nature and scope of the inquiry required by an issuer varies based on the circumstances of the issuer and the other offering participants.

The exemption provided in this subsection may not be used in conjunction with any other exemption under this chapter, except that offers and sales to controlling persons do not count toward the limitation in paragraph C. For purposes of this subsection, "controlling person" means an officer, director, partner or trustee, or an individual occupying a similar status or performing similar functions with respect to the issuer or to a person owning 10% or more of the outstanding shares of any class or classes of securities of the issuer.

The administrator shall adopt rules to protect investors who purchase securities under this subsection. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

SUMMARY

The purpose of this bill is to promote and encourage the growth of Maine small businesses by facilitating the ability of a business to raise capital by selling small amounts of equity to a wider pool of small investors with fewer restrictions. This bill exempts from existing restrictions regarding registration and advertising an issuer transaction or sale if the issuer transaction or sale meets certain conditions, including:

1. The issuer of the security must be a business entity formed and registered under Maine law;
2. The purchasers of the securities must be Maine residents;
3. The size of the offering may not exceed \$1,000,000 if the issuer has not undergone, and provided documentation from, a financial audit in the previous year;
4. The size of the offering may not exceed \$2,000,000 if the issuer has undergone, and provided documentation from, a financial audit in the previous year;
5. The issuer may not accept more than \$2,000 from any single purchaser unless the purchaser is an accredited investor under rules adopted by the federal Securities and Exchange Commission; and
6. The issuer requires from all purchasers a written acknowledgement that the purchaser assumes the risks associated with the investment.