

HOUSE BILL NO. HB0144

Wyoming invests now exemption-amendments.

Sponsored by: Representative(s) Olsen, Eyre, Furphy,
Lindholm, Sweeney, Wilson and Zwonitzer and
Senator(s) Nethercott and Pappas

A BILL

for

1 AN ACT relating to the Uniform Securities Act; amending
2 provisions relating to exemptions from registration of
3 securities to conform to federal law; modifying
4 requirements for transactions under the federal exemption
5 for intrastate offerings; increasing amounts an issuer may
6 receive from sales of securities or from unaccredited
7 investors as specified; making conforming amendments; and
8 providing for an effective date.

9

10 *Be It Enacted by the Legislature of the State of Wyoming:*

11

12 **Section 1.** W.S. 17-4-203(a) (i), (ii) (intro),
13 (A) (III), (B), (C), (iii) (A), (B), (iv), (v) (B) (intro), by
14 creating a new subdivision (VIII), (vii), (viii),
15 (ix) (intro) and (C) is amended to read:

1

2 **17-4-203. Intrastate crowdfunding exemption.**

3

4 (a) Except as otherwise provided in this act, an
5 offer or sale of a security by an issuer is exempt from the
6 requirements of W.S. 17-4-301 through 17-4-306 and 17-4-504
7 if the offer or sale meets all of the following
8 requirements:

9

10 (i) The issuer of the security is:

11

12 (A) An entity that is incorporated or
13 organized under the laws of this state;

14

15 (B) A resident of this state under
16 securities and exchange commission rule 147, (17 C.F.R.
17 230.147), or rule 147A, (17 C.F.R. 230.147A); and~~is~~

18

19 (C) Authorized to do business in this
20 state.~~†~~

21

22 (ii) The transaction meets the requirements for
23 the federal exemption for intrastate offerings under

1 section 3(a)(11) of the Securities Act of 1933, (15 U.S.C.
2 77c(a)(11)), and securities and exchange commission rule
3 147, (17 C.F.R. 230.147), including, but not limited to,
4 the requirements for determining whether an offeree or
5 purchaser is a resident of this state, or under 15 U.S.C.
6 77e and securities and exchange commission rule 147A, (17
7 C.F.R. 230.147A). All of the following apply concerning
8 these requirements:

9
10 (A) Each of the following is prima facie
11 evidence that an individual is a resident of this state:

12
13 (III) A signed affidavit showing that
14 the purchaser is a resident of this state as defined by
15 W.S. 22-1-102(a)(xxx); or

16
17 (B) The provisions of securities and
18 exchange commission rule 147, (17 C.F.R. 230.147), or rule
19 147A, (17 C.F.R. 230.147A), apply in determining the
20 residency of an offeree or purchaser that is a corporation,
21 partnership, trust, or other form of business organization;

22

1 (C) If a purchaser of a security that is
2 exempt under this section resells that security within ~~nine~~
3 ~~(9)~~ six (6) months after the closing of the particular
4 offering in which the purchaser obtained that security to a
5 person that is not a resident of this state, the original
6 investment agreement between the issuer and the purchaser
7 is void. If an agreement to purchase, or the purchase of, a
8 security is void under this subparagraph, the issuer may
9 recover damages from the misrepresenting offeree or
10 purchaser. These damages include, but are not limited to,
11 the issuer's expenses in resolving the misrepresentation.
12 However, damages described in this subparagraph shall not
13 exceed the amount of the person's investment in the
14 security.

15
16 (iii) The sum of all cash and other
17 consideration to be received for all sales of the security
18 in reliance on this exemption does not exceed the following
19 amounts:

20
21 (A) ~~One million dollars (\$1,000,000.00)~~ Two
22 million dollars (\$2,000,000.00), less the aggregate amount
23 received for all sales of securities by the issuer within

1 the twelve (12) months before the first offer or sale made
2 in reliance on this exemption, if the issuer has not made
3 available to each prospective purchaser and the secretary
4 of state audited financial statements or reviewed financial
5 statements for the issuer's most recently completed fiscal
6 year, prepared by a certified public accountant, holding a
7 certificate pursuant to W.S. 33-3-109, in accordance with
8 the statements on auditing standards of the American
9 Institute of Certified Public Accountants or the statements
10 on standards for accounting and review services of the
11 American Institute of Certified Public Accountants, as
12 applicable;

13

14 (B) ~~Two million dollars (\$2,000,000.00)~~
15 Four million dollars (\$4,000,000.00), less the aggregate
16 amount received for all sales of securities by the issuer
17 within the twelve (12) months before the first offer or
18 sale made in reliance on this exemption, if the issuer has
19 made available to each prospective purchaser and the
20 secretary of state audited financial statements or reviewed
21 financial statements for the issuer's most recently
22 completed fiscal year, prepared by a certified public
23 accountant, holding a certificate pursuant to W.S.

1 33-3-109, in accordance with the statements on auditing
2 standards of the American Institute of Certified Public
3 Accountants or the statements on standards for accounting
4 and review services of the American Institute of Certified
5 Public Accountants, as applicable.

6
7 (iv) The issuer has not accepted more than ~~five~~
8 ~~thousand dollars (\$5,000.00)~~ ten thousand dollars
9 (\$10,000.00) from any single purchaser unless the purchaser
10 is an accredited investor as defined by rule 501 of
11 securities and exchange commission regulation D, (17 C.F.R.
12 230.501) who comes within any category listed in the
13 definition of that rule or who the issuer reasonably
14 believes comes within any category listed in the definition
15 of that rule, at the time of the sale. The issuer may rely
16 on confirmation that the purchaser is an accredited
17 investor from information provided by the purchaser, a
18 licensed broker-dealer or another third party in making a
19 determination that the purchaser is an accredited investor;

20
21 (v) At least ten (10) days before an offer of
22 securities is made in reliance on this exemption or the use
23 of any publicly available website in connection with an

1 offering of securities in reliance on this exemption, the
2 issuer files a notice with the secretary of state, in
3 writing or in electronic form as specified by the secretary
4 of state, that contains all of the following:

5
6 (B) A copy of the disclosure statement to
7 be provided to prospective investors in connection with the
8 offering. The disclosure statement ~~must~~ shall be provided
9 at the time the offer of securities is made to the
10 prospective purchaser and shall contain all of the
11 following:

12
13 (VIII) Additional information material
14 to the offering, including, where appropriate, a discussion
15 of significant factors that make the offering speculative
16 or risky. This discussion shall be concise and organized
17 logically and need not present risks that could apply to
18 any issuer or any offering.

19
20 (vii) The issuer informs each prospective
21 purchaser that the securities are not registered under
22 federal or state securities laws and that the securities
23 are subject to limitations on transfer or resale and

1 displays the following legend conspicuously on the cover
2 page of the disclosure statement:

3
4 "IN MAKING AN INVESTMENT DECISION, PURCHASERS MUST RELY ON
5 THEIR OWN EXAMINATION OF THE ISSUER AND THE TERMS OF THE
6 OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THESE
7 SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR
8 STATE SECURITIES COMMISSION OR REGULATORY AUTHORITY.
9 FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT CONFIRMED
10 THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT.
11 ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.
12 THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON
13 TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR
14 RESOLD EXCEPT AS PERMITTED BY SUBSECTION (E) OF SEC RULE
15 147, (17 C.F.R. 230.147(E)), OR RULE 147A, (17 C.F.R.
16 230.147A(E)), AS PROMULGATED UNDER THE SECURITIES ACT OF
17 1933, AS AMENDED, AND THE APPLICABLE STATE SECURITIES LAWS,
18 PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. PURCHASERS
19 SHOULD BE AWARE THAT THEY WILL BE REQUIRED TO BEAR THE
20 FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD
21 OF TIME."

22

1 (viii) The issuer requires each purchaser to
2 certify in writing, and to include as part of that
3 certification his signature, and his initials next to each
4 paragraph of the certification, as follows:

5

6 "I understand and acknowledge that:

7

8 I am investing in a high-risk, speculative business
9 venture. I may lose all of my investment, and I can afford
10 the loss of my investment. This offering has not been
11 reviewed or approved by any state or federal securities
12 commission or other regulatory authority and that no
13 regulatory authority has confirmed the accuracy or
14 determined the adequacy of any disclosure made to me
15 relating to this offering.

16

17 The securities I am acquiring in this offering are
18 illiquid, that the securities are subject to possible
19 dilution, that there is no ready market for the sale of
20 those securities, that it may be difficult or impossible
21 for me to sell or otherwise dispose of this investment, and
22 that, accordingly, I may be required to hold this
23 investment indefinitely.

1

2 I may be subject to tax on my share of the taxable income
3 and losses of the issuer, whether or not I have sold or
4 otherwise disposed of my investment or received any
5 dividends or other distributions from the issuer.

6

7 By entering into this transaction with the issuer, I am
8 affirmatively representing myself as being a Wyoming
9 resident at the time that this contract is formed, and if
10 this representation is subsequently shown to be false, the
11 contract is void.

12

13 If I resell any of the securities I am acquiring in this
14 offering to a person that is not a Wyoming resident, within
15 ~~nine (9)~~ six (6) months after the closing of the offering,
16 my contract with the issuer for the purchase of these
17 securities is void."

18

19 (ix) If the offer and sale of securities under
20 this section is made through an internet website, all of
21 the following requirements ~~must be~~ are met:

22

1 (C) The website operator files a written
2 notice with the secretary of state that includes the
3 website operator's name, business address, and contact
4 information and states that it is authorized to do business
5 in this state and is being utilized to offer and sell
6 securities under this exemption. Beginning twelve (12)
7 months after the date of the written notice, a website
8 operator that has filed a written notice under this
9 subparagraph shall annually notify the secretary of state
10 in writing of any changes in the information provided to
11 the secretary of state under this subparagraph; ~~and shall~~
12 ~~pay a renewal fee;~~

13

14 **Section 2.** W.S. 17-4-203(a)(xiii) is repealed.

15

16 **Section 3.** This act is effective immediately upon
17 completion of all acts necessary for a bill to become law
18 as provided by Article 4, Section 8 of the Wyoming
19 Constitution.

20

21 (END)