

**NOTE: The governor signed this measure on 4/13/2015.**

# An Act

HOUSE BILL 15-1246

BY REPRESENTATIVE(S) Lee and Pabon, Williams, Priola, Tate, Arndt, Becker K., Foote, Garnett, Ginal, Kraft-Tharp, McCann, Mitsch Bush, Nordberg, Pettersen, Rankin, Rosenthal, Singer, Tyler, Willett, Winter, Young, Brown, Buckner, Carver, Duran, Fields, Hamner, Kagan, Keyser, Klingenschmitt, Lontine, Melton, Primavera, Roupe, Salazar, Sias, Thurlow, Vigil, Hullinghorst;  
also SENATOR(S) Scheffel and Hill, Heath, Jahn, Johnston, Kefalas, Merrifield, Todd, Aguilar, Baumgardner, Cooke, Donovan, Garcia, Grantham, Holbert, Kerr, Lambert, Lundberg, Marble, Martinez Humenik, Neville T., Newell, Roberts, Scott, Sonnenberg, Ulibarri, Woods, Cadman.

CONCERNING THE AUTHORIZATION OF CROWDFUNDING OF INTRASTATE SECURITIES.

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** In Colorado Revised Statutes, **add** 11-51-308.5 as follows:

**11-51-308.5. Crowdfunding - intrastate offering of securities - on-line intermediaries - rules - fees - short title - legislative declaration.**

(1) **Short title.** THIS ACT SHALL BE KNOWN AND MAY BE CITED AS THE "COLORADO CROWDFUNDING ACT".

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*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

(2) **Legislative declaration.** THE GENERAL ASSEMBLY HEREBY:

(a) FINDS THAT:

(I) START-UP COMPANIES PLAY A CRITICAL ROLE IN EXPANDING ECONOMIC OPPORTUNITIES, CREATING NEW JOBS, AND GENERATING REVENUES; AND

(II) LACK OF ACCESS TO CAPITAL IS AN OBSTACLE TO STARTING AND EXPANDING SMALL BUSINESS, INHIBITS JOB GROWTH, AND HAS NEGATIVELY AFFECTED THE STATE'S ECONOMY;

(b) DETERMINES THAT:

(I) THE COSTS AND COMPLEXITIES OF STATE SECURITIES REGISTRATION CAN OUTWEIGH THE BENEFITS TO COLORADO BUSINESSES SEEKING TO RAISE CAPITAL BY SMALL SECURITIES OFFERINGS;

(II) THE USE OF CROWDFUNDING, OR RAISING MONEY ON-LINE THROUGH SMALL CONTRIBUTIONS FROM A LARGE NUMBER OF INVESTORS, IS PRESENTLY RESTRICTED BY OUR STATE SECURITIES LAWS; AND

(III) CROWDFUNDING ALLOWS SMALL COMPANIES TO ACCESS THE CAPITAL THEY NEED TO START OR EXPAND BUSINESSES; AND

(c) DECLARES THAT:

(I) IN COMPLIANCE WITH EXEMPTIONS FROM FEDERAL LAW, THE EXEMPTION PROVIDED BY THIS SECTION APPLIES ONLY IF:

(A) THE INVESTOR IS A COLORADO RESIDENT OR IS AN ENTITY FORMED PURSUANT TO COLORADO LAWS;

(B) THE ISSUER OF THE SECURITIES IS AN ENTITY FORMED PURSUANT TO COLORADO LAWS AND DOING BUSINESS IN COLORADO; AND

(C) THE ISSUER INTENDS TO USE AND USES AT LEAST EIGHTY PERCENT OF THE PROCEEDS OF THE SALE OF SECURITIES IN COLORADO; AND

(II) CREATING A COLORADO CROWDFUNDING OPTION, WITH LIMITATIONS TO PROTECT INVESTORS, WILL ENABLE COLORADO BUSINESSES TO OBTAIN CAPITAL, DEMOCRATIZE VENTURE CAPITAL FORMATION, AND FACILITATE INVESTMENT BY COLORADO RESIDENTS IN COLORADO START-UPS, THEREBY PROMOTING THE FORMATION AND GROWTH OF LOCAL COMPANIES AND THE ACCOMPANYING JOB CREATION.

(3) **Exemption.** IF AN OFFER OR SALE OF A SECURITY BY AN ISSUER MADE AFTER THE SECURITIES COMMISSIONER INITIALLY PROMULGATES RULES TO IMPLEMENT THIS SECTION IS CONDUCTED IN ACCORDANCE WITH ALL THE FOLLOWING REQUIREMENTS AND THOSE CONTAINED IN THE RULES PROMULGATED PURSUANT TO SUBSECTION (4) OF THIS SECTION, THE TRANSACTION IS EXEMPT FROM SECTION 11-51-301:

(a) THE ISSUER OF THE SECURITY MUST BE A BUSINESS ENTITY ORGANIZED PURSUANT TO THE LAWS OF COLORADO AND AUTHORIZED TO DO BUSINESS IN COLORADO AND MEET ALL OF THE FOLLOWING REQUIREMENTS:

(I) THE SECURITIES MUST MEET THE REQUIREMENTS OF THE FEDERAL EXEMPTION FOR INTRASTATE OFFERINGS IN SECTION 3 (a) (11) OF THE FEDERAL "SECURITIES ACT OF 1933", 15 U.S.C. SEC. 77c (a) (11), AND THE SECURITIES AND EXCHANGE COMMISSION'S RULE 147 ADOPTED PURSUANT TO SAID ACT, 17 CFR 230.147, FOR AN INTRASTATE OFFERING BEING CONDUCTED IN COLORADO. PRIOR TO ANY SALE PURSUANT TO THIS EXEMPTION, THE ISSUER SHALL OBTAIN DOCUMENTARY EVIDENCE FROM EACH PROSPECTIVE PURCHASER THAT PROVIDES THE SELLER WITH A REASONABLE BASIS TO BELIEVE THAT THE PURCHASER MEETS THE REQUIREMENTS OF SUBSECTION (d) OF THE SECURITIES AND EXCHANGE COMMISSION'S RULE 147, 17 CFR 230.147 (d).

(II) THE SUM OF ALL CASH AND OTHER CONSIDERATION TO BE RECEIVED FOR ALL SALES OF THE SECURITY PURSUANT TO THE EXEMPTION PROVIDED BY THIS SECTION MUST NOT EXCEED ONE MILLION DOLLARS DURING ANY TWELVE-MONTH PERIOD; EXCEPT THAT, IF BEFORE OFFERING AND SELLING THE SECURITIES, THE ISSUER SUBMITS AUDITED FINANCIAL STATEMENTS REGARDING THE ISSUER TO THE SECURITIES COMMISSIONER, THE SUM MUST NOT EXCEED TWO MILLION DOLLARS.

(III) THE AGGREGATE AMOUNT SOLD TO ANY PURCHASER DURING

THE TWELVE-MONTH PERIOD PRECEDING THE DATE OF THE SALE MUST NOT EXCEED FIVE THOUSAND DOLLARS UNLESS THE PURCHASER IS AN ACCREDITED INVESTOR AS DEFINED BY THE SECURITIES AND EXCHANGE COMMISSION'S RULE 501 OF REGULATION D, 17 CFR 230.501.

(IV) UNLESS WAIVED OR MODIFIED BY WRITTEN CONSENT BY THE SECURITIES COMMISSIONER, NOT LESS THAN TEN DAYS BEFORE THE COMMENCEMENT OF AN OFFERING OF SECURITIES PURSUANT TO THE EXEMPTION PROVIDED BY THIS SECTION, THE ISSUER MUST DO ALL THE FOLLOWING:

(A) MAKE A NOTICE FILING WITH THE SECURITIES COMMISSIONER ON A FORM PRESCRIBED BY THE SECURITIES COMMISSIONER, INCLUDING A CONSENT TO SERVICE OF PROCESS IN SUCH FORM AS THE SECURITIES COMMISSIONER MAY REQUIRE;

(B) PAY THE FEE ESTABLISHED BY THE SECURITIES COMMISSIONER;

(C) PROVIDE THE SECURITIES COMMISSIONER WITH A COPY OF THE DISCLOSURE DOCUMENT TO BE PROVIDED TO PROSPECTIVE PURCHASERS PURSUANT TO SUBPARAGRAPH (X) OF THIS PARAGRAPH (a);

(D) PROVIDE THE SECURITIES COMMISSIONER WITH A COPY OF AN ESCROW AGREEMENT WITH A BANK, REGULATED TRUST COMPANY OR CORPORATE FIDUCIARY, SAVINGS BANK, SAVINGS AND LOAN ASSOCIATION, OR CREDIT UNION AUTHORIZED TO DO BUSINESS IN COLORADO IN WHICH THE ISSUER WILL DEPOSIT THE PURCHASER'S FUNDS OR CAUSE THE PURCHASER'S FUNDS TO BE DEPOSITED AND THAT THE ISSUER MAY ACCESS ONLY AS PROVIDED IN SUB-SUBPARAGRAPH (F) OF THIS SUBPARAGRAPH (IV). THE BANK, REGULATED TRUST COMPANY OR CORPORATE FIDUCIARY, SAVINGS BANK, SAVINGS AND LOAN ASSOCIATION, OR CREDIT UNION IN WHICH THE PURCHASER FUNDS ARE DEPOSITED SHALL ACT ONLY AT THE DIRECTION OF THE PARTY ESTABLISHING THE ESCROW AGREEMENT AND DOES NOT HAVE ANY DUTY OR LIABILITY, CONTRACTUAL OR OTHERWISE, TO ANY PURCHASER OR OTHER PERSON. A PURCHASER MAY CANCEL THE PURCHASER'S COMMITMENT TO INVEST IF THE MINIMUM AMOUNT ESTABLISHED PURSUANT TO SUB-SUBPARAGRAPH (F) OF THIS SUBPARAGRAPH (IV) IS NOT RAISED BEFORE THE TIME STATED IN THE ESCROW AGREEMENT.

(E) MAINTAIN ALL RECORDS WITH RESPECT TO ANY OFFERING CONDUCTED PURSUANT TO THE EXEMPTION PROVIDED BY THIS SECTION AS THE SECURITIES COMMISSIONER MAY BY RULE REQUIRE; AND

(F) ESTABLISH BOTH A MINIMUM AND A MAXIMUM OFFERING AMOUNT, AND DEPOSIT ALL FUNDS RAISED FROM PURCHASERS PURSUANT TO THE EXEMPTION PROVIDED BY THIS SECTION INTO AN ESCROW ACCOUNT ESTABLISHED PURSUANT TO SUB-SUBPARAGRAPH (D) OF THIS SUBPARAGRAPH (IV). THE MINIMUM ESTABLISHED MUST BE NOT LESS THAN ONE-HALF OF THE MAXIMUM OFFERING AMOUNT. THE MAXIMUM AMOUNT MUST NOT EXCEED THE LIMITATIONS SET FORTH IN SUBPARAGRAPH (II) OF THIS PARAGRAPH (a). THE ISSUER SHALL NOT ACCESS THE ESCROW FUNDS UNTIL THE AGGREGATE FUNDS RAISED FROM ALL PURCHASERS EQUALS OR EXCEEDS THE MINIMUM AMOUNT. THE ISSUER SHALL USE ALL FUNDS IN ACCORDANCE WITH REPRESENTATIONS MADE TO PURCHASERS.

(V) THE ISSUER MUST NOT BE, EITHER BEFORE OR AS A RESULT OF THE OFFERING, AN INVESTMENT COMPANY, AS DEFINED IN SECTION 3 OF THE FEDERAL "INVESTMENT COMPANY ACT OF 1940", 15 U.S.C. SEC. 80a-3, AN ENTITY THAT WOULD BE AN INVESTMENT COMPANY BUT FOR THE EXCLUSIONS PROVIDED IN SECTION 3 (c) OF THE FEDERAL "INVESTMENT COMPANY ACT OF 1940", 15 U.S.C. SEC. 80a-3 (c), OR SUBJECT TO THE REPORTING REQUIREMENTS OF SECTION 13 OR 15 (d) OF THE FEDERAL "SECURITIES EXCHANGE ACT OF 1934", 15 U.S.C. SEC. 78m OR 78o (d).

(VI) THE ISSUER SHALL INFORM ALL PROSPECTIVE PURCHASERS OF SECURITIES OFFERED PURSUANT TO THE EXEMPTION PROVIDED BY THIS SECTION, IN PLAIN, NONTECHNICAL LANGUAGE USING WORDS WITH COMMON AND EVERYDAY MEANING THAT ARE UNDERSTANDABLE TO THE AVERAGE READER, THAT THE SECURITIES HAVE NOT BEEN REGISTERED PURSUANT TO FEDERAL OR STATE SECURITIES LAW AND THAT THE SECURITIES ARE SUBJECT TO LIMITATIONS ON RESALE. THE ISSUER SHALL DISPLAY THE FOLLOWING LEGEND CONSPICUOUSLY ON THE COVER PAGE OF THE DISCLOSURE DOCUMENT REQUIRED BY SUBPARAGRAPH (X) OF THIS PARAGRAPH (a):

THESE SECURITIES HAVE NOT BEEN REGISTERED WITH, APPROVED BY, OR RECOMMENDED BY ANY FEDERAL OR STATE AGENCY. IN MAKING AN INVESTMENT DECISION, PURCHASERS MUST RELY

ON THEIR OWN EXAMINATION OF THE ISSUER AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES COMMISSION OR DIVISION OR OTHER REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE. THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED BY SUBSECTION (e) OF SECURITIES AND EXCHANGE COMMISSION RULE 147, 17 CFR 230.147 (e), AS PROMULGATED PURSUANT TO THE FEDERAL "SECURITIES ACT OF 1933", AS AMENDED, AND THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. INVESTORS SHOULD BE AWARE THAT THEY WILL BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.

(VII) THE ISSUER SHALL REQUIRE EACH PURCHASER TO CERTIFY IN WRITING OR ELECTRONICALLY AS FOLLOWS:

I UNDERSTAND AND ACKNOWLEDGE THAT I AM INVESTING IN A HIGH-RISK, SPECULATIVE BUSINESS VENTURE. I MAY LOSE ALL OF MY INVESTMENT, OR UNDER SOME CIRCUMSTANCES MORE THAN MY INVESTMENT, AND I CAN AFFORD THIS LOSS. THIS OFFERING HAS NOT BEEN REVIEWED OR APPROVED BY ANY STATE OR FEDERAL SECURITIES COMMISSION OR DIVISION OR OTHER REGULATORY AUTHORITY AND NO SUCH PERSON OR AUTHORITY HAS CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF ANY DISCLOSURE MADE TO ME RELATING TO THIS OFFERING. THE SECURITIES I AM ACQUIRING IN THIS OFFERING CANNOT BE READILY SOLD, ARE ILLIQUID, THERE IS NO READY MARKET FOR THE SALE OF SUCH SECURITIES, IT MAY BE DIFFICULT OR IMPOSSIBLE FOR ME TO

SELL OR OTHERWISE DISPOSE OF THIS INVESTMENT, AND, ACCORDINGLY, I MAY BE REQUIRED TO HOLD THIS INVESTMENT INDEFINITELY. I MAY BE SUBJECT TO TAX ON MY SHARE OF THE TAXABLE INCOME AND LOSSES OF THE COMPANY, WHETHER OR NOT I HAVE SOLD OR OTHERWISE DISPOSED OF MY INVESTMENT OR RECEIVED ANY DIVIDENDS OR OTHER DISTRIBUTIONS FROM THE COMPANY.

(VIII) THE ISSUER MUST OBTAIN FROM EACH PURCHASER OF A SECURITY OFFERED PURSUANT TO THE EXEMPTION PROVIDED BY THIS SECTION EVIDENCE THAT THE PURCHASER IS A RESIDENT OF COLORADO OR, IF THE PURCHASER IS AN ENTITY, IS ORGANIZED PURSUANT TO THE LAWS OF COLORADO AND, IF APPLICABLE, IS AN ACCREDITED INVESTOR.

(IX) ALL PAYMENTS FOR PURCHASE OF SECURITIES OFFERED PURSUANT TO THE EXEMPTION PROVIDED BY THIS SECTION MUST BE DIRECTED TO AND HELD BY THE FINANCIAL INSTITUTION SPECIFIED IN SUB-SUBPARAGRAPH (D) OF SUBPARAGRAPH (IV) OF THIS PARAGRAPH (a). THE SECURITIES COMMISSIONER MAY REQUEST FROM THE FINANCIAL INSTITUTION INFORMATION NECESSARY TO ENSURE COMPLIANCE WITH THIS SECTION. THIS INFORMATION IS NOT A PUBLIC RECORD AND IS NOT AVAILABLE FOR PUBLIC INSPECTION.

(X) THE ISSUER OF SECURITIES OFFERED PURSUANT TO THE EXEMPTION PROVIDED BY THIS SECTION MUST PROVIDE A DISCLOSURE DOCUMENT TO EACH PROSPECTIVE PURCHASER AT THE TIME THE OFFER OF SECURITIES IS MADE TO THE PROSPECTIVE PURCHASER THAT CONTAINS THE INFORMATION THAT THE SECURITIES COMMISSIONER REQUIRES BY RULE.

(XI) ALL SALES PURSUANT TO AN OFFERING OR SINGLE PLAN OF FINANCING PURSUANT TO THE EXEMPTION PROVIDED BY THIS SECTION MUST MEET ALL OF THE TERMS AND CONDITIONS OF THIS SECTION. THE EXEMPTION PROVIDED BY THIS SECTION SHALL NOT BE USED IN CONJUNCTION WITH ANY OTHER EXEMPTION PURSUANT TO SECTION 11-51-307, 11-51-308, OR 11-51-309 DURING THE IMMEDIATELY PRECEDING TWELVE-MONTH PERIOD.

(XII) THE EXEMPTION PROVIDED BY THIS SECTION IS NOT AVAILABLE IF AN ISSUER OR A PERSON AFFILIATED WITH THE ISSUER OR OFFERING IS SUBJECT TO DISQUALIFICATION ESTABLISHED BY THE

SECURITIES COMMISSIONER BY RULE OR CONTAINED IN THE SECURITIES AND EXCHANGE COMMISSION'S RULE 506 (d) ADOPTED PURSUANT TO THE FEDERAL "SECURITIES ACT OF 1933", 17 CFR 230.506 (d).

(XIII) AN ISSUER OF A SECURITY PURSUANT TO THIS SECTION SHALL PROVIDE, FREE OF CHARGE, A QUARTERLY REPORT TO THE ISSUER'S OWNERS. AN ISSUER MAY SATISFY THE REPORTING REQUIREMENT OF THIS SUBPARAGRAPH (XIII) BY MAKING THE INFORMATION AVAILABLE ON A WEB SITE OPERATED BY AN ON-LINE INTERMEDIARY IF THE INFORMATION IS MADE AVAILABLE WITHIN FORTY-FIVE DAYS AFTER THE END OF EACH FISCAL QUARTER AND REMAINS AVAILABLE UNTIL THE SUCCEEDING QUARTERLY REPORT IS ISSUED. AN ISSUER SHALL FILE EACH QUARTERLY REPORT REQUIRED PURSUANT TO THIS SUBPARAGRAPH (XIII) WITH THE DIVISION AND, IF THE QUARTERLY REPORT IS MADE AVAILABLE ON A WEB SITE OPERATED BY AN ON-LINE INTERMEDIARY, THE ISSUER SHALL ALSO PROVIDE A WRITTEN COPY OF THE REPORT TO ANY OWNER UPON REQUEST. THE REPORT MUST CONTAIN ALL THE FOLLOWING:

(A) 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 ANY AFFILIATE OF THE ISSUER, OR OTHER COMPENSATION RECEIVED; AND

(B) AN ANALYSIS BY MANAGEMENT OF THE ISSUER OF THE BUSINESS OPERATIONS AND FINANCIAL CONDITION OF THE ISSUER.

(XIV) THE ISSUER MAY DISTRIBUTE A NOTICE WITHIN COLORADO THAT IS LIMITED TO A STATEMENT THAT THE ISSUER IS CONDUCTING AN OFFERING AND THAT INCLUDES:

(A) THE NAME OF THE ON-LINE INTERMEDIARY, SALES REPRESENTATIVE, OR LICENSED BROKER-DEALER THROUGH WHICH THE OFFERING IS BEING CONDUCTED; AND

(B) A LINK DIRECTING THE POTENTIAL INVESTOR TO THE ON-LINE INTERMEDIARY'S OR BROKER-DEALER'S WEB SITE.

(b) AN ISSUER MAY MAKE AN OFFERING PURSUANT TO THE EXEMPTION PROVIDED BY THIS SECTION THROUGH:



(I) A BROKER-DEALER THAT IS LICENSED PURSUANT TO PART 4 OF THIS ARTICLE WITH ITS PRINCIPAL PLACE OF BUSINESS IN COLORADO;

(II) A SALES REPRESENTATIVE THAT IS LICENSED PURSUANT TO PART 4 OF THIS ARTICLE; OR

(III) AN ON-LINE INTERMEDIARY THAT MEETS THE REQUIREMENTS OF PARAGRAPH (c) OF THIS SUBSECTION (3).

(c) (I) BEFORE ACTING AS AN ON-LINE INTERMEDIARY FOR AN OFFERING PURSUANT TO THE EXEMPTION PROVIDED BY THIS SECTION, THE ON-LINE INTERMEDIARY MUST FILE A STATEMENT WITH THE SECURITIES COMMISSIONER, ACCOMPANIED BY THE FILING FEE ESTABLISHED BY THE SECURITIES COMMISSIONER, THAT INCLUDES ALL THE FOLLOWING:

(A) THAT THE ON-LINE INTERMEDIARY CONSENTS TO SERVICE OF PROCESS IN COLORADO PURSUANT TO SECTION 11-51-706;

(B) THAT THE ON-LINE INTERMEDIARY WILL PROVIDE INFORMATION WITH RESPECT TO THE OFFER OF SECURITIES IN COLORADO ONLY PURSUANT TO THE EXEMPTION PROVIDED BY THIS SECTION;

(C) THE IDENTITY AND LOCATION OF, AND CONTACT INFORMATION FOR, THE ON-LINE INTERMEDIARY, INCLUDING THE NAMES AND PHYSICAL ADDRESSES OF THE OFFICERS, DIRECTORS, MANAGERS, PARTNERS, AND OTHER PERSONS WHO CONTROL THE BUSINESS DECISIONS OF THE ON-LINE INTERMEDIARY;

(D) A STATEMENT THAT SETS FORTH ANY CHANGES TO THE INFORMATION CONTAINED IN THE ORIGINAL OR ANY SUBSEQUENTLY FILED STATEMENT REQUIRED BY THIS SUBPARAGRAPH (I); AND

(E) NOTICE OF ITS INTENTION TO ACT AS ON-LINE INTERMEDIARY FOR AN OFFERING, WHICH STATEMENT MUST BE ON SUCH FORM AS THE SECURITIES COMMISSIONER REQUIRES.

(II) AN ON-LINE INTERMEDIARY SHALL MAINTAIN RECORDS OF ALL OFFERS OF SECURITIES EFFECTED THROUGH ITS WEB SITE AND SHALL PROVIDE READY ACCESS TO THE RECORDS TO THE DIVISION, UPON REQUEST. THE RECORDS OF AN ON-LINE INTERMEDIARY REQUIRED PURSUANT TO THIS

SUBPARAGRAPH (II) ARE SUBJECT TO THE REASONABLE PERIODIC, SPECIAL, OR OTHER EXAMINATION OR INSPECTION BY A REPRESENTATIVE OF THE SECURITIES COMMISSIONER, IN OR OUTSIDE COLORADO, AS THE SECURITIES COMMISSIONER CONSIDERS NECESSARY OR APPROPRIATE IN THE PUBLIC INTEREST AND FOR THE PROTECTION OF PURCHASERS. AN EXAMINATION OR INSPECTION MAY BE MADE AT ANY TIME AND WITHOUT PRIOR NOTICE. THE SECURITIES COMMISSIONER MAY COPY, AND REMOVE FOR EXAMINATION OR INSPECTION COPIES OF, ALL RECORDS THAT THE SECURITIES COMMISSIONER REASONABLY CONSIDERS NECESSARY OR APPROPRIATE TO CONDUCT THE EXAMINATION OR INSPECTION. THE SECURITIES COMMISSIONER MAY ASSESS A REASONABLE CHARGE FOR CONDUCTING AN EXAMINATION OR INSPECTION PURSUANT TO THIS SUBPARAGRAPH (II). THE SECURITIES COMMISSIONER MAY BY RULE REQUIRE AN ON-LINE INTERMEDIARY TO:

(A) FILE WITH THE SECURITIES COMMISSIONER SPECIFIED FINANCIAL AND OTHER INFORMATION;

(B) MAKE AND MAINTAIN SPECIFIED RECORDS AND TO PRESERVE SUCH RECORDS FOR FIVE YEARS OR SUCH OTHER PERIOD AS MAY BE SPECIFIED BY RULE; AND

(C) ESTABLISH WRITTEN SUPERVISORY PROCEDURES AND A SYSTEM FOR APPLYING SUCH PROCEDURES THAT IS REASONABLY EXPECTED TO PREVENT AND DETECT VIOLATIONS OF THIS ARTICLE.

(III) AN ON-LINE INTERMEDIARY SHALL:

(A) LIMIT ITS OFFER OF SECURITIES PURSUANT TO THE EXEMPTION PROVIDED BY THIS SECTION TO ONLY COLORADO RESIDENTS AS THAT TERM IS DEFINED IN SUBSECTION (d) OF THE SECURITIES AND EXCHANGE COMMISSION'S RULE 147, 17 CFR 230.147 (d);

(B) NOT HOLD A FINANCIAL INTEREST IN ANY ISSUER OR BE AFFILIATED WITH OR UNDER COMMON CONTROL WITH AN ISSUER WHOSE SECURITIES APPEAR ON ANY WEB SITE MAINTAINED FOR THE OFFER OF SECURITIES BY THE ON-LINE INTERMEDIARY; AND

(C) NOT BE AN OWNER OF ANY ISSUER OFFERING SECURITIES PURSUANT TO THE EXEMPTION PROVIDED BY THIS SECTION.

(IV) AN ON-LINE INTERMEDIARY SHALL NOT BE COMPENSATED BASED ON THE AMOUNT OF SECURITIES SOLD. THE FEE THAT AN ON-LINE INTERMEDIARY MAY CHARGE AN ISSUER FOR AN OFFERING OF SECURITIES PURSUANT TO THE EXEMPTION PROVIDED BY THIS SECTION MUST BE EITHER:

(A) A FIXED AMOUNT FOR EACH OFFERING;

(B) A VARIABLE AMOUNT BASED ON THE LENGTH OF TIME THAT THE SECURITIES ARE OFFERED BY THE ON-LINE INTERMEDIARY; OR

(C) A COMBINATION OF THE FIXED AND VARIABLE AMOUNTS.

(V) AN ON-LINE INTERMEDIARY SHALL NOT IDENTIFY, PROMOTE, OR OTHERWISE REFER TO ANY INDIVIDUAL SECURITY OFFERED BY IT IN ANY ADVERTISING FOR OR ON BEHALF OF THE ON-LINE INTERMEDIARY.

(VI) AN ON-LINE INTERMEDIARY SHALL NOT ENGAGE IN ANY OTHER ACTIVITIES THAT THE SECURITIES COMMISSIONER, BY RULE, DETERMINES ARE PROHIBITED BY THE ON-LINE INTERMEDIARY.

(VII) AN ON-LINE INTERMEDIARY AND A DIRECTOR, EXECUTIVE OFFICER, GENERAL PARTNER, MANAGING MEMBER, OR OTHER PERSON WITH MANAGEMENT AUTHORITY OVER THE ON-LINE INTERMEDIARY, MUST NOT HAVE BEEN SUBJECT TO ANY CONVICTION, ORDER, JUDGMENT, DECREE, OR OTHER ACTION THAT WOULD DISQUALIFY AN ISSUER FROM CLAIMING AN EXEMPTION PURSUANT TO RULE 506 (a) TO (d) ADOPTED BY THE SECURITIES EXCHANGE COMMISSION PURSUANT TO THE FEDERAL "SECURITIES ACT OF 1933", 17 CFR 230.506 (a) TO (d).

(4) **Rules.** THE SECURITIES COMMISSIONER MAY ADOPT RULES TO:

(a) IMPLEMENT OR ENFORCE THIS SECTION OR PROVIDE EXCEPTIONS OR WAIVERS TO THE REQUIREMENTS OF THIS SECTION; OR

(b) CONFORM OR ADD TO THE REQUIREMENTS OF THIS SECTION TO ACCOMMODATE THE REQUIREMENTS OF FEDERAL LAW APPLICABLE TO THE OFFER OR SALE OF A SECURITY BY AN ISSUER UNDER THIS SECTION.

**SECTION 2.** In Colorado Revised Statutes, 11-51-201, **add** (11.5) as follows:

**11-51-201. Definitions.** As used in this article, unless the context otherwise requires:

(11.5) "ON-LINE INTERMEDIARY" MEANS A PERSON:

(a) ACTING PURSUANT TO SECTION 11-51-308.5 AS AN INTERMEDIARY IN A TRANSACTION INVOLVING THE OFFER THROUGH A WEB SITE OF SECURITIES FOR THE ACCOUNT OF AN ISSUER; AND

(b) WHO DOES NOT:

(I) OFFER INVESTMENT ADVICE OR RECOMMENDATIONS;

(II) SOLICIT PURCHASES, SALES, OR OFFERS TO BUY THE SECURITIES OFFERED OR DISPLAYED ON ITS WEB SITE;

(III) COMPENSATE EMPLOYEES, AGENTS, OR OTHER PERSONS FOR SUCH SOLICITATION OR BASED ON THE SALE OF SECURITIES DISPLAYED OR REFERENCED ON ITS WEB SITE;

(IV) HOLD, MANAGE, POSSESS, OR OTHERWISE HANDLE PURCHASER FUNDS OR SECURITIES;

(V) ACT AS AN EXCHANGE OR LISTING OR QUOTATION SERVICE FOR THE OFFER OR SALE OF SECURITIES BY THIRD PARTIES; OR

(VI) ENGAGE IN SUCH OTHER ACTIVITIES AS THE SECURITIES COMMISSIONER, BY RULE, DETERMINES IS INAPPROPRIATE.

**SECTION 3.** In Colorado Revised Statutes, 11-51-402, **amend** (1) introductory portion, (1) (a) (V), and (1) (b); and **add** (1) (c) as follows:

**11-51-402. Exempt broker-dealers, sales representatives - sanctions - exempt investment advisers and investment adviser representatives.** (1) The following broker-dealers are exempt from the license requirement of SECTION 11-51-401 (1):

(a) A broker-dealer who is registered as a broker-dealer under the federal "Securities Exchange Act of 1934" and has no place of business in this state if the business transacted in this state as a broker-dealer is

exclusively with the following:

(V) During any twelve consecutive months, not more than five persons in this state, excluding persons described in subparagraphs (I) to (IV) of this paragraph (a); ~~and~~

(b) Other broker-dealers the securities commissioner by rule or order exempts; AND

(c) AN ON-LINE INTERMEDIARY OPERATING PURSUANT TO SECTION 11-51-308.5.

**SECTION 4. Act subject to petition - effective date - applicability.** (1) This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 5, 2015, if adjournment sine die is on May 6, 2015); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2016 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

(2) This act applies to conduct occurring on or after the applicable effective date of this act.

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Dickey Lee Hullinghorst  
SPEAKER OF THE HOUSE  
OF REPRESENTATIVES

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Bill L. Cadman  
PRESIDENT OF  
THE SENATE

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Marilyn Eddins  
CHIEF CLERK OF THE HOUSE  
OF REPRESENTATIVES

---

Cindi L. Markwell  
SECRETARY OF  
THE SENATE

APPROVED \_\_\_\_\_

---

John W. Hickenlooper  
GOVERNOR OF THE STATE OF COLORADO