S T A T E O F N E W Y O R K

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2015-2016 Regular Sessions

I N A S S E M B L Y

May 27, 2015

Introduced by M. of A. SCHIMMINGER, LUPARDO, COOK, BLAKE -- Multi-Sponsored by -- M. of A. HIKIND, SOLAGES, THIELE -- read once and referred to the Committee on Economic Development

AN ACT to amend the general business law, in relation to allowing crowdfunding with limited restrictions to assist start-ups with accessing capital

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The legislature finds that start-up companies are an important part of this state's economy. The legislature also finds that start-ups have unique challenges when accessing capital. Crowdfunding allows start-ups to raise money through a significant number of investors. However, crowdfunding practices are burdened by registration requirements under New York state law. Registration requirements for issuers of securities can be expensive and inconvenient for small offerings facilitated through crowdfunding. Therefore, to assist start-ups with accessing capital in an efficient and streamlined way, the legislature finds that crowdfunding should be permitted with limited restrictions.

S 2. The general business law is amended by adding a new section 359-ffff to read as follows:

S 359-FFFF. ACCESSING CAPITAL EXEMPTIONS. 1. ANY TRANSACTION RELATING TO THE SALE OR OFFERING FOR SALE BY THE ISSUER OF A SECURITY SHALL BE EXEMPT FROM THE PROVISIONS OF SUBDIVISION EIGHT OF SECTION THREE HUNDRED FIFTY-NINE-E OF THIS ARTICLE IF SUCH TRANSACTION MEETS THE FOLLOWING REQUIREMENTS:

A. THE OFFERING IS CONDUCTED IN ACCORDANCE WITH THE REQUIREMENTS OF PARAGRAPH ELEVEN OF SUBDIVISION (A) OF SECTION THREE OF THE SECURITIES ACT OF 1933 AND THIS SECTION. SECURITIES ARE OFFERED TO AND SOLD ONLY TO PERSONS WHO ARE RESIDENTS OF THE STATE OF NEW YORK AT THE TIME OF PURCHASE. PRIOR TO ANY OFFER OR SALE PURSUANT TO THIS EXEMPTION, THE

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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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 NEW YORK. SALES OF SECURITIES SHALL BE MADE ONLY BE ENTITIES ORGANIZED AND DOING BUSINESS IN THE STATE OF NEW YORK.

B. THE AGGREGATE PURCHASE PRICE OF ALL SECURITIES SOLD BY THE ISSUER PURSUANT TO THIS EXEMPTION DURING ANY TWELVE-MONTH PERIOD SHALL NOT EXCEED ONE MILLION DOLLARS. SECURITIES SOLD BY THE ISSUER PURSUANT TO OTHER AVAILABLE EXEMPTIONS SHALL NOT COUNT AGAINST THE ONE MILLION DOLLAR CAP.

C. THE AGGREGATE AMOUNT SOLD TO ANY INVESTOR BY ANY ONE ISSUER DURING THE TWELVE-MONTH PERIOD PRECEDING THE DATE OF SUCH TRANSACTION MAY NOT EXCEED: (I) THE GREATER OF TWO THOUSAND DOLLARS OR FIVE PERCENT OF THE ANNUAL INCOME OR NET WORTH OF SUCH INVESTOR, AS APPLICABLE, IF EITHER THE ANNUAL INCOME OR THE NET WORTH OF THE INVESTOR IS LESS THAN ONE HUNDRED THOUSAND DOLLARS; AND (II) TEN PERCENT OF THE ANNUAL INCOME OR NET WORTH OF SUCH INVESTOR, AS APPLICABLE, NOT TO EXCEED A MAXIMUM AGGREGATE AMOUNT SOLD OF ONE HUNDRED THOUSAND DOLLARS, IF EITHER THE ANNUAL INCOME OR NET WORTH OF THE INVESTOR IS ONE HUNDRED THOUSAND DOLLARS OR MORE.

D. SECURITIES MAY BE SOLD ONLY TO PERSONS WHO SIGN THE FOLLOWING STATEMENT AT THE TIME OF SALE: "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."

E. SALES OF SECURITIES MAY BE OFFERED THROUGH AN INTERNET PORTAL WHICH REQUIRES AS A CONDITION OF ENTRY TO THE PORTAL EVIDENCE OR CERTIFICATION OF RESIDENCY WITHIN THE STATE OF NEW YORK. THE DEPARTMENT OF STATE MAY INSPECT AND REVIEW ANY SUCH WEBSITE, AND AT THE TIME SUCH A WEBSITE FIRST OFFERS INVESTMENT OPPORTUNITIES TO NEW YORK STATE RESIDENTS, THE WEBSITE OPERATOR SHALL INFORM THE SECRETARY OF STATE OF THE EXISTENCE OF THE WEBSITE AND SHALL GIVE THE DEPARTMENT ACCESS TO THE SITE.

F. 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.

G. ATTEMPTED COMPLIANCE WITH THE EXEMPTION PROVIDED BY THIS SECTION DOES NOT ACT AS AN EXCLUSIVE ELECTION. THE ISSUER MAY CLAIM ANY OTHER APPLICABLE EXEMPTION.

H. FOR SO LONG AS ANY OF THE SECURITIES ISSUED UNDER THE EXEMPTION ARE OUTSTANDING, THE ISSUER SHALL PROVIDE A QUARTERLY REPORT TO THE ISSUER'S SHAREHOLDERS BY MAKING SUCH REPORT PUBLICLY ACCESSIBLE, FREE OF CHARGE, AT THE ISSUER'S INTERNET WEBSITE ADDRESS WITH A USER NAME AND PASSWORD WITHIN FORTY-FIVE DAYS OF THE END OF EACH FISCAL QUARTER. THE REPORT MUST CONTAIN THE FOLLOWING INFORMATION: (I) EXECUTIVE OFFICER AND DIRECTOR COMPENSATION, INCLUDING SPECIFICALLY THE CASH COMPENSATION EARNED BY THE EXECUTIVE OFFICERS AND DIRECTORS SINCE THE PREVIOUS REPORT AND ON AN ANNUAL BASIS, AND ANY BONUSES OR OTHER COMPENSATION, INCLUDING STOCK OPTIONS OR OTHER RIGHTS TO RECEIVE EQUITY SECURITIES OF THE ISSUER OR ANY AFFILIATE OF THE ISSUER, RECEIVED BY THEM; AND (II) A BRIEF ANALYSIS BY MANAGEMENT OF THE ISSUER OF THE BUSINESS OPERATIONS AND FINANCIAL CONDITION OF THE ISSUER.

I. SECURITIES ISSUED PURSUANT TO A TRANSACTION DESCRIBED IN THIS SECTION MAY NOT BE TRANSFERRED BY THE PURCHASER OF SUCH SECURITIES DURING A ONE-YEAR PERIOD BEGINNING ON THE DATE OF PURCHASE, UNLESS SUCH SECURITIES ARE TRANSFERRED: (I) TO THE ISSUER OF THE SECURITIES; (II) TO AN ACCREDITED INVESTOR; (III) AS PART OF A REGISTERED OFFERING; OR (IV) TO A MEMBER OF THE FAMILY OF THE PURCHASER OR THE EQUIVALENT, OR IN

CONNECTION WITH DEATH OR DIVORCE OR OTHER SIMILAR CIRCUMSTANCES, IN THE DISCRETION OF THE DEPARTMENT.

2. THE DEPARTMENT MAY ADOPT RULES TO PROTECT INVESTORS WHO PURCHASE SECURITIES UNDER THIS SECTION.

S 3. This act shall take effect immediately.